#E-200

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Pre-Print RECOMMENDATION

Hazardous Substance Account Recodification Act

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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SUMMARY OF RECOMMENDATION

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."

The Commission decided to proceed with this work in phases, first undertaking work on Chapter 6.8.

This recommendation presents a complete draft of a proposed recodification of the provisions of Chapter 6.8. The proposed law would reorganize the provisions to make them more user-friendly, without changing the substance of the law.

This recommendation discusses the history and purposes of the Commission's study. This recommendation then describes the general character and noteworthy features of the proposed recodification, as well as the methodology used in preparing it.

The Commission has prepared a separate recommendation that proposes necessary conforming revisions (i.e., updating cross-references to Chapter 6.8 and its contents).

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

HAZARDOUS SUBSTANCE ACCOUNT RECODIFICATION ACT

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.

This recommendation presents a complete draft of a proposed recodification of the provisions of Chapter 6.8. The proposed law would reorganize the provisions to make them more user-friendly, without changing the substance of the law.

The history and purposes of the Commission's study are discussed briefly below. This recommendation then describes the general character and noteworthy features of the proposed recodification, as well as the methodology used in preparing it.

Unless otherwise indicated, all further statutory references are to the Health and Safety Code.

History and Purposes of the Commission's Study

This study originated with the work of the Independent Review Panel (IRP) of the Department of Toxic Substances Control.[2] In 2015, the IRP was established to "review and make recommendations regarding improvements to the department's permitting, enforcement, public outreach, and fiscal management."[3] During its tenure, the IRP prepared 12 reports and submitted a number of recommendations, including recommendations about statutory reforms.[4]

In response to the IRP's work,[5] the Legislature authorized the Commission to:

> study, report on, and prepare recommended legislation to revise 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. Such revisions may include, but are not limited to, grouping similar provisions together, reducing the length and complexity of sections, eliminating obsolete or redundant provisions, and correcting technical errors. The recommended revisions shall not make any

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

2. Senate Committee on Judiciary Analysis of SCR 91 (April 23, 2018), pp. 4-5.

3. 2015 Cal. Stat. ch. 24, § 15. The statute creating the IRP was repealed, by its own terms, on January 1, 2018.

4. See generally https://dtsc.ca.gov/independent-review-panel/.

5. See Senate Committee on Judiciary Analysis of SCR 91 (April 23, 2018), p. 3 (quoting Sen. Roth).

> substantive changes to the law. The commission's report shall also include a list of substantive issues that the commission identifies in the course of its work, for possible future study.[6]

The Legislature passed the resolution authorizing this work and the resolution was chaptered in August 2018. Soon afterwards, the Commission began examining the provisions of the Health and Safety Code as requested.[7]

Scope of Recommendation

Early in the course of this study, the Commission decided to begin work with the recodification of Chapter 6.8. This recommendation contains a proposed recodification for the material currently found in Chapter 6.8.

Going forward, the Commission will work on Chapter 6.5 to prepare a separate recommendation addressing those provisions.

The Legislature has granted the Commission authority to work on "related provisions." Early in the course of this study, the Commission received stakeholder input highlighting relationships between Chapters 6.5 and 6.8 and a number of surrounding chapters.[8] For the time being, the Commission has construed the "related provisions" authority narrowly to focus on required cross-reference updates (and, as needed, relocation of any clearly misplaced provisions). The Commission has prepared a separate recommendation containing conforming revisions to address the cross-references to provisions of Chapter 6.8 throughout the codes.[9]

Nonsubstantive Reform

In directing the Commission to study Chapters 6.5 and 6.8 of Division 20, the Legislature specified that the Commission's recommended legislation should "improve the organization and expression of the law," but "shall *not* make any substantive changes to the law."[10] By this directive, the Legislature made clear that the Commission's proposed revisions were to be nonsubstantive.

The Commission, mindful of this limitation, took several measures to avoid introducing any substantive changes in the course of its work. These measures are described below.

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6. 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth)); see also 2020 Cal. Stat. res. ch. 46 (ACR 173 (Gallagher)).

7. See CLRC Staff Memorandum 2018-52.

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.

8. See Exhibit to First Supplement to CLRC Staff Memorandum 2018-69; CLRC Staff Memorandum 2019-10, pp. 4-5.

9. *Hazardous Substance Account Recodification Act: Conforming Revisions*, __ Cal. L. Revision Comm'n Reports __ (2021).

10. 2020 Cal. Stat. res. ch. 46 (emphasis added).

Objective and Participatory Study Process

The Commission's study process is well-suited to the development of a nonsubstantive legal reform, for the following reasons:

- The Commission is neutral and objective, with a long history of nonpartisan statutory reforms.[11]
- The Commission is experienced in drafting legislation to recodify a complex body of law without substantive change.[12]
- The Commission actively solicits input from affected individuals and interest groups. It carefully considers each comment and often makes revisions in response to concerns raised.
- In proposing a statutory reform, the Commission prepares a thorough report that explains the purpose and effect of the reform. The report also includes a complete draft of the proposed legislation and accompanying commentary, a detailed table of contents, and a table showing the disposition of every affected section. This report facilitates public review of the proposed reform.
- The Commission's work is transparent. All materials are publicly distributed. All deliberations are conducted at open public meetings.

Commission Comments

In preparing a recommendation, the Commission drafts an explanatory "Comment" for every section that is added, amended, or repealed.[13] A Comment indicates the derivation of the section and often explains its relation to other law.

Virtually every Comment in this recommendation expressly states that a proposed new code section either continues or restates an existing code section "without substantive change."[14] That is important because upon enactment of the Commission's recommendation, the Comment would become a key aid in determining legislative intent.

On completion of a final recommendation in this study, the Commission will present the full recommendation, including the Comments, to the Legislature and the Governor. If a bill is introduced to implement the recommendation, the

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11. For a listing of reforms that have been enacted on the Commission's recommendation, see the most recent version of its *Annual Report* (available at www.clrc.ca.gov).

12. See, e.g., *Nonsubstantive Reorganization of Deadly Weapon Statutes,* 38 Cal. L. Revision Comm'n Reports 217 (2009) (enacted as 2010 Cal. Stat. chs. 178 & 711); *Civil Discovery: Nonsubstantive Reform,* 33 Cal. L. Revision Comm'n Reports 789 (2003) (enacted as 2004 Cal. Stat. ch. 182).

13. In the proposed legislation presented in this recommendation, the Comment for each proposed code section appears immediately after the code section.

14. For example, the Comment to proposed Section 78035 states that it "restates former Section 25310 without substantive change." The Comment refers to the existing provision as "former Section 25310" (rather than "Section 25310") because the Comment would be used after enactment of the proposed law and repeal of existing Chapter 6.8 of Division 20.

Commission will provide the full recommendation to each member of every policy committee that reviews the bill.

Commission materials that have been placed before and considered by the Legislature are considered evidence of legislative intent,[15] and are entitled to great weight in construing statutes.[16] The materials are a key interpretive aid for practitioners as well as courts,[17] and courts may judicially notice and rely on them.[18] Courts at all levels of the state[19] and federal[20] judicial systems use Commission materials to construe statutes enacted on Commission recommendation.[21]

The Commission's Comments to the proposed legislation in this study would thus help to demonstrate that the legislation constitutes a purely nonsubstantive recodification of Chapter 6.8.

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15. See, e.g., Fair v. Bakhtiari (2006) 40 Cal.4th 189, 195, 147 P.3d 653, 51 Cal.Rptr.3d 871 ("The Commission's official comments are deemed to express the Legislature's intent."); People v. Williams (1976) 16 Cal.3d 663, 667-68, 547 P.2d 1000, 128 Cal.Rptr. 888 ("The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it.").

16. See, e.g., Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2006) 40 Cal.4th 1, 12-13 n.9, 145 P.3d 462, 50 Cal.Rptr.3d 585 (Commission's official comments are persuasive evidence of Legislature's intent); Hale v. S. Cal. IPA Med. Group, Inc. (2001) 86 Cal.App.4th 919, 927, 103 Cal.Rptr.2d 773 (In discerning legislative intent, Law Revision Commission reports are entitled to great weight).

17. See 7 B. Witkin, Summary of California Law *Constitutional Law* § 138, at 250 (11th ed. 2017) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction,* 5 Sw. U. L. Rev. 349, 384 (1973).

18. See, e.g., Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc. (2005) 133 Cal.App.4th 26, 34 Cal.Rptr.3d 520 (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale,* 86 Cal.App.4th at 927; Barkley v. City of Blue Lake (1993) 18 Cal.App.4th 1745, 1751 n.3, 23 Cal.Rptr.2d 315.

19. See, e.g., Sullivan v. Delta Air Lines, Inc. (1997) 15 Cal.4th 288, 298, 935 P.2d 781, 63 Cal.Rptr.2d 74 (California Supreme Court); Admin. Mgmt. Servs., Inc. v. Fid. & Deposit Co. (1982) 129 Cal.App.3d 484, 488, 181 Cal.Rptr. 141 (court of appeal); Rossetto v. Barross (2001) 90 Cal.App.4th Supp. 1, 5-6, 110 Cal.Rptr.2d 255 (appellate division of superior court).

20. See, e.g., California v. Green (1970) 399 U.S. 149, 154 n.3 (United States Supreme Court); S. Cal. Bank v. Zimmerman (*In re* Hilde) (9th Cir. 1997) 120 F.3d 950, 953 (federal court of appeals); Williams v. Townsend (C.D. Cal. 1968) 283 F.Supp. 580, 582-83 (federal district court); Ford Consumer Fin. Co. v. McDonell (*In re* McDonell) (B.A.P. 9th Cir. 1996) 204 B.R. 976, 978-79 (bankruptcy appellate panel); *In re* Garrido (Bankr. S.D. Cal. 1984) 43 B.R. 289, 292-93 (bankruptcy court).

21. See, e.g., Jevne v. Superior Court (2005) 35 Cal.4th 935, 947, 111 P.3d 954, 28 Cal.Rptr.3d 685 (Commission report entitled to substantial weight in construing statute); Collection Bureau of San Jose v. Rumsey (2000) 24 Cal.4th 301, 308 & n.6, 6 P.3d 713, 99 Cal.Rptr.2d 792 (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); Brian W. v. Superior Court (1978) 20 Cal.3d 618, 623, 574 P.2d 788, 143 Cal.Rptr. 717 (Comments persuasive evidence of Legislature's intent); Volkswagen Pac., Inc. v. City of Los Angeles (1972) 7 Cal.3d 48, 61-63, 496 P.2d 1237, 101 Cal.Rptr. 869 (Comments evidence clear legislative intent of law).

Statements of Legislative Intent

The proposed law would be known as the "Hazardous Substance Account Recodification Act."[22] It includes several codified provisions that would expressly state the purpose and effect of the recodification.

Proposed Section 78010 is a general statement regarding the nonsubstantive effect of the recodification:

> 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 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.

Proposed Section 78015 would make clear that a provision of the proposed law is intended as a restatement and continuation of the provision that it restates, rather than a new enactment, and that any reference to a restated provision is deemed to include a reference to the section that restates it (and vice versa):

> 78015. (a) A provision of this part, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation of the previously existing provision and not as a new enactment.
>
> (b) 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.
>
> (c) A reference in a statute or regulation to a provision of this part that is substantially the same as a previously existing provision, shall, unless a contrary intent appears, be deemed to include a reference to the previously existing provision.
>
> (d) A reference in a regulation to a provision of former Chapter 6.8 (commencing with Section 25300) of Division 20, rather than to the provision of this part that continues the former provision, has no effect on the validity of the regulation.

Another provision, proposed Section 78020, would make clear that restatement of an existing provision is not intended to have any effect, positive or negative, on a judicial interpretation of the restated provision:

> 78020. (a) A judicial decision interpreting a previously existing provision is relevant in interpreting any provision of this part that restates and continues that previously existing provision.
>
> (b) However, in enacting the Hazardous Substance Account Recodification Act, the Legislature has not evaluated the correctness of any judicial decision interpreting a provision affected by the act.
>
> (c) The Hazardous Substance Account Recodification Act is not intended to, and does not, reflect any assessment of any judicial decision interpreting any provision affected by the act.

22. See proposed Section 78000(b) *infra*.

Lastly, proposed Section 78025 would make clear that restatement of a provision is not intended to have any effect, positive or negative, on a judicial decision on the *constitutionality* of the restated provision:

> 78025. (a) A judicial decision on the constitutionality of a previously existing provision is relevant in determining the constitutionality of any provision of this part that restates and continues that previously existing provision.
>
> (b) However, in enacting the Hazardous Substance Account Recodification Act, the Legislature has not evaluated the constitutionality of any provision affected by the act, or the correctness of any judicial decision on the constitutionality of any provision affected by the act.
>
> (c) The Hazardous Substance Account Recodification Act is not intended to, and does not, reflect any determination of the constitutionality of any provision affected by the act.

The provisions discussed above would establish that enactment of the proposed recodification should not be viewed as acquiescence in any court case construing the provisions of Chapter 6.8, or as an indication that the Legislature assessed the constitutionality of each recodified section in enacting the recodification. The proposed law would take no stand and have no effect on such matters.

Conservative Drafting

In preparing this recommendation, the Commission used a conservative drafting approach. It stuck closely to the existing statutory text, to further minimize the risk of a substantive change. In large part, this recodification continues the language of existing law verbatim. In some instances, language was restated to improve clarity.[23] Such changes are noted in the Comment (provisions where language changes were made are designated as "restating" the former provision). Minor changes to reflect current legislative drafting practices or correct grammatical errors were made without notation.

Legislative Process

After the Commission completes its study process and issues a final recommendation, the proposed law would be scrutinized carefully in the legislative process, just like any other bill. This would serve as a final safeguard against any substantive change in the law.

Drafting Approach

As discussed above, the Commission used a conservative drafting approach in preparing this recommendation. Other significant drafting techniques and decisions are described below.

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23. See, e.g., proposed Sections 78105(b), 78185, 78300, 78590, 79100, 80070, and 81030.

Location of the Proposed Law

Currently, Chapter 6.8 is codified in "Division 20. Miscellaneous Health and Safety Provisions" of the Health and Safety Code. The chapter contains the following articles:

- Article 1. Short Title and Legislative Intent.[24]
- Article 2. Definitions.[25]
- Article 3. Hazardous Substance Account.[26]
- Article 4. Fees.[27]
- Article 5. Uses of the State Account.[28]
- Article 5.5. Cleanup of Santa Susana Field Laboratory.[29]
- Article 6. Recovery Actions.[30]
- Article 6.3. Technology Demonstration Program.[31]
- Article 7. Compensation.[32]
- Article 7.5. Hazardous Substance Cleanup Bond Act of 1984.[33]
- Article 7.8. Orphan Share Reimbursement Trust Fund.[34]
- Article 8.5. Cleanup Loans and Environmental Assistance to Neighborhoods.[35]
- Article 8.6. Revolving Loans Fund.[36]
- Article 8.7. California Financial Assurance and Insurance for Redevelopment Program.[37]

Within Chapter 6.8, there is only a single heading level available to organize the material. Chapter 6.8 is divided into fourteen articles, as shown above.

The Commission recommends moving the substance of Chapter 6.8 to a new location (i.e., Part 2 of a new division, Division 45) within the Health and Safety

24. Sections 25300-25301.
25. Sections 25310-25327.
26. Sections 25330.2-25337.
27. Sections 25342-25343.
28. Sections 25350-25359.7.
29. Section 25359.20.
30. Sections 25360-25367.
31. Sections 25368-25368.8.
32. Sections 25372-25382.
33. Sections 25385-25386.5.
34. Sections 25390-25390.9.
35. Sections 25395.20-25395.32.
36. Sections 25395.35-25395.36.
37. Sections 25395.40-25395.45.

Code. Relocating the material as proposed would provide an additional heading level to organize the material.

The additional heading level would allow for lengthy sections to be subdivided under a single heading and for sections within an article to be grouped into smaller, but thematically cohesive pieces. This would further the legislative objectives to "group[]similar provisions together [and] reduc[e] the length and complexity of sections."[38]

Structure of the Proposed Law

As proposed, Chapter 6.8 of Division 20 would be recodified as "Part 2. Hazardous Substance Account" of a new "Division 45. Hazardous Substance Response." Part 1 of Division 45 would be reserved for general provisions. Part 2 would be divided into twelve chapters, as follows:

Chapter 1. General Provisions.
Chapter 2. Financial Provisions.
Chapter 3. General Powers and Duties.
Chapter 4. Releases of Hazardous Substances.
Chapter 5. Cleanup of Hazardous Substance Releases.
Chapter 6. Site-Specific Rules Related to Cleanup.
Chapter 7. Enforcement.
Chapter 8. Cost Recovery.
Chapter 9. Orphan Share Reimbursement.
Chapter 10. Cleanup Loans and Environmental Assistance to Neighborhoods.
Chapter 11. California Financial Assurance and Insurance for Redevelopment Program.
Chapter 12. Compensation.

Within those chapters, the material is further subdivided into articles.

Numbering System

Throughout the proposed legislation, the Commission used whole numbers for numbering code sections (e.g., Section 78000). The Commission also left gaps in the numbering, to allow ready insertion of new statutory material in an appropriate location if needed in the future.

This numbering approach will prevent confusion regarding the proper sequencing of code sections, which sometimes exists when decimal numbers are used. It will also promote logical, user-friendly organization as this law continues to evolve.

38. 2020 Cal. Stat. res. ch. 46.

Short, Simple Sections

The Legislature instructed the Commission to "reduc[e] the length and complexity of sections."[39]

Excessively long sections can obscure relevant details of law, especially if a single section addresses several different subjects. A better approach is to divide the law into a larger number of smaller sections, with each section limited to a single subject.

Short sections have numerous advantages. They enhance readability and understanding of the law, and make it easier to locate and refer to pertinent material. In contrast to a long section, a short section can be amended without undue technical difficulties[40] and new material can be inserted where logically appropriate, facilitating sound development of the law.[41] The use of short sections is the preferred drafting technique of the California Code Commission,[42] the Legislature,[43] the Legislative Counsel,[44] and the Law Revision Commission.[45]

For all of the reasons discussed above, the proposed law would divide lengthy sections into shorter and simpler provisions.

Cross-References

Chapter 6.8 contains numerous internal cross-references. In the proposed legislation, the Commission updated each such cross-reference to reflect the new numbering scheme in the recodification.

To facilitate review of the updated cross-references, this recommendation includes two tables, located immediately after the proposed legislation. One table shows the disposition of each existing code section; the other table shows the derivation of each proposed code section.

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39. 2020 Cal. Stat. res. ch. 46 (ACR 173 (Gallagher)).

40. The full text of a section must be set forth in any bill amending the section. Joint Rule 10. A lengthy bill entails higher printing costs than a short one. It also takes longer to review. Much of the material may be unrelated to a proposed reform, wasting reviewers' time and potentially injecting additional issues into a simple proposal.

Further, the likelihood that two bills will be introduced to amend the same section is greater if a section is long and covers multiple topics than if a section is short and limited to a single topic. If two bills affect the same section and both are enacted, the bill that is signed last generally prevails over the other bill, rendering it a nullity. Gov't Code § 9605. This can be avoided by double-jointing the bills or including other language to address the conflict. Taking such steps entails expense and effort, however, and introduces new possibilities for errors.

41. In amending a short section, the Legislature is unhampered by constraints such as overlong paragraphs and lack of available subparts. This promotes clear and straightforward drafting, as opposed to confusing and convoluted provisions.

42. California Code Commission, *Drafting Rules and Principles for Use of California Code Commission Draftsmen,* 1947-48 Report, app. G, at 4.

43. Joint Rule 8.

44. Legislative Counsel of California, Legislative Drafting Manual 26-28 (1975).

45. CLRC Staff Memorandum 1976-24; First Supplement to CLRC Staff Memorandum 1985-64.

Chapter 6.8 also contains numerous cross-references to statutes located outside the chapter. In addition to updating the internal cross-references, the Commission checked each of the external cross-references in preparing this recommendation.

Currently, a few of the cross-references in Chapter 6.8 are obsolete or plainly erroneous. Where possible, the Commission corrected the cross-reference in the proposed legislation, rather than perpetuating the error. The cross-reference corrections are described in the accompanying Comments.

There are also many code sections located outside of Chapter 6.8 that cross-refer to one or more provisions within Chapter 6.8. Those cross-references will also need to be conformed to the new numbering scheme in the recodification. Those cross-references are addressed in a separate recommendation.

Future Legislation

If, prior to introduction of legislation to implement this recommendation, a bill is enacted amending provisions of Chapter 6.8, the Commission will incorporate the substance of the enacted bill into the legislation to implement the proposed recodification, without substantive change.

When the Commission eventually approves a final recommendation and a legislator introduces a bill to implement that recommendation, there might be conflicts between that bill and other pending bills (i.e., they might try to revise the same code provision in different ways). If so, the Commission will recommend double-jointing amendments or other steps to eliminate the conflicts and coordinate the bills. Any such adjustments will be consistent with the nonsubstantive nature of this study.

Delayed Operative Date

Because of the breadth of the organizational changes that would be made by the proposed legislation, the Commission recommends that it be given a delayed operative date. The proposed legislation includes an uncodified provision to that effect, delaying the operation of the proposed law by one year.

This delayed operation would provide time for those who work closely with the affected statutes, including legal publishers, to adjust to the new organizational scheme before it takes effect. The Commission's comments and the disposition and derivation tables in the Commission's report would also help ease the transition.

Although the proposed recodification would entail some transitional costs (such as updating manuals and regulations), the Commission believes that the long-term benefits of having a better organized, more user-friendly statutory scheme would soon outweigh those transitional costs.

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PROPOSED LEGISLATION

Health & Safety Code §§ 25300-25395.45 (repealed). Hazardous Substance Account

SEC. ___. Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code is repealed.

Comment. Chapter 6.8 is repealed. The substance of Chapter 6.8 has been continued as Part 2 (commencing with Section 78000) of Division 45. For background, see *Hazardous Substance Account Recodification Act,* __ Cal. L. Revision Comm'n Reports __ (2021).

Health & Safety Code §§ 78000-81050 (added). Hazardous substance response

SEC. ___. Division 45 (commencing with Section 78000) is added to the Health and Safety Code, to read:

DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE

PART 1. GENERAL PROVISIONS [RESERVED]

PART 2. HAZARDOUS SUBSTANCE ACCOUNT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Preliminary Provisions

§ 78000. Short title

78000. (a) This part shall be known and may be cited as the Carpenter-Presley-Tanner Hazardous Substance Account Act.

(b) This part recodifies the provisions of former Chapter 6.8 (commencing with Section 25300) of Division 20. The act that added this part, and the act that consists of conforming revisions to reflect the addition of this part, shall be known and may be cited as the "Hazardous Substance Account Recodification Act."

Comment. Subdivision (a) of Section 78000 continues former Section 25300 without substantive change. The Carpenter-Presley-Tanner Hazardous Substance Account Act was formerly codified as Chapter 6.8 (commencing with Section 25300) of Division 20 of this code.

Subdivision (b) is new. It provides a convenient means of referring to the recodification of former Chapter 6.8 (commencing with Section 25300) of Division 20. For background, see *Hazardous Substance Account Recodification Act,* __ Cal. L. Revision Comm'n Reports __ (2021) and *Hazardous Substance Recodification Act: Conforming Revisions*, __ Cal. L. Revision Comm'n Reports __ (2021).

§ 78005. Legislative intent

78005. It is the intent of the Legislature to do all of the following:

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

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

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

Comment. Section 78005 continues former Section 25301 without substantive change.

See Sections 78065 ("federal act"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response"), 78155 ("site").

Article 2. Effect of Recodification

§ 78010. Nonsubstantive reform

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 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.

Comment. Section 78010 is modeled on Penal Code Section 16005. It makes clear that the Hazardous Substance Account Recodification Act has no substantive effect. The act is intended solely to make the Carpenter-Presley-Tanner Hazardous Substance Account Act more user-friendly. For background, see *Hazardous Substance Account Recodification Act,* __ Cal. L. Revision Comm'n Reports __ (2021).

For specific guidance on the impact of a judicial decision interpreting a predecessor of a provision in this part, see Section 78020. For specific guidance on the impact of a judicial decision assessing the constitutionality of a predecessor of a provision in this part, see Section 78025.

See Section 78000(b) ("Hazardous Substance Account Recodification Act").

§ 78015. Continuation of existing law

78015. (a) A provision of this part, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation of the previously existing provision and not as a new enactment.

(b) 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.

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

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

Comment. Subdivision (a) of Section 78015 is similar to Section 2, which is a standard provision found in many codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2; Penal Code §§ 5, 16010(a); Prob. Code § 2(a); Veh. Code § 2.

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

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

Subdivision (d) is new. It is added to make clear that any delay in updating regulations to reflect the enactment of this part does not have any effect on the validity of the regulation. A regulation continues to be valid even if it refers to a provision of former Chapter 6.8 (commencing with Section 25300) of Division 20.

See Section 78000(b) ("Hazardous Substance Account Recodification Act").

§ 78020. Judicial decision interpreting former law

78020. (a) A judicial decision interpreting a previously existing provision is relevant in interpreting any provision of this part that restates and continues that previously existing provision.

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

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

Comment. Section 78020 is modeled on Penal Code Section 16020.

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

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

For specific guidance on the impact of a judicial decision assessing the constitutionality of a predecessor of a provision in this part, see Section 78025. For general guidance on the nonsubstantive impact of the Hazardous Substance Account Recodification Act, see Section 78010.

See Section 78000(b) ("Hazardous Substance Account Recodification Act").

§ 78025. Constitutionality

78025. (a) A judicial decision on the constitutionality of a previously existing provision is relevant in determining the constitutionality of any provision of this part that restates and continues that previously existing provision.

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

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

Comment. Section 78025 is modeled on Penal Code Section 16025.

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

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

For specific guidance on the impact of a judicial decision interpreting a predecessor of a provision in this part, see Section 78020. For general guidance on the nonsubstantive effect of the Hazardous Substance Account Recodification Act, see Section 78010.

See Section 78000(b) ("Hazardous Substance Account Recodification Act").

§ 78030. Conforming rule change

78030. (a) The department or another state agency may make a conforming rule change without complying with the rulemaking procedure specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, if the rule change meets all of the requirements of this section.

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

(1) A completed and signed form STD 400.

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

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

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

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

Comment. Section 78030 is new.

See Section 78050 ("department").

Article 3. Definitions

§ 78035. Applicable definitions

78035. The definitions set forth in this article govern the interpretation of this part. Unless the context requires otherwise and except as provided in this article, the definitions contained in Section 101 of the federal act (42 U.S.C. Sec. 9601) apply to the terms used in this part.

Comment. Section 78035 restates former Section 25310 without substantive change.

See Section 78065 ("federal act").

§ 78040. "Agency"

78040. "Agency" means the California Environmental Protection Agency.

Comment. Section 78040 continues former Section 25310.5 without substantive change.

§ 78045. "Contract competitor"

78045. "Contract competitor" means any person competing for a state contract pursuant to subdivision (a) of Section 78655.

Comment. Section 78045 continues former Section 25311 without substantive change. See Section 78085 ("person").

§ 78050. "Department"

78050. "Department" means the Department of Toxic Substances Control.

Comment. Section 78050 continues former Section 25312 without substantive change.

§ 78055. "Director"

78055. "Director" means the Director of Toxic Substances Control.

Comment. Section 78055 continues former Section 25313 without substantive change.

§ 78060. "Feasibility study"

78060. "Feasibility study" means the identification and evaluation of technically feasible and effective remedial action alternatives to protect public health and the environment, at a hazardous substance release site, or other activities deemed necessary by the department for the development of a remedial action plan.

Comment. Section 78060 continues former Section 25314 without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78155 ("site").

§ 78065. "Federal act"

78065. "Federal act" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

Comment. Section 78065 continues former Section 25315 without substantive change.

§ 78070. "Federally permitted release"

78070. "Federally permitted release" has the same meaning as defined in Section 101(10) of the federal act (42 U.S.C. Sec. 9601(10)).

Comment. Section 78070 continues former Section 25325 without substantive change. See Sections 78065 ("federal act"), 78105 ("release").

§ 78075. "Hazardous substance"

78075. (a) "Hazardous substance" means:

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

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

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

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

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

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

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

(b) "Hazardous substance" does not include:

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

(2) Ash produced by a resource recovery facility utilizing a municipal solid waste stream.

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

Comment. Subdivision (a) of Section 78075 continues former Section 25316 without substantive change.

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

See Section 78065 ("federal act").

§ 78080. "Operation and maintenance"

78080. "Operation and maintenance" means those activities initiated or continued at a hazardous substance release site following completion of a response action that are deemed necessary by the department or regional board in order to protect public health or safety or the environment, to maintain the effectiveness of the response action at the site, or to achieve or maintain the response action standards and objectives established by the final remedial action plan or final removal action work plan applicable to the site.

Comment. Section 78080 continues former Section 25318.5 without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78130 ("removal action work plan"), 78140 ("response"), 78155 ("site").

§ 78085. "Person"

78085. "Person" means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities, to the extent permitted by law.

Comment. Section 78085 continues former Section 25319 without substantive change.

§ 78090. "Phase I environmental assessment"

78090. "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 substance based on reasonably available information about the property and general vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records, current and historical land uses, prior releases of a hazardous material, database searches, reviews of relevant files of federal, state, and local agencies, visual and other surveys of the property and general vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of a phase I environmental assessment.

Comment. Section 78090 continues former Section 25319.1 without substantive change. See 78075 ("hazardous substance"), 78105 ("release").

§ 78095. "Preliminary endangerment assessment"

78095. "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous substance management practices have resulted in a release or threatened release of a hazardous substance that poses a threat to the public health or the environment and is conducted in a manner that complies with the guidelines published by the department entitled "Preliminary Endangerment Assessment: Guidance Manual," or as those guidelines may be amended by the department. A preliminary endangerment assessment includes all of the following activities:

(a) Sampling and analysis of a site.

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

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

Comment. Section 78095 continues former Section 25319.5 without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site").

§ 78100. "Regional board"

78100. "Regional board" means a California regional water quality control board.

Comment. Section 78100 continues former Section 25319.6 without substantive change.

§ 78105. "Release"

78105. (a) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

(b) "Release" does not include any of the following:

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

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

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

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

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

Comment. Subdivision (a) of Section 78105 continues former Section 25320 without substantive change.

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

See Sections 78065 ("federal act"), 78085 ("person"), 78140 ("response").

§ 78110. "Release authorized or permitted pursuant to state law"

78110. "A release authorized or permitted pursuant to state law" means any release into the environment that is authorized by statute, ordinance, regulation, or rule of any state, regional, or local agency or government or by any specific permit, license, or similar authorization from such an agency, including one of the foregoing, that recognizes a standard industry practice, including variances obtained from the agency that allow operations for facilities during a period of time when releases from the facilities do not conform with relevant statutes, ordinances, regulations, or rules. The term includes a federally permitted release, as defined by Section 78070, and releases that are in accordance with any court order or consent decree.

Comment. Section 78110 continues former Section 25326 without substantive change.

See Sections 78040 ("agency"), 78105 ("release").

§ 78115. "Remedial design"

78115. "Remedial design" means the detailed engineering plan to implement the remedial action alternative or initial remedial measure approved by the department.

Comment. Section 78115 continues former Section 25322.1 without substantive change. See Sections 78050 ("department"), 78125 ("remedy").

§ 78120. "Remedial investigation"

78120. "Remedial investigation" means those actions deemed necessary by the department to determine the full extent of a hazardous substance release at a site, identify the public health and environment threat posed by the release, collect data on possible remedies, and otherwise evaluate the site for purposes of developing a remedial action plan.

Comment. Section 78120 continues former Section 25322.2 without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78155 ("site").

§ 78125. "Remedy" or "remedial action"

78125. "Remedy" or "remedial action" includes all of the following:

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

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

(c) Site operation and maintenance.

Comment. Section 78125 continues former Section 25322 without substantive change. See Sections 78055 ("director"), 78065 ("federal act"), 78075 ("hazardous substance"), 78080 ("operation and maintenance"), 78105 ("release"), 78135 ("remove"), 78155 ("site").

§ 78130. "Removal action work plan"

78130. "Removal action work plan" means a work plan prepared or approved by the department or a regional board that is developed to carry out a removal action, in an effective manner, that is protective of the public health and safety and the environment. The removal action work plan shall include a detailed engineering plan for conducting the removal action, a description of the onsite contamination, the goals to be achieved by the removal action, and any alternative removal options that were considered and rejected and the basis for that rejection.

Comment. Section 78130 continues former Section 25323.1 without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78135 ("remove").

§ 78135. "Remove" or "removal"

78135. "Remove" or "removal" includes the cleanup or removal of released hazardous substances from the environment or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release, as further defined by Section 101(23) of the federal act (42 U.S.C. Sec. 9601(23)).

Comment. Section 78135 continues former Section 25323 without substantive change. See Sections 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release").

§ 78140. "Response," "respond," or "response action"

78140. "Response," "respond," or "response action" have the same meanings as defined in Section 101(25) of the federal act (42 U.S.C. Sec. 9601(25)). The enforcement and oversight activities of the department and regional board are included within the meaning of "response," "respond," or "response action."

Comment. Section 78140 continues former Section 25323.3 without substantive change. An erroneous cross-reference to "Section 9601(25) of the federal act" was corrected to refer to "Section 101(25) of the federal act."

See Sections 78050 ("department"), 78065 ("federal act"), 78100 ("regional board").

§ 78145. "Responsible party" or "liable person"

78145. (a)(1) "Responsible party" or "liable person," for the purposes of this part, means those persons described in Section 107(a) of the federal act (42 U.S.C. Sec. 9607(a)).

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

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

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

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

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

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

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

Comment. Section 78145 continues former Section 25323.5 without substantive change. See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78155 ("site").

§ 78150. "Secretary"

78150. "Secretary" means the Secretary for Environmental Protection.

Comment. Section 78150 continues former Section 25326.3 without substantive change.

§ 78155. "Site"

78155. "Site" has the same meaning as the term "facility" is defined by Section 101(9) of the federal act (42 U.S.C. Sec. 9601(9)).

Comment. Section 78155 continues former Section 25323.9 without substantive change. See Section 78065 ("federal act").

§ 78160. "Site cleanup evaluation"

78160. "Site cleanup evaluation" means an evaluation by the department of the effectiveness of a removal or remedial action conducted by a responsible party, to reduce or eliminate actual or potential public health and environmental threats posed by a hazardous substance release site if the action itself is not the subject of oversight by the department.

Comment. Section 78160 continues former Section 25326.5 without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

§ 78165. "State account"

78165. "State account" means the Toxic Substances Control Account established pursuant to Section 25173.6.

Comment. Section 78165 continues former Section 25324(a) without substantive change.

§ 78168. "State board"

78168. "State board" means the State Water Resources Control Board.

Comment. Section 78168 continues and generalizes the substance of former Sections 25356.1(a) and 25395.20(a)(18). The application of the definition of "state board" was broadened for drafting convenience.

§ 78170. "Tier"

78170. "Tier" means a grouping of hazardous substance release sites that require removal and remedial actions, that are listed alphabetically, and that are of a roughly equivalent priority for removal and remedial action.

Comment. Section 78170 continues former Section 25327 without substantive change.

See Sections 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

Article 4. Construction of Part

§ 78185. Construction as to liability

78185. (a) This part shall not be construed as imposing any new liability associated with acts that occurred on or before January 1, 1982, if the acts were not in violation of existing state or federal laws at the time they occurred.

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

(c) Except as provided in Sections 79650, 79665, and 79670 and Articles 3 (commencing with Section 79700) and 5 (commencing with 79760) of Chapter 8, nothing in this part shall affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of the hazardous substance.

Comment. Section 78185 restates former Section 25366 without substantive change.

See Sections 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78110 ("release authorized or permitted pursuant to state law"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response").

CHAPTER 2. FINANCIAL PROVISIONS

Article 1. Budget

§ 78200. Items to be scheduled in Budget Act

78200. The Director of Finance shall schedule in the annual proposed budget the projects proposed in any fiscal year, that will incur direct costs for removal and remedial actions at hazardous substance release sites.

Comment. Section 78200 restates former Section 25342 without substantive change.

See Section 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

Article 2. Externally-Funded Positions

§ 78210. Protection of positions funded by federal grant or responsible party

78210. (a) For the purposes of this section, an "externally-funded position" means either of the following:

(1) A direct or indirect position that provides oversight and related support of remediation and hazardous substance management at a military base, including a closed military base, that is funded through an agreement with a party responsible for paying the department's costs.

(2) A direct or indirect position that is funded by a federal grant that does not require a state match funded from the General Fund.

(b)(1) Notwithstanding Section 12439 of the Government Code, the Controller may not eliminate any externally-funded position.

(2) Notwithstanding any other provision of law, including Section 4.10 of the Budget Act of 2003, for the 2003–04 and 2004–05 fiscal years, the Director of Finance may not eliminate any externally-funded position.

(c) Neither the Controller nor the Department of Finance may impose any hiring freeze or personal services limitations, including any position reductions, upon any externally-funded position.

(d) The Controller and Department of Finance shall exclude, from the department's base for purposes of calculating any budget or position reductions required by any state agency or any state law, any externally-funded position and the specific amounts attributable to any externally-funded position.

(e) Notwithstanding any other provision of law, neither the Controller nor the Department of Finance may require the department to reduce authorized positions or other appropriations for other department programs, including personal services, to replace the reductions precluded by subdivisions (b), (c), and (d).

(f) Notwithstanding any other provision of law, upon the request of the department, and upon review and approval by the Department of Finance, the Controller shall augment any Budget Act appropriations, except for appropriations from the General Fund, necessary to implement this section.

(g)(1) This section does not apply to any department appropriation or expenditure of General Fund moneys.

(2) This section does not limit the authority of the Department of Finance to eliminate a position when funding for the position, through an agreement with a party or by a federal grant, is no longer available.

Comment. Subdivision (a) of Section 78210 is new. It was added for drafting convenience. Subdivisions (b)-(g) restate former Section 25353.5 without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance").

Article 3. State Account

§ 78220. Actions involving state account

78220. The state account may sue and be sued in its own name.

Comment. Section 78220 continues former Section 25331 without substantive change. See Section 78165 ("state account").

§ 78225. Excess expenditures

78225. Expenditures from the state account shall not be made in excess of the total amount of money in the state account at any one time. Expenditures in excess of that amount may be made only when additional money is collected or otherwise added to the state account.

Comment. Section 78225 continues former Section 25357 without substantive change. See Section 78165 ("state account").

§ 78230. Subaccount for funds for response action at specific site

78230. (a) Notwithstanding any other provision of law, the Controller shall establish a separate subaccount in the state account, for any funds received from a settlement agreement or the General Fund for a removal or remedial action to be performed at a specific site.

(b) Notwithstanding Section 13340 of the Government Code, funds deposited in the subaccount for those removal or remedial actions are hereby continuously appropriated to the department, without regard to fiscal years, for removal or remedial action at the specific site, and for administrative costs associated with the removal or remedial action at the specific site.

(c) Notwithstanding any other provision of law, money in the subaccount for those removal or remedial actions shall not revert to the General Fund or be transferred to any other fund or account in the State Treasury, except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from investment of the funds specified in subdivision (a) pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the subaccount for removal or remedial action at the specific sites.

(e) At the conclusion of all removal or remedial actions at the specific site, any unexpended funds in any subaccounts established pursuant to this section shall be transferred to the subaccount for site operation and maintenance established pursuant to Section 78235, if necessary, for those activities at the site, or, if not needed for site operation and maintenance at the site, to the state account.

(f) There is hereby created a subaccount in the state account as the successor fund to the Stringfellow Insurance Proceeds Account created pursuant to former Section 25330.6, as amended by Chapter 178 of the Statutes of 2007. All assets, liabilities,

and surplus in the Stringfellow Insurance Proceeds Account shall be transferred to, and become a part of, this subaccount for the Stringfellow Superfund Site in Riverside County, as provided in Section 16346 of the Government Code. All appropriations from the Stringfellow Insurance Proceeds Account, to the extent encumbered, shall continue to be available from the subaccount for expenditure for the same purposes and periods.

Comment. Section 78230 continues former Section 25330.4(a)-(e), inclusive, and (f)(1) without substantive change. For ease of reference, former paragraph (f)(1)'s reference to "former Section 25330.6, as that section read on January 1, 2013" has been replaced with a reference to the last statute to amend the section prior to that date.

Former Section 25330.4(f)(2) is obsolete and has not been continued.

See Sections 78050 ("department"), 78080 ("operation and maintenance"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site"), 78165 ("state account").

§ 78235. Subaccount for site operation and maintenance

78235. (a) The Controller shall establish a separate subaccount for site operation and maintenance in the state account. All of the following amounts shall be deposited in the subaccount:

(1) Funds received from responsible parties for site operation and maintenance.

(2) Funds received from the federal government pursuant to the federal act for site operation and maintenance.

(3) Funds received from cities, counties, or any other state or local agency for site operation and maintenance.

(4) Funds appropriated from the state account by the Legislature for site operation and maintenance.

(b) Notwithstanding Section 13340 of the Government Code, funds deposited in the subaccount for site operation and maintenance are hereby continuously appropriated to the department, without regard to fiscal years, for site operation and maintenance, and for administrative costs associated with site operation and maintenance.

(c) Notwithstanding any other provision of law, money in the subaccount for site operation and maintenance shall not revert to the General Fund or be transferred to any other fund or account in the State Treasury, except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from investment of the funds specified in subdivision (a) pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the subaccount for site operation and maintenance.

Comment. Section 78235 continues former Section 25330.5 without substantive change.

See Sections 78050 ("department"), 78065 ("federal act"), 78080 ("operation and maintenance"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 78240. Reserve account for emergencies

78240. (a) There is hereby continuously appropriated from the state account to the department the sum of one million dollars ($1,000,000) for each fiscal year as a reserve account for emergencies, notwithstanding Section 13340 of the Government Code. Funds in the reserve account are governed by Section 78875.

(b) Once the appropriation made pursuant to subdivision (a) is fully expended, the director may file a report with the Legislature if it is in session or, if it is not in session, with the Committee on Rules of the Assembly and the Senate as to the moneys expended pursuant to Section 78875. The Legislature may appropriate moneys from the state account, in addition to those moneys appropriated pursuant to subdivision (a), to the department for the purpose of taking corrective action pursuant to subdivision (a) of Section 78875.

(c) Except as provided in subdivision (b), the amount deposited in the reserve account and appropriated pursuant to this section shall not exceed one million dollars ($1,000,000) in any fiscal year. On June 30 of each year, the unencumbered balance of the reserve account shall revert to and be deposited in the state account.

Comment. The first sentence of subdivision (a) of Section 78240 continues the first sentence of former Section 25354(a).

The second sentence of subdivision (a) is new.

Subdivision (b) continues former Section 25354(c), with the exception of the first sentence.

Subdivision (c) continues former Section 25354(d).

See Sections 78050 ("department"), 78055 ("director"), 78165 ("state account").

Article 4. Site Remediation Account

§ 78260. Site Remediation Account

78260. (a) There is in the General Fund the Site Remediation Account, which shall be administered by the director. The account shall be funded by money transferred from the state account, upon appropriation by the Legislature. Consistent with the requirements of Section 104(c) of the federal act (42 U.S.C. Sec. 9604(c)), the moneys in the account may be expended by the department, upon appropriation by the Legislature, for direct site remediation costs.

(b)(1) For purposes of this section, "direct site remediation costs" means payments to contractors for investigations, characterizations, removal, remediation, or long-term operation and maintenance at sites contaminated or suspected of contamination by hazardous materials, where those actions are authorized pursuant to this part.

(2) "Direct site remediation costs" also means the state-mandated share pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

(3) "Direct site remediation costs" does not include the department's administrative expenses or the department's expenses for staff to perform oversight of investigations, characterizations, removals, remediations, or long-term operation and maintenance.

Comment. Section 78260 continues former Section 25337 without substantive change. In subdivision (a), an erroneous reference to "Section 114(c) of the federal act (42 U.S.C. Sec. 9614(c))" was corrected to refer to "Section 104(c) of the federal act (42 U.S.C. Sec. 9604(c))."

See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78080 ("operation and maintenance"), 78135 ("remove"), 78155 ("site"), 78165 ("state account").

§ 78265. Encumbrance and disbursement of funds

78265. Funds in the Site Remediation Account appropriated for removal or remedial action pursuant to this part are available for encumbrance for three fiscal years subsequent to the fiscal year in which the funds are appropriated and are available for disbursement in liquidation of encumbrances pursuant to Section 16304.1 of the Government Code.

Comment. Section 78265 continues former Section 25330.2 without substantive change.

See Section 78125 ("remedy"), 78135 ("remove").

Article 5. Hazardous Substance Cleanup Bond Act of 1984

§ 78280. Short title

78280. This article shall be known and may be cited as the Johnston-Filante Hazardous Substance Cleanup Bond Act of 1984.

Comment. Section 78280 continues former Section 25385 without substantive change.

§ 78285. Definitions

78285. For purposes of this article, and for purposes of Section 16722 of the Government Code as applied to this article, the following definitions apply:

(a) "Board" means the department.

(b) "Committee" means the Hazardous Substance Cleanup Committee created pursuant to Section 78295.

(c) "Director" means the director.

(d) "Fund" means the state account.

(e) "Orphan site" means a site with a release or threatened release of a hazardous substance with no reasonably identifiable responsible parties.

(f) "Orphan share" means those costs of removal or remedial action at sites with a release or threatened release of hazardous substances, which costs are in excess of amounts included in a cleanup agreement.

(g) "Responsible party" means a person who is, or may be, responsible or liable for carrying out, or paying for the costs of, a removal or remedial action.

Comment. Section 78285 continues former Section 25385.1 without substantive change.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 78290. Application of State General Obligation Bond Law

78290. The State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code) is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued pursuant to this article, and the provisions of that law are included in this article as though set out in full in this article, except that, notwithstanding anything in the State General Obligation Bond Law, the maximum maturity of bonds shall not exceed 30 years from the date of the bonds, or from the date of each respective series. The maturity of each respective series shall be calculated from the date of the series.

Comment. Section 78290 continues former Section 25385.2 without substantive change.

§ 78295. Creation of Hazardous Substance Cleanup Committee

78295. The Hazardous Substance Cleanup Committee, which is hereby created, shall consist of the Governor, the Director of Finance, the Treasurer, the Controller, and the secretary.

Comment. Section 78295 continues former Section 25385.4 without substantive change. See Section 78150 ("secretary").

§ 78300. Authority of committee to create debt for specified purposes

78300. The committee may create debts or liabilities of the State of California, in the aggregate of one hundred million dollars ($100,000,000), in the manner provided in this article. The debts or liabilities shall be created for the purpose of providing moneys, for deposit in the fund, for the purposes specified in Section 78305.

Comment. Section 78300 restates former Section 25385.5 without substantive change. The phrases "debt or debts" and "liability or liabilities" have been singularized. These are nonsubstantive changes. See Section 13. See Section 78285 ("committee" and "fund").

§ 78305. Authorized uses of funds from bond proceeds

78305. (a) The moneys in the state account that are the proceeds of bonds issued and sold pursuant to this article may be used, upon appropriation by the Legislature, for the purposes specified in this section.

(b) The board may expend moneys in the fund that are the proceeds of bonds issued and sold pursuant to this article upon the authorization of the committee, for all of the following purposes:

(1) To provide the state share of a removal or remedial action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)) if the site is the subject of a final remedial action plan issued pursuant to Article 12 (commencing with Section 79190) of Chapter 5.

(2) To pay all costs of a removal or remedial action incurred by the state, or by any local agency with the approval of the director, in response to a release or threatened release of a hazardous substance at a site that is listed in the priority

ranking of sites pursuant to Article 5 (commencing with Section 78760) of Chapter 4 and is the subject of a final remedial action plan issued pursuant to Article 12 (commencing with Section 79190) of Chapter 5, to the extent that the costs are not paid by responsible parties or are reimbursed by the federal act.

(3) To pay for site characterization of a release of hazardous substances, even if a remedial action plan has not been prepared, approved, adopted, or made final for that site.

Comment. Section 78305 continues former Section 25385.6 without substantive change.

See Sections 78055 ("director"), 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response"), 78155 ("site"), 78165 ("state account"), 78285 ("board", "committee," "director," "fund," and "responsible party").

§ 78310. Bonds as general obligations of state

78310. (a) All bonds authorized by this article, which are sold and delivered as provided in this article, constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California are hereby pledged for the punctual payment of both the principal of and the interest on the bonds.

(b) There shall be collected annually, in the same manner and at the same time as other state revenue is collected, that sum, in addition to the ordinary revenues of the state, which is required to pay the principal of, and interest on, the bonds as provided in this article, and all officers charged by law with any duty in regard to the collection of the revenue shall perform each and every act that is necessary to collect this additional sum.

Comment. Section 78310 restates former Section 25385.7 without substantive change.

§ 78315. Transfers to General Fund

78315. Notwithstanding Section 78345, the money deposited in the fund is available for transfer to the General Fund if money was deposited in the fund pursuant to any provision of law requiring repayments to the state for assistance financed by the proceeds of the bonds issued pursuant to this article. When transferred to the General Fund, that money shall be applied as a reimbursement to the General Fund for the principal and interest payments on the bonds that have been paid from the General Fund.

Comment. Section 78315 continues former Section 25386 without substantive change.

See Section 78285 ("fund").

§ 78320. Appropriation from General Fund

78320. There is hereby appropriated from the General Fund in the State Treasury, for the purpose of this article, an amount equal to the sum of all of the following:

(a) The sum, annually, that will be necessary to pay the principal of, and the interest on, the bonds issued and sold pursuant to this article, as the principal and interest become due and payable.

(b) The sum that is necessary to carry out Section 78325, which sum is appropriated without regard to fiscal years, notwithstanding Section 13340 of the Government Code.

Comment. Section 78320 continues former Section 25386.1 without substantive change.

§ 78325. Withdrawals from General Fund

78325. (a) For the purpose of carrying out this article, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of amounts not to exceed the amount of the unsold bonds that the committee has, by resolution, authorized to be sold for the purpose of carrying out this article.

(b) Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the board in accordance with this article.

(c) Any moneys made available pursuant to this section shall be returned to the General Fund from moneys received from the sale of bonds sold for the purpose of carrying out this article.

Comment. Section 78325 continues former Section 25386.2 without substantive change. See Section 78285 ("board," "committee," and "fund").

§ 78330. Tax-exempt funds

78330. Notwithstanding any other provision of this bond act, or of the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), if the Treasurer sells bonds pursuant to this bond act that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law, or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

Comment. Section 78330 continues former Section 25386.25 without substantive change.

§ 78335. Determination on issuance of bonds

78335. Upon the request of the board, and supported by a statement of the proposed actions to be taken pursuant to Section 78305, the committee shall determine whether it is necessary or desirable to issue any bonds authorized pursuant to this article in order to take these actions, and if so, the amount of bonds that should be issued and sold. Successive issues of bonds may be authorized and sold to take these actions progressively, and it is not necessary that all of the bonds authorized by this article to be issued are sold at any one time.

Comment. Section 78335 continues former Section 25386.3 without substantive change. See Section 78285 ("board" and "committee").

§ 78340. Authority to sell bonds

78340. The committee may authorize the Treasurer to sell all, or any part of, the bonds authorized under this article at the time or times as may be fixed by the Treasurer.

Comment. Section 78340 continues former Section 25386.4 without substantive change. See Section 78285 ("committee").

§ 78345. Uses of bond proceeds

78345. Except as provided in Section 78315, all proceeds from the sale of bonds, except those derived from premiums and accrued interest, are available for the purposes specified in Section 78305, but are not available for transfer to the General Fund to pay the principal of, and interest on, the bonds.

Comment. Section 78345 continues former Section 25386.5 without substantive change. A cross-reference to "subdivision (c) of Section 25385.3" has been deleted as obsolete because that section was repealed by its own terms on January 1, 2007. See 2006 Cal. Stat. ch. 77, § 39.

Article 6. Revolving Loans Fund

§ 78360. Definitions

78360. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Brownfield site" has the same meaning as defined in Section 101 of the federal act (42 U.S.C. Sec. 9601).

(b) "Brownfield law" means the federal Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107-118) as amending the federal act.

(c) "Federal Trust Fund" means the Federal Trust Fund established pursuant to Section 16360 of the Government Code.

(d) "Fund" means the Revolving Loans Fund established pursuant to this article.

Comment. Section 78360 continues former Section 25395.35 without substantive change. Technical changes were made to correct a federal law citation and conform to standard citation formats.

See Section 78065 ("federal act").

§ 78365. Revolving Loans Fund

78365. (a) The Revolving Loans Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated, without regard to fiscal year, to the department for expenditure in accordance with this part. The department is the state agency responsible for administering the fund.

(b) All of the following moneys shall be deposited in the fund:

(1) Notwithstanding Section 25173.6, moneys received pursuant to the brownfield law and transferred to the fund from the Federal Trust Fund.

(2) The amounts collected for loan services.

(3) Interest payments.

(4) Principal repayments.

(5) Notwithstanding Section 16475 of the Government Code, any interest earned upon the moneys deposited in the fund.

(c) The department may expend the moneys in the fund only for the purposes authorized by the brownfield law, as specified in subsection (k) of Section 104 of the federal act (42 U.S.C. Sec. 9604(k)), including providing financial assistance for both of the following:

(1) Issuing loans for response actions to eligible brownfield sites.

(2) Making subgrants for response actions to eligible brownfield sites.

(d) Any repayment of fund moneys, including interest payments, and all interest earned on, or accruing to, any moneys in the fund, that are deposited in the fund, as provided in subdivision (b), shall be available, in perpetuity, for expenditure for the purposes and uses authorized by the brownfield law.

Comment. Section 78365 continues former Section 25395.36 without substantive change. A technical change was made to conform to the standard citation format for the federal act. See Section 78065.

See Sections 78050 ("department"), 78065 ("federal act"), 78140 ("response"), 78360 ("brownfield site," "brownfield law," "Federal Trust Fund," and "fund").

Article 7. Illegal Drug Lab Cleanup Account

§ 78370. Illegal Drug Lab Cleanup Account

78370. The Illegal Drug Lab Cleanup Account is hereby created in the General Fund and the department may expend any money in the account, upon appropriation by the Legislature, to carry out the removal actions required by Article 16 (commencing with Section 79350) of Chapter 5 and to implement Section 79380, including, but not limited to, funding an interagency agreement entered into with the Office of Environmental Health Hazard Assessment to provide guidance services. The account shall be funded by moneys appropriated directly from the General Fund.

Comment. Section 78370 continues former Section 25354.5(f) without substantive change.

See Section 78050 ("department"), 78135 ("remove").

CHAPTER 3. GENERAL POWERS AND DUTIES

Article 1. Regulatory Authority

§ 78400. Authority to adopt regulations

78400. The department shall adopt any regulations necessary to carry out its responsibilities pursuant to this part, including, but not limited to, regulations governing the expenditure of, and accounting procedures for, moneys allocated to state, regional, and local agencies pursuant to this part.

Comment. Section 78400 continues former Section 25351.5 without substantive change.

See Section 78050 ("department").

Article 2. Federal Assistance

§ 78410. Obligation to seek federal funds and agreements

78410. The state shall actively seek to obtain all federal funds to which it is entitled under the federal act and shall take all actions necessary to enter into contractual or cooperative agreements under Sections 104(c)(3) and 104(d)(1) of the federal act (42 U.S.C. Sec. 9604(c)(3) and 42 U.S.C. Sec. 9604(d)(1)).

Comment. Section 78410 continues former Section 25358 without substantive change. See Section 78065 ("federal act").

Article 3. Public Outreach

§ 78420. Community service offices

78420. (a) The department and the State Water Resources Control Board shall establish two community service offices, one to serve northern California and the other to serve southern California.

(b) Notwithstanding Section 80025, the department and, if appropriate, the State Water Resources Control Board shall expend a total of four hundred thousand dollars ($400,000) per year from the Orphan Share Reimbursement Trust Fund established pursuant to Chapter 9 (commencing with Section 80000) on the operation of the community service offices established pursuant to this section. The offices shall use these funds to provide direct technical and logistical support to any community advisory group established pursuant to Section 78950. Funds allocated pursuant to this subdivision shall supplement, and not supplant, any funds expended for the purposes of developing and implementing other public participation activities required to be undertaken pursuant to this part, including, but not limited to, activities undertaken pursuant to the National Contingency Plan or the public participation plan required to be adopted by the department pursuant to Section 78930.

(c) The State Water Resources Control Board may contract with the department to provide this service on behalf of a regional board if the State Water Resources Control Board finds that it would be more practical and economical to do so.

(d) In implementing this section and Section 78925, the department and the regional boards are not obligated to expend funds beyond the amounts appropriated in any fiscal year for purposes of developing and implementing public participation activities required by other provisions of this part unless the Orphan Share Reimbursement Trust Fund contains funding at the level specified in subdivision (b).

Comment. Section 78420 continues former Section 25358.7.2, with the exceptions described in this comment, without substantive change. Obsolete language in subdivision (a) about the timing for the establishment of the community service offices is not continued. The second sentence of former Section 25358.7.2(a) is continued elsewhere in this part.

A reference to a "public participation workplan" in subdivision (b) was corrected to refer to a "public participation plan." See Section 78930.

See Sections 78050 ("department"), 78100 ("regional board").

Article 4. Investigatory Powers

§ 78435. Purpose of investigation

78435. The department, a representative of the department, or any person designated by the director may take the actions specified in this article only if there is a reasonable basis to believe that there has been or may be a release or threatened release of a hazardous substance, and only for the purpose of determining under this part the need for a response action, the choosing or taking of a response action, or otherwise for the purpose of enforcing this part.

Comment. Section 78435 continues former Section 25358.1(a) without substantive change.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response").

§ 78440. Authority to require person to provide relevant information

78440. (a) Any officer or employee of the department, a representative of the director, or a person designated by the director may require any person who has or may have information relevant to any of the following matters to furnish the information, upon reasonable notice:

(1) The identification, nature, and quantity of materials that have been, or are, generated, treated, stored, or disposed of at a hazardous substance release site or that have been, or are, transported to a hazardous substance release site.

(2) The nature or extent of a release or a threatened release of a hazardous substance at, or from, a hazardous substance release site.

(3) The ability of a person to pay for or to perform a response action, consistent with Section 104(e) of the federal act (42 U.S.C. Sec. 9604(e)).

(b) Any person required to furnish information pursuant to this article shall pay any costs of photocopying or transmitting the information.

(c) A person who is required to provide information pursuant to subdivision (a) shall, in accordance with Section 78455, allow the officer, employee, representative, or designee, upon reasonable notice and at reasonable times, to have access to, and copy, all records relating to the hazardous substances for purposes of assisting the department in determining the need for a response action.

Comment. Section 78440 continues former Section 25358.1(b)-(d), inclusive, without substantive change. A technical change was made to conform to the standard citation format for the federal act. See Section 78065.

See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response"), 78155 ("site").

§ 78445. Disclosure of information

78445. (a) The department may disclose information submitted pursuant to this article to authorized representatives, contractors, or other governmental agencies only in connection with the department's responsibilities pursuant to this part. The

department shall establish procedures to ensure that information submitted pursuant to this article is used only in connection with these responsibilities and is not otherwise disseminated without the consent of the person who provided the information to the department.

(b) The department may also make available to the United States Environmental Protection Agency any information required by law to be furnished to that agency. The sharing of information between the department and that agency pursuant to this article does not constitute a waiver by the department or of any affected person of any privilege or confidentiality provided by law that pertains to the information.

Comment. Section 78445 continues former Section 25358.1(j) and (k) without substantive change.

See Sections 78050 ("department"), 78085 ("person").

§ 78450. Entry, inspection, and sampling of property

78450. (a) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with Section 78455, enter, at reasonable times, any of the following properties:

(1) Any nonresidential establishment or other place or property where any hazardous substances may be, or have been, produced, stored, treated, disposed of, or transported from.

(2) Any nonresidential establishment or other place or property from which, or to which, a hazardous substance has been, or may have been, released.

(3) Any nonresidential establishment or other place or property where a hazardous substance release is, or may be, threatened.

(4) Any nonresidential establishment or other place or property where entry is needed to determine the need for a response action, or the appropriate remedial action, to effectuate a response action under this part.

(5) Any residential place or property that, if it were a nonresidential establishment or other place or property, would otherwise meet the criteria described in paragraphs (1) to (4), inclusive, if the department, representative, or person designated by the director is able to establish, based upon reasonably available evidence, that hazardous substances have been released onto or under the residential place or real property and if entry is made only at reasonable times and after reasonable notification to the owners and occupants.

(b) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with Section 78455, carry out any of the following activities:

(1) Inspect and obtain samples from any establishment or other place or property specified in subdivision (a) or from any location of any suspected hazardous substance.

(2) Inspect and obtain samples of any substances from any establishment or place or property specified in subdivision (a).

(3) Inspect and obtain samples of any containers or labeling for the suspected hazardous substances, and samples of the soil, vegetation, air, water, and biota on the premises.

(4) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous substances.

(5) Survey and determine the topographic, geologic, and hydrogeologic features of the land.

(6) Photograph any equipment, sample, activity, or environmental condition described in paragraphs (2) to (5), inclusive.

(c)(1) If photographs are to be taken pursuant to paragraph (6) of subdivision (b), the department shall do all of the following:

(A) Comply with all procedures established pursuant to Section 78490.

(B) Notify the person whose facility is photographed prior to public disclosure of the photographs.

(C) Upon the request of the person owning the facility, submit a copy of any photograph to the person for the purpose of determining whether trade secret information, as defined in Section 78480, or facility security, would be revealed by the photograph.

(2) "Disclosure," as used in Section 78485, for purposes of this paragraph, does not include the review of the photograph by a court of competent jurisdiction or by an administrative law judge. A court or judge may review the photograph in camera.

(d) An officer, employee, representative, or designee who enters a place, establishment, or property pursuant to this article shall make a reasonable effort to inform the owner or the owner's authorized representative of the inspection and shall provide split samples to the owner or the representative upon request.

Comment. Section 78450 continues former Section 25358.1(e)–(h) without substantive change. See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78140 ("response").

§ 78455. Entry to property without voluntary grant of access

78455. If the owner or the owner's authorized representative does not voluntarily grant access to a place, establishment, or property pursuant to this article, the officer, employee, representative, or designee shall first obtain a warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, if there is an emergency posing an immediate threat to public health and safety, the officer, employee, representative, or designee may enter the place, establishment, or property without the consent of the owner or owner's authorized representative and without the issuance of a warrant.

Comment. Section 78455 continues former Section 25358.1(i) without substantive change.

§ 78460. Immunity for entry and response action

78460. The department, and any person authorized by the department to enter upon any lands for the purpose of taking a response action pursuant to this part, shall

not be held liable, in either a civil or criminal proceeding, for trespass or for any other acts that are necessary to carry out the response action.

Comment. Section 78460 continues former Section 25358.1(*l*) without substantive change. See Sections 78050 ("department"), 78085 ("person"), 78140 ("response").

§ 78465. Order directing compliance

78465. If a person intentionally or negligently fails to furnish and transmit to any officer or employee of the department, a representative of the director, or a person designated by the director any information required to be disclosed pursuant to this article, the department may issue an order directing compliance with the request. The order shall be issued only after notice and opportunity for consultation as is reasonably appropriate under the circumstances.

Comment. Section 78465 continues former Section 25367(b) without substantive change. See Sections 78050 ("department"), 78055 ("director"), 78085 ("person").

§ 78470. Penalties for violations

78470. Any person who commits any of the following acts shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation, or for continuing violations, for each day during which that violation continues:

(a) Intentionally or negligently makes any false statement or representation in any report or information furnished pursuant to this article.

(b) Intentionally or negligently fails to provide any information requested pursuant to this article.

(c) Refuses or prevents, without sufficient cause, any activity authorized pursuant to this article.

Comment. Section 78470 continues former Section 25367(a), with the exception of part of paragraph (a)(3) (which is restated in Section 78665), without substantive change. See Section 78085 ("person").

Article 5. Protection of Trade Secrets

§ 78480. "Trade secrets"

78480. "Trade secrets," as used in this article, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that is not patented, that is known only to certain individuals within a commercial concern who are using it to fabricate, produce, develop, or compound an article of trade or a service having commercial value, and that gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

Comment. Section 78480 continues former Section 25358.2(a) without substantive change.

§ 78485. Identification of trade secret information

78485. Any person providing information pursuant to subdivision (a) of Section 78440 shall, at the time of its submission, identify all information that the person believes is a trade secret. Any information or record not identified as a trade secret is available to the public, unless exempted from disclosure by other provisions of law.

Comment. Section 78485 continues former Section 25358.2(c) without substantive change. See Sections 78085 ("person"), 78480 ("trade secrets").

§ 78490. Procedures for protection of trade secret information

78490. The department shall establish procedures to ensure that trade secret information is utilized by the department only in connection with the responsibilities of the department pursuant to this part and is not otherwise disseminated without the consent of the person who provided the information to the department. However, any information shall be made available to governmental agencies for use in making studies and for use in judicial review or enforcement proceedings involving the person furnishing the information.

Comment. Section 78490 continues former Section 25358.2(b) without substantive change. See Sections 78050 ("department"), 78085 ("person"), 78480 ("trade secrets").

§ 78495. Penalty for knowing and willful dissemination of trade secret information

78495. Any person who knowingly and willfully disseminates information protected by this article or procedures established by the department pursuant to Section 78490 shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000), imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment.

Comment. Section 78495 continues former Section 25358.2(d) without substantive change. See Sections 78050 ("department"), 78085 ("person").

Article 6. Abandoned Sites

§ 78505. Notice regarding abandoned sites

78505. (a) The director shall notify, within 20 working days, each of the appropriate county health officers as to all the potential abandoned sites of which the department has knowledge or that the department is investigating for releases of hazardous substances that may have occurred or might be occurring at abandoned sites. The county health officers may request quarterly updates on the status of the investigations of these sites.

(b) As used in this section, "abandoned site" means an inactive disposal, treatment, or storage facility that cannot, with reasonable effort, be traced to a specific owner, a site whose owner is the subject of an order for relief in bankruptcy, or a location where a hazardous substance has been illegally disposed.

(c) Within 10 working days of the identification of an abandoned site, the department or a county health officer shall notify the other agency of the status of the site. The department and the county health officer shall inform the other agency of orders to fence and post these sites and the status of compliance with those orders. The department or the county health officers may request quarterly updates of the testing, enforcement action, and remedial or removal actions that are proposed or ongoing.

Comment. Section 78505 continues former Section 25359.6 without substantive change. See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78105 ("release"), 78135 ("remove"), 78155 ("site").

Article 7. Laboratories

§ 78510. Accreditation requirement

78510. The analysis of any material that is required to demonstrate compliance with this part shall be performed by a laboratory accredited by the State Water Resources Control Board pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

Comment. Section 78510 restates former Section 25358.4 without substantive change. The reference to the "State Department of Health Services" in former Section 25358.4 has been replaced with a reference to the "State Water Resources Control Board." Formerly, the State Department of Health Services was the state agency authorized to accredit laboratories under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101. See former Section 100825(c)(1), (4), (18) as added by 2005 Cal. Stat. ch. 406, § 2. Currently, the State Water Resources Control Board is the agency authorized to accredit laboratories under that article. See Section 100825(c)(1), (4), (11), (12).

Article 8. Technology Demonstration Program

§ 78525. Technology demonstration program for treatment technologies

78525. Notwithstanding Section 79055, the department shall carry out a program of full-scale demonstrations to evaluate treatment technologies that can be safely utilized for removal and remedial actions to hazardous substance releases.

Comment. Section 78525 continues former Section 25368 without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78530 ("full-scale demonstration" and "treatment technologies").

§ 78530. Definitions

78530. For the purposes of this article, the following definitions apply:

(a) "Treatment technologies" means methods, techniques, or processes, including proprietary or patented methods, that permanently alter the composition of hazardous substances at hazardous substance release sites through chemical, biological, or physical means so as to make the substances nonhazardous or to significantly reduce the toxicity, mobility, or volume, or any combination of these characteristics, of the hazardous substances or contaminated materials being treated.

(b) "Full-scale demonstration" means a demonstration of a technology that is of a size or capacity that permits valid comparison of the technology to the technical performance and cost of conventional technologies, that is likely to be cost-effective, and that will result in a substantial or complete remedial or removal action to a hazardous substance release site.

Comment. Section 78530 restates former Section 25368.1 without substantive change.

See Sections 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

§ 78535. Criteria for selection

78535. The department shall select technology demonstration projects to be evaluated pursuant to this article using criteria that include, at a minimum, all of the following requirements:

(a) The project proposal includes complete and adequate documentation of technical feasibility.

(b) The project proposal includes evidence that a technology has been sufficiently developed for full-scale demonstration and can likely operate on a cost-effective basis.

(c) The department has determined that a site is available and suitable for demonstrating the technology, taking into account the following:

(1) The physical, biological, chemical, and geological characteristics of the site.

(2) The extent and type of contamination found at the site.

(3) The capability to conduct demonstration projects in a manner to ensure the protection of human health and the environment.

(d) The technology to be demonstrated preferably has widespread applicability in removal and remedial actions at other sites in the state.

(e) The project will be developed to the extent that a successful demonstration on a hazardous substance release site may lead to commercial utilization by responsible parties at other sites in the state.

(f) The department has determined that adequate funding is available from one or more of the following sources:

(1) Responsible parties.

(2) The United States Environmental Protection Agency.

(3) The state account.

Comment. Section 78535 restates former Section 25368.2 without substantive change. The phrase "technology or technologies" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account"), 78530 ("full-scale demonstration").

§ 78540. Selection of sites

78540. The department shall identify hazardous substance release sites, listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4, that are

particularly well-suited for technology demonstration projects. In identifying hazardous substance release sites, the department shall consider, at a minimum, all of the following:

(a) The state's priority ranking for removal and remedial actions to hazardous substance release sites adopted pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

(b) The volume and variability of the hazardous substance release at the site.

(c) The availability of data characterizing the hazardous substance release.

(d) The accessibility of the hazardous substance release.

(e) Availability of required utilities.

(f) Support of federal and local governments.

(g) Potential for adverse effects to public health and the environment.

Comment. Section 78540 continues former Section 25368.3 without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

§ 78545. Solicitation of proposals

78545. (a) The department shall annually, on or before July 1, publish a solicitation for proposals to conduct treatment demonstration projects that utilize technologies that are at a stage of development suitable for full-scale demonstrations at hazardous substance release sites. The solicitation notice shall prescribe information to be included in the proposal, including technical and economic data derived from the applicant's own research and development efforts, and any other information that may be prescribed by the department to assess the technology's potential and safety and the types of removal or remedial action to which it may be applicable.

(b) Any person, private entity, or public entity may submit an application to the department in response to the solicitation. The application shall contain a proposed treatment demonstration plan setting forth how the treatment demonstration project is to be carried out and any other information that the department may require.

Comment. Section 78545 restates former Section 25368.4 without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response"), 78155 ("site"), 78530 ("full-scale demonstration").

§ 78550. Selection of technology demonstration projects

78550. (a) On or before January 1, after reviewing all proposals submitted pursuant to Section 78545, the department shall annually select at least two treatment demonstration projects, to be commenced during that calendar year, using, at a minimum, the criteria specified in Section 78535.

(b) If the department determines that the required number of demonstrations required by subdivision (a) cannot be initiated consistent with the criteria specified in Section 78535 in any fiscal year, the department shall inform the appropriate

committees of the Legislature of the reasons for its inability to conduct these demonstration projects.

(c) Each treatment demonstration project selected pursuant to this section shall be performed by the applicant, or by a person approved by the applicant and the department.

Comment. Section 78550 continues former Section 25368.5 without substantive change. See Sections 78050 ("department"), 78085 ("person").

§ 78555. Recovery of incremental costs

78555. Notwithstanding Section 79650, if the department determines that using an alternative treatment technology to conduct a removal or remedial action at a hazardous substance release site listed pursuant to Section 78760 would be more costly than another available and feasible removal or remedial action method that would also achieve satisfactory results, the department may determine not to attempt to recover from the liable person the incremental costs of the removal or remedial action attributable to the alternative treatment technology.

Comment. Section 78555 continues former Section 25368.6 without substantive change. An obsolete reference to "paragraph (2) or (3) of subdivision (b) of Section 25356" was updated to refer to "Section 78760."

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78530 ("treatment technologies").

§ 78560. Technology transfer program

78560. (a) The department shall conduct a technology transfer program that shall include the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative hazardous substance treatment technologies demonstrated pursuant to this article.

(b) The information in subdivision (a) shall include all of the following:

(1) An evaluation of each treatment demonstration project's efficacy relating to performance and cost in achieving permanent and significant reduction in risks from hazardous substance releases.

(2) Documentation of the testing procedures utilized in the project, the data collected, and the quality assurance and quality control that was conducted.

(3) The technology's applicability, pretreatment and posttreatment measurements, and the technology's advantages or disadvantages compared to other available technologies.

Comment. Section 78560 restates former Section 25368.7 without substantive change. An erroneous reference to "hazardous waste" was corrected to refer to "hazardous substance."

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78530 ("treatment technologies").

§ 78565. Consideration of cost-effectiveness

78565. Notwithstanding subdivision (e) of Section 79205, when preparing or approving a remedial action plan for a site listed pursuant to Section 78760, that has

been selected for a treatment demonstration project pursuant to this article, the department shall consider the cost-effectiveness of the project but is not required to choose the most cost-effective measure.

Comment. Section 78565 continues former Section 25368.8 without substantive change. An erroneous cross-reference to "paragraph (5) of subdivision (c) of Section 25356.1" was corrected to refer to "subdivision (e) of Section 79205," which continues former Section 25356.1(d)(5). An obsolete reference to "paragraph (2) or (3) of subdivision (b) of Section 25356" was updated to refer to "Section 78760."

See Section 78050 ("department"), 78125 ("remedy"), 78155 ("site").

Article 9. Content of Biennial Report

§ 78575. San Gabriel Valley groundwater sites

78575. (a) The department shall report to the Governor and the Legislature on the progress of the cleanup of the San Gabriel Valley groundwater sites in Los Angeles County, and on the progress of enforcement actions relating to those sites, in the biennial report specified in Section 25178. The report shall include, but not be limited to, all of the following:

(1) State expenditures and planned expenditures.

(2) Actions accomplished at the sites.

(3) Actions planned, including a time schedule for the accomplishment of planned actions.

(b) The report may be prepared in cooperation with other state and federal agencies involved with the sites, and shall include a summary of the activities of those additional agencies.

Comment. Section 78575 continues former Section 25334.7 without substantive change.

See Section 78050 ("department"), 78155 ("site").

§ 78580. Accounting of expenditures from emergency reserve account

78580. The department shall include in the biennial report specified in Section 25178 an accounting of the moneys expended pursuant to Section 78875.

Comment. Section 78580 continues the first sentence of former Section 25354(c) without substantive change.

See Section 78050 ("department").

Article 10. Contracting

§ 78590. Definitions

78590. For purposes of this article, the following definitions shall apply:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of engineering, architecture, environmental, landscape architecture, construction project management, or land surveying.

(b) "Prequalified list" means a short list of professional service firms that possess the qualifications established by the department to perform a specific type of professional service, with each firm ranked in order of its qualifications and costs, pursuant to subdivision (c) of Section 78600.

(c) "Professional service" includes a professional service of an engineering, architectural, environmental, landscape architectural, construction project management, land surveying, or similar nature, as well as an incidental service that members of these professions and those in their employ may logically or justifiably perform.

Comment. Section 78590 restates former Section 25358.6.1(a) without substantive change.

The definition of "prequalified list" was restated to make clear that the "prequalified list" is the ranked short list of firms prepared pursuant to Section 78600(c).

The defined term "engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services" was simplified to "professional service" and implementing changes were made.

See Section 78050 ("department").

§ 78595. Application of article to contracts less than or equal to $1,000,000

78595. Notwithstanding Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, the department may advertise and award a contract, in accordance with this article, for a professional service pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20, if the contract is individually in an amount equal to, or less than, one million dollars ($1,000,000).

Comment. Section 78595 continues former Section 25358.6.1(b) without substantive change.

See Sections 78050 ("department"), 78590 ("firm," "professional service").

§ 78600. Prequalified lists

78600. The department may establish prequalified lists of professional service firms in accordance with the following process:

(a) For each type of professional service work for which the department elects to use this article for advertising and awarding contracts, the department may request annual statements of qualifications from interested firms. The request for statements of qualifications shall be announced statewide through the California State Contracts Register and publications, internet websites, or electronic bulletin boards of respective professional societies that are intended, designed, and maintained by the professional societies to communicate with their memberships. Each announcement shall describe the general scope of services to be provided within each generic project category for a professional service that the department anticipates may be awarded during the period covered by the announcement.

(b) The department shall define a generic project category so that each specific project to be awarded within that generic project category is substantially similar to all other projects within that generic project category, may be within the same size range and geographical area, and requires substantially similar skills and magnitude of professional effort as every other project within that generic project category. The

generic categories shall provide a basis for evaluating and establishing the type, quality, and costs, including hourly rates for personnel and field activities and equipment, of the services that would be provided by the firm.

(c) The department shall evaluate the statements of qualifications received pursuant to subdivision (a) and the department shall develop a short list of the most qualified firms that meet the criteria established and published by the department. The department shall hold discussions regarding each firm's qualifications with all firms listed on the short list. The department shall then rank the firms listed on the short list according to each firm's qualifications and the evaluation criteria established and published by the department.

(d) The department shall maintain prequalified lists of professional service firms on an ongoing basis, except that no firm may remain on a list developed pursuant to subdivision (c) based on a single qualification statement for more than three years. The department shall include in each prequalified list no less than three firms, unless the department certifies that the scope of the prequalified list is appropriate for the department's needs, taking into account the nature of the work, that the department made reasonable efforts to solicit qualification statements from qualified firms, and that the efforts were unsuccessful in producing three firms that met the established criteria. A firm may remain on the prequalified list up to three years without resubmitting a qualification statement, but the department may add additional firms to that list and may annually rank these firms. For purposes of annual adjustment to the ranking of firms already on the prequalified list, the department shall rely on that firm's most recent annual qualification statement, if the statement is not more than three years old.

Comment. Section 78600 restates former Section 25358.6.1(c)(1)-(4), inclusive, without substantive change. Subdivision (d) was revised to remove superfluous cross-references. See Section 78590 ("prequalified list").

See Sections 78050 ("department"), 78590 ("firm," "prequalified list," "professional service").

§ 78605. Contracting using prequalified lists

78605. (a) During the term of the prequalified list, as specific projects are identified by the department as being eligible for contracting under the procedures adopted pursuant to Section 78610, the department shall contact the highest ranked firm on the appropriate prequalified list to determine if that firm has sufficient staff and is available for performance of the project. If the highest ranked firm is not available, the department shall continue to contact firms on the prequalified list in order of rank until a firm that is available is identified.

(b) The department may enter into a contract for the services with a firm identified pursuant to subdivision (a), if the contract is for a total price that the department determines is fair and reasonable to the department and otherwise conforms to all matters and terms previously identified and established upon participation in the prequalified list.

(c)(1) If the department is unable to negotiate a satisfactory contract with a firm identified pursuant to subdivision (b), the department shall terminate the negotiations with that firm and the department shall undertake negotiations with the next ranked firm that is available for performance. If a satisfactory contract cannot be negotiated with the second identified firm, the department shall terminate these negotiations and the department shall continue the negotiation process with the remaining qualified firms, in order of their ranking, until the department negotiates a satisfactory contract.

(2) The department may award a contract to a firm on a prequalified list that is to be executed, including amendments, for a term that extends beyond the expiration date of that firm's tenure on the prequalified list.

(3) If the department is unable to negotiate a satisfactory contract with a firm on two separate occasions, the department may remove that firm from the prequalified list.

(d) Once a satisfactory contract is negotiated and awarded to a firm from any prequalified list for a generic project category involving a site or facility investigation or characterization, a feasibility study, or a remedial design, for a specific response action or corrective action, including, but not limited to, a corrective action carried out pursuant to Section 25200.10, the department shall not enter into a contract with that firm for purposes of construction or implementation of any part of that same response action or corrective action.

Comment. Section 78605 restates former Section 25358.6.1(c)(5)-(8), inclusive, without substantive change. Subdivision (a) was revised to remove superfluous cross-references. See Section 78590 ("prequalified list").

See Sections 78050 ("department"), 78060 ("feasibility study"), 78115 ("remedial design"), 78135 ("remove"), 78140 ("response"), 78155 ("site"), 78590 ("firm," "prequalified list").

§ 78610. Authority to adopt guidelines or regulations

78610. The department may adopt guidelines or regulations as necessary and consistent with this article, to define the manner of advertising, generic project categories, type, quantity and cost of services, qualification standards and evaluation criteria, content and submittal requirements for statements of qualification, procedures for ranking of firms and administration of the prequalified list, the scope of matters addressed by participation on a prequalified list, manner of notification of, negotiation with, and awarding of contracts to, prequalified firms, and procedures for protesting the award of contracts under this article, or any other matter that is appropriate for implementation of this article.

Comment. Section 78610 continues former Section 25358.6.1(d) without substantive change.

See Sections 78050 ("department"), 78590 ("firm," "prequalified list").

§ 78615. Exemption for specified actions

78615. Any removal or remedial action taken or contracted by the department pursuant to Section 78870 or 78875 is exempt from this article.

Comment. Section 78615 continues former Section 25358.6.1(e) without substantive change.

See Sections 78050 ("department"), 78125 ("remedy"), 78135 ("remove").

§ 78620. Compliance with Government Code personal services contract rules

78620. This article does not exempt any contract from compliance with Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code.

Comment. Section 78620 continues former Section 25358.6.1(f) without substantive change.

CHAPTER 4. RELEASES OF HAZARDOUS SUBSTANCES

Article 1. General Powers of Director

§ 78650. Powers of director in event of release or threatened release of hazardous substances

78650. When the director determines that a release of a hazardous substance has occurred or is about to occur, the director may do any or all of the following:

(a) Undertake those investigations, monitoring, surveys, testing, and other information gathering necessary to identify the existence, source, nature, and extent of the hazardous substances involved and the extent of danger to the public health or environment.

(b) Undertake those planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations that are necessary or appropriate to plan and direct response actions, to recover the cost of those actions, and to enforce this part.

Comment. Section 78650 continues former Section 25358.3(b) without substantive change.

See Sections 78055 ("director"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response").

§ 78655. Authority to take or contract for response or other authorized actions

78655. (a) Whenever there is a release or threatened release of a hazardous substance into the environment, the director may take or contract for any necessary removal or remedial action and may take or contract for any actions authorized by Section 78650, in compliance with the provisions of this part, including, but not limited to, subdivision (a) of Section 79130.

(b) Any person bidding for a contract specified in subdivision (a) shall submit a disclosure statement, as specified by Section 25112.5, except for a federal, state, or local agency. The director may prohibit a person from bidding on such a contract if the director makes any of the following determinations:

(1) The director determines, in writing, that the bidder, or, if the bidder is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has engaged in activities resulting in any federal or state conviction that are significantly related to the fitness of the bidder to perform the bidder's duties or activities under the contract. For purposes of this paragraph, "conviction" means a plea or verdict of

guilty or a conviction following a plea of nolo contendere. Any action that the department may take pursuant to this subdivision relating to the department's refusal to permit a person to bid on the contract 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 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.

(2) The director determines, in writing, that the bidder, or, if the bidder is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has violated or failed to comply with this part, Chapter 6.5 (commencing with Section 25100) or Chapter 6.7 (commencing with Section 25280) of Division 20, the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the federal Hazardous Materials Transportation Authorization Act of 1994, as amended (49 U.S.C. Sec. 5101 et seq.), the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.), the federal 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 subdivision (a) of Section 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or failure to comply shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(3) The director determines, in writing, that the bidder has had a license, permit, or registration for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous substances revoked or suspended.

Comment. Section 78655 continues former Section 25358.3(c) and (d) without substantive change. Technical changes were made to correct federal law citation formats.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove").

§ 78660. Judicial proceedings

78660. (a) Whenever there is a release or threatened release of a hazardous substance, the director may request the Attorney General to secure relief as may be necessary from the responsible party to abate the release or threatened release. The

superior court of the county in which the release or threatened release occurs has jurisdiction to grant the relief that the public interest and equities of the case may require to protect the public health and safety and the environment. Upon a showing by the department that a release or threatened release of a hazardous substance has occurred or is occurring, and that there may be an imminent or substantial endangerment to the public health and safety or to the environment, the court may grant a temporary restraining order or a preliminary or permanent injunction.

(b) Upon the failure of any person to comply with any order issued by the department pursuant to this article, Section 78870, or Section 79055, the director may request the Attorney General to petition the superior court for the issuance of an injunction requiring that person to comply with the order. The superior court shall have jurisdiction to grant a temporary restraining order or a preliminary or permanent injunction.

(c) In any civil action brought pursuant to this part in which a temporary restraining order or a preliminary or permanent injunction is sought, the department shall prove that the defendant is a responsible party and that there is a release or threatened release of a hazardous substance. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order or the preliminary or permanent injunction not be issued, or that the remedy at law is inadequate. The temporary restraining order or the preliminary or permanent injunction shall issue without those allegations and without that proof.

Comment. Section 78660 restates former Section 25358.3(e)-(g), inclusive, without substantive change. The phrase "party or parties" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78145 ("responsible party").

§ 78665. Penalties for violations

78665. Any person who refuses or prevents, without sufficient cause, any activity authorized pursuant to this article or Section 78870 shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation, or for continuing violations, for each day during which that violation continues.

Comment. Section 78665 restates part of former Section 25367(a)(3) without substantive change.

See Section 78085 ("person").

Article 2. Reporting Requirement

§ 78675. Prohibition and reporting requirement for releases

78675. (a) A person shall not release, or allow or cause a release of, a reportable quantity of a hazardous substance into the environment that is not authorized or permitted pursuant to state law.

(b) Any release of a reportable quantity of hazardous substance shall be reported to the department in writing within 30 days of discovery, unless any of the following apply:

(1) The release is permitted or in the permit process.

(2) The release is authorized by state law.

(3) The release requires immediate reporting to the Office of Emergency Services pursuant to Section 11002 or 11004 of Title 42 of the United States Code, or pursuant to Section 25510.

(4) The release has previously been reported to the department or the Office of Emergency Services.

(5) The release occurred prior to January 1, 1994.

(c) For the purposes of this article, "reportable quantity" means either of the following:

(1) The quantity of a hazardous substance established in Part 302 (commencing with Section 302.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations, the release of which requires notification pursuant to that part.

(2) Any quantity of a hazardous substance that is not reportable pursuant to paragraph (1), but that may pose a significant threat to public health and safety or to the environment. The department may establish guidelines for determining which releases are reportable under this paragraph.

Comment. Section 78675 continues former Section 25359.4(a)-(c), inclusive, without substantive change. A cross-reference to Section 25507 has been corrected to refer to Section 25510.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release").

§ 78680. Liability for failure to report

78680. (a) The owner of property on which a reportable release has occurred and any person who releases, or causes a reportable release and who fails to make the written report required by subdivision (b) of Section 78675, shall be liable for a penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation and for each day that a violation continues. Each day on which the released hazardous substance remains is a separate violation unless the person has either filed the report or is in compliance with an order issued by a local, state, or federal agency with regard to the release.

(b) Liability under this article may be imposed in a civil action or may be administratively imposed by the department pursuant to Article 4 (commencing with Section 79590) of Chapter 7.

(c) If the violation of subdivision (b) of Section 78675 results in, or significantly contributes to, an emergency, including, but not limited to, a fire, to which a county, city, or district is required to respond, the responsible party may be assessed the full cost of the emergency response by the city, county, or district.

Comment. Section 78680 continues former Section 25359.4(d)-(f), inclusive, without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party").

Article 3. Disclosure Requirement

§ 78700. Disclosure requirement for property owner

78700. Any owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath that real property shall, prior to the sale, lease, or rental of the real property by that owner, give written notice of that condition to the buyer, lessee, or renter of the real property. Failure of the owner to provide written notice when required by this section to the buyer, lessee, or renter shall subject the owner to actual damages and any other remedies provided by law. In addition, where the owner has actual knowledge of the presence of any release of a material amount of a hazardous substance and knowingly and willfully fails to provide written notice to the buyer, lessee, or renter, as required by this section, the owner is liable for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation.

Comment. Section 78700 continues former Section 25359.7(a) without substantive change. See Sections 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy").

§ 78705. Disclosure requirement for lessee or renter

78705. Any lessee or renter of real property who knows or has reasonable cause to believe that any release of a hazardous substance has come or will come to be located on or beneath that real property shall, within a reasonable period of time, either prior to the release or following the discovery by the lessee or renter of the presence or believed presence of the hazardous substance release, give written notice of that condition to the owner of the real property or to the lessor under the lessee's or renter's lease or rental agreement.

(a) A lessee or renter who fails to provide written notice when required by this section to the owner or lessor is subject to actual damages and any other remedy provided by law.

(b) If the lessee or renter has knowledge of the presence of a release of a material amount of a hazardous substance, or of a hazardous substance release that is required to be reported to a state or local agency pursuant to law, on or under the real property leased or rented by the lessee or renter and knowingly and willfully fails to provide written notice when required by this section to the owner or lessor, both of the following shall apply:

(1) The failure is deemed to constitute a default, upon the owner's or lessor's written notice to the lessee or renter, under the lessee's or renter's lease or rental agreement, except that this paragraph does not apply to lessees and renters of property used exclusively for residential purposes.

(2) The lessee or renter is liable for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation.

(c) A lessee or renter may cure a default under the lessee's or renter's lease or rental agreement that resulted from a violation of this section, by promptly commencing and completing the removal of, or taking other appropriate remedial action with respect to, the hazardous substance release. The removal or remedial action shall be conducted in accordance with all applicable laws and regulations and in a manner that is reasonably acceptable to, and that is approved in writing by, the owner or lessor. This subdivision does not relieve the lessee or renter of any liability for actual damages or for any civil penalty for a violation of this section.

Comment. Section 78705 continues former Section 25359.7(b) without substantive change.

See Sections 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove").

Article 4. Securing Site of Release

§ 78720. Conditions when order to secure site is required

78720. After making a determination, based upon a preliminary site assessment that there has been a release of a hazardous substance on, under, or into the land on a site, the department or a county health officer shall order the property owner to secure the site if all of the following conditions apply to that site:

(a) The release does not comply with the terms of a current permit or interim status document or regulation of the department.

(b) The site poses a public health risk if human contact is made with the hazardous substance or the surrounding contaminated area.

(c) There is a likelihood of human or domestic animal contact.

Comment. Section 78720 continues former Section 25359.5(a) without substantive change. An erroneous reference to "hazardous waste" was corrected to refer to "hazardous substance."

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site").

§ 78725. Requirements of order to secure site

78725. (a) The order to secure the site shall require, within five days after receiving notification of the order, the posting of the site with signs. The order shall also require, within five days after receiving notification of the order, that the site be enclosed with a fence, unless it is physically and economically infeasible or unless the fencing is unnecessary because it will not alleviate the danger to the public health.

(b) If fencing is ordered, the fences shall be maintained at the site to prevent unauthorized persons from gaining access to the site. The signs shall be maintained and shall meet all of the following requirements:

(1) The signs shall be bilingual, appropriate to the local area, and may include international symbols, as required by the department.

(2) The signs shall have lettering that is legible from a distance of at least 25 feet.

(3) The signs shall read: "Caution: Hazardous Substance Area, Unauthorized Persons Keep Out" and shall have the name and phone number of the department or the county health officer that ordered the posting.

(4) The signs shall be visible from the surrounding contaminated area and posted at each route of entry into the site, including those routes that are likely to be used by unauthorized persons, at access roads leading to the site, and facing navigable waterways where appropriate.

(5) The signs shall be of a material able to withstand the elements.

Comment. Section 78725 continues former Section 25359.5(b) and (c) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78155 ("site").

§ 78730. Advising agencies on health risks and site requirements

78730. The department or the county health officer shall advise other agencies on the public health risks and the need for fencing and posting of sites when those agencies confirm the release of a hazardous substance pursuant to Section 78720.

Comment. Section 78730 continues former Section 25359.5(e) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site").

§ 78735. Penalty for failure to comply with order to secure site

78735. (a) A property owner who fails to comply with an order of the department or the county health officer is subject to a civil penalty of up to twenty-five thousand dollars ($25,000). In determining the amount of a civil penalty to be imposed, the court shall consider all relevant circumstances, including, but not limited to, the economic assets of the property owner and whether the property owner has acted in good faith.

(b) If the property owner fails to secure and post the site, the department or the county health officer shall secure and post the site pursuant to subdivision (a) of Section 78725 within 30 days of the expiration of the five-day period and shall seek recovery of the costs of that securing and posting from the property owner. If the site is an abandoned site, as defined in Section 78505, if the site cannot be traced to a specific owner, or if the owner is the subject of an order for relief in bankruptcy, the department or the county health officer shall secure and post the site, using any source of funds, pursuant to subdivision (a) of Section 78725.

Comment. Section 78735 continues former Section 25359.5(d) without substantive change.

See Sections 78050 ("department"), 78155 ("site").

§ 78740. Remedies and penalties not exclusive

78740. The remedies and penalties specified in this article and Section 78505 are in addition to, and do not affect, any other remedies, enforcement actions, requirements, or penalties otherwise authorized by law.

Comment. Section 78740 continues former Section 25359.5(f) without substantive change.

Article 5. Listing of Hazardous Substance Release Sites

§ 78760. List of selected hazardous substance release sites

78760. (a) The department shall publish and revise, at least annually, a listing of the hazardous substance release sites selected for, and subject to, a response action under this part.

(b) The department shall list the sites based upon the criteria adopted pursuant to Section 78765 and the extent to which deferral of a response action at a site will result, or is likely to result, in a rapid increase in response costs at the site or in a significant increase in risk to human health or safety or the environment.

(c) The department shall list sites alphabetically within each priority tier, as specified in Section 78770, and shall update the list of sites at least annually to reflect new information regarding previously listed sites or the addition of new sites requiring response actions.

(d) The list of sites established pursuant to this section shall be published by the department and made available to the public or any interested person upon request and without cost.

Comment. Section 78760 continues former Section 25356(b) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response"), 78155 ("site"), 78170 ("tier").

§ 78765. Criteria for selection of hazardous substance release sites

78765. (a) The department shall adopt, by regulation, criteria for the selection of hazardous substance release sites for a response action under this part. The criteria shall take into account pertinent factors relating to public health, safety and the environment. The pertinent factors shall include, but are not necessarily limited to, potential hazards to public health, safety or the environment, the risk of fire or explosion, and toxic hazards, and shall also include the criteria established pursuant to Section 105(a)(8) of the federal act (42 U.S.C. Sec. 9605(a)(8)).

(b) The criteria adopted pursuant to subdivision (a) may include a minimum hazard threshold, below which sites shall not be listed pursuant to this article, if the sites are subject to the authority of the department to order a response action, or similar action, pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20.

Comment. Section 78765 restates former Section 25356(a) without substantive change. An incomplete cross-reference to the federal act has been corrected.

See Sections 78050 ("department"), 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78155 ("site").

§ 78770. Priority tiers for listed hazardous substance release sites

78770. The department shall assign each site listed pursuant to Section 78760 to one of the following priority tiers for the purpose of informing the public of the relative hazard of listed sites:

(a) "Priority tier one" shall include any site that the department determines, using the criteria described in Section 78760, meets any of the following conditions:

(1) The site may pose a known or probable threat to public health or safety through direct human contact.

(2) The site may pose a substantial probability of explosion or a fire or a significant risk due to hazardous air emissions.

(3) The site has a high potential to contaminate or to continue to contaminate groundwater resources that are present or possible future sources of drinking water.

(4) There is a risk that the costs of a response action will increase rapidly or risks to human health or safety or the environment will increase significantly if response action is deferred.

(b) "Priority tier two" shall include any site that poses a substantial but less immediate threat to public health or safety or the environment and any site that will require a response action, but presents only a limited and defined threat to human health or safety or the environment. Priority tier two may contain sites previously listed in priority tier one if the department determines that direct threats to human health or safety have been removed and if physical deterioration of the site has been stabilized so that threats to the environment are not significantly increasing.

Comment. Section 78770 continues former Section 25356(c) without substantive change.

See Sections 78050 ("department"), 78135 ("remove"), 78140 ("response"), 78155 ("site"), 78170 ("tier").

§ 78775. Requirements for listed hazardous substance release sites

78775. Hazardous substance release sites listed by the department pursuant to Section 78760 are subject to this part and all actions carried out in response to hazardous substance releases or threatened releases at listed sites shall comply with the procedures, standards, and other requirements set forth in this part or established pursuant to the requirements of this part.

Comment. Section 78775 continues former Section 25356(d) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78155 ("site").

§ 78780. Conformance of expenditures with prioritization of sites

78780. (a) Except as provided in subdivision (b), the department shall expend all funds appropriated to the department for any response action pursuant to this part, and shall take all response action pursuant to this part, in conformance with the assignment of sites to priority tiers pursuant to Section 78770.

(b) The department may expend funds appropriated for a response action and take a response action, without conforming to the listing of sites by tier pursuant to Section 78770, or at a site that has not been listed pursuant to Section 78760, if any of the following apply:

(1) The department is monitoring a response action conducted by a responsible party at a site listed pursuant to Section 78760 or at a site that is not listed but is being voluntarily remediated by a responsible party or another person.

(2) The expenditure of funds is necessary to pay for the state share of a response action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

(3) The department is assessing, evaluating, and characterizing the nature and extent of a hazardous substance release at a site for which the department has not been able to identify a responsible party, the responsible party is defunct or insolvent, or the responsible party is not in compliance with an order issued, or an enforceable agreement entered into, pursuant to Section 79055.

(4) The department is carrying out activities pursuant to Section 79065 or subdivision (b) or (c) of Section 79060.

(c) The department may, at any one time, expend funds and take a response action at more than one site on the list established pursuant to Section 78760. In addition, the department may, at any one time, oversee the performance of any activities conducted by a responsible party on more than one site on the list established pursuant to Section 78760.

Comment. Section 78780 continues former Section 25356(f) without substantive change.

See Sections 78050 ("department"), 78065 ("federal act"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 78170 ("tier").

§ 78785. Commencement of response actions at sites

78785. This article does not require the department to characterize every site listed pursuant to Section 78760 before the department begins response actions at those sites.

Comment. Section 78785 continues former Section 25356(g) without substantive change.

See Sections 78050 ("department"), 78140 ("response"), 78155 ("site").

§ 78790. Responsibility for response action compliance

78790. The department, or, if appropriate, the regional board, is the state agency with sole responsibility for ensuring that required action in response to a hazardous substance release or threatened release at a listed site is carried out in compliance with the procedures, standards, and other requirements set forth in this part, and shall, as appropriate, coordinate the involvement of interested or affected agencies in the response action.

Comment. Section 78790 continues former Section 25356(h) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78140 ("response"), 78155 ("site").

§ 78795. Application of administrative rulemaking requirements

78795. (a) The adoption of the minimum hazard threshold pursuant to subdivision (b) of Section 78765, the department's development and publication of the list of sites pursuant to Section 78760, and the assignment of sites to a tier pursuant to Section 78770, including the classification of a site as within a minimum threshold pursuant to Section 78770, are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The adoption of the criteria used by the department pursuant to Section 78760 to determine the extent to which deferral of a response action at a site will result, or is likely to result, in a rapid increase in response costs at a site or in a significant increase in risk to human health or safety or the environment is subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 78795 continues former Section 25356(e) without substantive change. See Sections 78050 ("department"), 78140 ("response"), 78155 ("site"), 78170 ("tier").

CHAPTER 5. CLEANUP OF HAZARDOUS SUBSTANCE RELEASES

Article 1. General Provisions

§ 78850. Coordination of response actions by Governor

78850. The Governor is responsible for the coordination of all state response actions for sites identified in Article 5 (commencing with Section 78760) of Chapter 4 in order to assure the maximum use of available federal funds.

Comment. Section 78850 continues former Section 25355(a) without substantive change. See Sections 78140 ("response"), 78155 ("site").

§ 78855. Consistency requirements for response actions

78855. (a) For response actions taken pursuant to the federal act, only those costs for actions that are consistent with the priorities, guidelines, criteria, and regulations contained in the national contingency plan, as revised and republished pursuant to Section 105 of the federal act (42 U.S.C. Sec. 9605), shall qualify for appropriation by the Legislature and expenditure by the director pursuant to Sections 78240, 78875, and 79450.

(b) For response actions not taken pursuant to the federal act or for response actions taken that are not specifically addressed by the priorities, guidelines, criteria, and regulations contained in the national contingency plan, as revised and republished, the costs of the response actions shall also qualify for appropriation by the Legislature and expenditure by the department pursuant to Sections 78240, 78875, and 79450 provided they are, to the maximum extent possible, consistent with the priorities, guidelines, criteria, and regulations contained in the national contingency plan for similar releases, situations, or events.

Comment. Section 78855 restates the first two sentences of former Section 25350 without substantive change. The cross-references to Section 25351 were not continued, because that section has been repealed. See 1997 Cal. Stat. ch. 870, § 43.

See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78105 ("release"), 78140 ("response").

§ 78860. No duplication of federal response actions

78860. No response actions taken pursuant to this part by the department or regional or local agencies shall duplicate federal response actions.

Comment. Section 78860 continues the third sentence of former Section 25350 without substantive change.

See Sections 78050 ("department"), 78140 ("response").

Article 2. Rules for Specified Circumstances

§ 78870. Powers of director to address imminent or substantial endangerment

78870. Whenever the director determines that there may be an imminent or substantial endangerment to the public health or welfare or to the environment, because of a release or a threatened release of a hazardous substance, the director may do any or all of the following:

(a) Order any responsible party to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment. No order under this section shall be made to an owner of real property solely on the basis of that ownership as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)). The director shall give the responsible party an opportunity to assert all defenses to the order.

(b) Take or contract for any necessary removal or remedial action.

(c) Request the Attorney General to secure relief as may be necessary from the responsible party to abate the danger or threat. The superior court of the county in which the threat or danger occurs shall have jurisdiction to grant the relief the public interest and equities of the case may require to protect public health and welfare and the environment. Upon a showing by the department that a release or threatened release of a hazardous substance has occurred or is occurring, and that there may be an imminent or substantial endangerment to the public health and safety or to the environment, the court may grant a temporary restraining order or a preliminary or permanent injunction pursuant to subdivision (a) of Section 78660.

Comment. Section 78870 restates former Section 25358.3(a) without substantive change. The phrase "party or parties" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party").

§ 78875. Immediate corrective action

78875. (a) The department shall expend moneys available in the reserve account, established pursuant to subdivision (a) of Section 78240, only for the purpose of taking immediate corrective action necessary to remedy or prevent an emergency resulting from a fire or an explosion of, or human exposure to, hazardous substances caused by the release or threatened release of a hazardous substance.

(b)(1) Notwithstanding any other provision of law, the department may enter into written contracts for corrective action taken or to be taken pursuant to subdivision (a).

(2) Notwithstanding any other provision of law, the department may enter into oral contracts, not to exceed ten thousand dollars ($10,000) in obligation, when, in

the judgment of the department, immediate corrective action is necessary to remedy or prevent an emergency specified in subdivision (a).

(3) The contracts made pursuant to this subdivision, whether written or oral, may include provisions for the rental of tools or equipment, either with or without operators furnished, and for the furnishing of labor and materials necessary to accomplish the work.

(4) If the department finds that the corrective action includes the relocation of individuals, the department may contract with those individuals for out-of-pocket expenses incurred in moving for an amount of not more than one thousand dollars ($1,000).

Comment. Section 78875 restates the second sentence of former Section 25354(a) and all of former Section 25354(b) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy").

§ 78880. Exemptions for specified actions

78880. Any removal or remedial action taken or contracted by the department pursuant to Section 78870 or 78875 shall be exempt from all of the following provisions:

(a) State Contract Act (Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code).

(b) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(c) Section 10295 of the Public Contract Code.

(d) Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

Comment. Section 78880 restates former Section 25358.5 without substantive change. The cross-reference to Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code has been omitted because the heading of that article was repealed and the remaining provisions of that article are now located in Article 4 of the same chapter. See 2000 Cal. Stat. ch. 759, § 18.

See Sections 78050 ("department"), 78125 ("remedy"), 78135 ("remove").

§ 78885. Prequalification of bidders for specified actions

78885. (a) The department may prequalify bidders for remedial or removal actions taken pursuant to Section 78870 or 78875. The department may reject the bid of any prospective bidder that has not been prequalified.

(b) To prequalify bidders, the department shall adopt and apply a uniform system of rating bidders. In order to obtain information for that rating, the department may require from prospective bidders answers to questions, including, but not limited to, questions about the bidder's financial ability, the bidder's experience in removal and remedial action involving hazardous substances, the bidder's past safety record, and the bidder's past performance on federal, state, or local government projects. The department may also require prospective bidders to submit financial statements.

(c) The department shall utilize the business financial data and information submitted by a bidder pursuant to subdivision (b) only for the purposes of prequalifying bidders pursuant to this section and shall not otherwise disseminate this data or information.

(d) The system of rating bidders may be adopted by the department as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for purposes of that chapter, when these regulations are adopted as emergency regulations pursuant to Section 11349.6 of the Government Code, the regulations shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. It is the intent of the Legislature that emergency regulations adopted pursuant to this subdivision shall remain in effect until the regulations are adopted as final regulations, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 78885 continues former Section 25358.6 without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78125 ("remedy"), 78135 ("remove").

Article 3. Referral of Site to Department by State or Regional Board

§ 78900. Referral of sites to department for listing

78900. The State Water Resources Control Board or a regional board that has jurisdiction over a hazardous substance release site pursuant to Division 7 (commencing with Section 13000) of the Water Code may refer the site to the department as a candidate for listing pursuant to Article 5 (commencing with Section 78760) of Chapter 4. After determining that the site meets the criteria adopted pursuant to Section 78765, the department may place the site on the list of sites subject to this part and establish its priority ranking pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

Comment. Section 78900 continues former Section 25355.6(a) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78155 ("site").

§ 78905. Authority of department at listed, referred site

78905. If a hazardous substance release site is referred to the department and is listed pursuant to Section 78900, the department may expend money from the state account for removal or remedial action at the site, upon appropriation by the Legislature, without first issuing an order or entering into an agreement pursuant to paragraph (1) of subdivision (a) of Section 79055, if all of the following apply:

(a) The State Water Resources Control Board or a regional board has issued either a cease and desist order pursuant to Section 13301 of the Water Code or a cleanup

and abatement order pursuant to Section 13304 of the Water Code to the potentially responsible party for the site.

(b) The State Water Resources Control Board or the regional board has made a final finding that the potentially responsible party has not complied with the order issued pursuant to subdivision (a).

(c) The State Water Resources Control Board or the regional board has notified the potentially responsible party of the determination made pursuant to subdivision (b) and that the hazardous substance release site has been referred to the department pursuant to Section 78900.

Comment. Section 78905 continues former Section 25355.6(b) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 78910. Notice to state or regional board regarding referred site

78910. (a) If a hazardous substance release site is referred to the department pursuant to Section 78900, and the department makes either of the following determinations, the department shall notify the appropriate regional board and the State Water Resources Control Board:

(1) The department determines that the site does not meet the criteria established pursuant to Section 78765 and the site cannot be placed, pursuant to Article 5 (commencing with Section 78760) of Chapter 4, on the list of sites subject to this part.

(2) The department determines that a removal or remedial action at the site will not commence for a period of one year from the date of listing due to a lack of funds or the low priority of the site.

(b) If a regional board or the State Water Resources Control Board receives a notice pursuant to subdivision (a), the regional board or state board may take any further action concerning the hazardous substance release site that the regional board or state board determines to be necessary or feasible, and that is authorized by this part or Division 7 (commencing with Section 13000) of the Water Code.

Comment. Section 78910 continues former Section 25355.6(c) and (d) without substantive change. An erroneous cross-reference to "subdivision (a)" (as opposed to "subdivision (a) *of Section 25356*") was corrected to refer to Section 78765 (which continues former Section 25356(a)).

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site"), 78168 ("state board").

Article 4. Public Participation

§ 78925. Role of community service offices

78925. With regard to sites listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4 where the department or regional board is taking action to investigate or remediate the site, the community service offices shall facilitate

communication between the department or regional board, the responsible parties, and the affected community, including any community advisory group that may have been formed in the community where the hazardous substance release site is located.

Comment. Section 78925 restates the second sentence of former Section 25358.7.2(a) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78145 ("responsible party"), 78155 ("site").

§ 78930. Department or regional board facilitation of public participation in response actions

78930. (a) The department or the regional board, as appropriate, shall take the actions specified in this section to provide an opportunity for meaningful public participation in response actions undertaken for sites listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

(b) The department, or the regional board, as appropriate, shall inform the public, and in particular, persons living in close proximity to a hazardous substance release site listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4, of the existence of the site and the department's or regional board's intention to conduct a response action at the site.

(c)(1) The department shall conduct a baseline community survey to determine the level of public interest and desire for involvement in the department's or regional board's activities, and to solicit concerns and information regarding the site from the affected community.

(2) Based on the results of the baseline survey, the department or regional board shall develop a public participation plan that shall establish appropriate communication and outreach measures commensurate with the level of interest expressed by survey respondents. The public participation plan shall be updated as necessary to reflect any significant changes in the degree of public interest as the site investigation and cleanup process moves toward completion.

(d) The department or regional board shall provide any person affected by a response action undertaken for sites listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4 with the opportunity to participate in the department's or regional board's decisionmaking process regarding that action by taking all of the following actions:

(1) Provide access to information that the department or regional board is required to release pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), relating to the action, except for the following:

(A) Trade secrets, as defined in Section 78480.

(B) Business financial data and information, as specified in subdivision (c) of Section 78885.

(C) Information that the department or regional board is prohibited from releasing pursuant to any state or federal law.

(2) Provide factsheets, based on the expressed level of public interest, regarding plans to conduct the major elements of the site investigation and response actions. The factsheets shall present the relevant information in nontechnical language and shall be detailed enough to provide interested persons with a good understanding of the planned activities. The factsheets shall be made available in languages other than English if appropriate.

(3) Provide notification, upon request, of any public meetings held by the department or regional board concerning the action.

(4) Provide the opportunity to attend and to participate at those public meetings.

(5) Based on the results of the baseline community survey, provide opportunities for public involvement at key stages of the response action process, including the health risk assessment, the preliminary assessment, the site inspection, the remedial investigation, and the feasibility study stages of the process. If the department or regional board determines that public meetings or other opportunities for public comment are not appropriate at any of the stages listed in this section, the department or regional board shall provide notice of that decision to the affected community.

(e) The department or regional board shall develop and make available to the public a schedule of activities for each site for which remedial action is expected to be taken by the department or regional board pursuant to this part and shall make available to the public any plan provided to the department or regional board by any responsible party, unless the department is prohibited from releasing the information pursuant to any state or federal law.

(f) In making decisions regarding the methods to be used for removal or remedial actions taken pursuant to this part, the department or regional board shall incorporate or respond in writing to the advice of persons affected by the actions.

(g) This section does not apply to emergency actions taken pursuant to Section 78875.

Comment. Section 78930 restates former Section 25358.7 without substantive change.

See Sections 78050 (“department”), 78060 (“feasibility study”), 78075 (“hazardous substance”), 78085 (“person”), 78100 (“regional board”), 78105 (“release”), 78120 (“remedial investigation”), 78125 (“remedy”), 78135 (“remove”), 78140 (“response”), 78145 (“responsible party”), 78155 (“site”).

§ 78935. Notice and comment opportunity for local agencies

78935. The department or regional board shall advise local environmental regulatory agencies and other appropriate local agencies of planned response actions and provide opportunities for review and comment.

Comment. Section 78935 continues the third sentence of former Section 25358.7.1(a) without substantive change.

See Sections 78050 (“department”), 78100 (“regional board”), 78140 (“response”).

Article 5. Community Advisory Groups

§ 78950. Establishment of group

78950. (a) At each site, a community advisory group may be established by the affected community to review any response action and comment on the response action to be conducted in that community.

(b)(1) If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site, the department or regional board shall assist the petitioners to establish a community advisory group to review the response action at the site.

(2) If the department or regional board, whichever is overseeing a response action, receives a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the legislative body to establish a community advisory group to review the response action at the site.

Comment. Section 78950 continues the first sentence and restates the fourth sentence of former Section 25358.7.1(a) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78155 ("site").

§ 78955. Composition of group

78955. To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:

(a) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.

(b) Individuals from the local business community.

(c) Local political or government agency representatives.

(d) Local citizen, civic, environmental, or public interest group members residing in the community.

Comment. Section 78955 continues former Section 25358.7.1(b) without substantive change.

See Sections 78075 ("hazardous substance"), 78085 ("person"), 78100 ("regional board"), 78105 ("release"), 78140 ("response"), 78155 ("site").

§ 78960. Communication with group

78960. The department or regional board shall regularly communicate, and confer as appropriate, with the community advisory group.

Comment. Section 78960 continues the second sentence of former Section 25358.7.1(a) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board").

§ 78965. Participation in group meetings

78965. The following entities may participate in community advisory group meetings in order to provide information and technical expertise:

(a) The department or regional boards.

(b) Representatives of local environmental regulatory agencies.

(c) The potentially responsible parties or other persons who are conducting the response action.

Comment. Section 78965 continues former Section 25358.7.1(c) without substantive change. See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party").

§ 78970. Relationship with other public participation provisions

78970. (a) The existence of a community advisory group shall not diminish any other obligation of the department or regional board with respect to public participation requirements specified in Section 78930.

(b) Nothing in this article shall affect the status of any citizen advisory group formed before May 26, 1999, a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board.

Comment. Section 78970 continues former Section 25358.7.1(d) without substantive change. See Sections 78050 ("department"), 78100 ("regional board").

§ 78975. Technical assistance grants for group

78975. A community advisory group established pursuant to Section 78950 may request, in writing, and a potentially responsible party may fund, a technical assistance grant for a site, for the purpose of providing technical assistance to the community advisory group.

Comment. Section 78975 restates former Section 25358.8 without substantive change. The phrase "party or parties" has been singularized. This is a nonsubstantive change. See Section 13. See Sections 78145 ("responsible party"), 78155 ("site").

Article 6. Oversight and Review of Responsible Party Actions

§ 79000. Policies and procedures for oversight by department or state board

79000. The department and the State Water Resources Control Board concurrently shall establish policies and procedures consistent with this part that the department's representatives shall follow in overseeing and supervising the activities of responsible parties who are carrying out the investigation of, and taking removal or remedial actions at, hazardous substance release sites. The policies and procedures shall be consistent with the policies and procedures established pursuant to Section 13307 of the Water Code, and shall include, but are not limited to, all of the following:

(a) The procedures the department will follow in making decisions as to when a potentially responsible party may be required to undertake an investigation to determine if a hazardous substance release has occurred.

(b) Policies for carrying out a phased, step-by-step investigation to determine the nature and extent of possible soil and groundwater contamination at a site.

(c) Procedures for identifying and utilizing the most cost-effective methods for detecting contamination and carrying out removal or remedial actions.

(d) Policies for determining reasonable schedules for investigation and removal or remedial action at a site. The policies shall recognize the dangers to public health and the environment posed by a release and the need to mitigate those dangers, while taking into account, to the extent possible, the financial and technical resources available to a responsible party.

Comment. Section 79000 continues former Section 25355.7 without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

§ 79005. Voluntary enforceable agreements for actions at petroleum release sites

79005. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 78075, any person may voluntarily enter into an enforceable agreement with the department pursuant to this section that allows removal or remedial actions to be conducted under the oversight of the department at sites with petroleum releases from sources other than underground storage tanks, as defined in Section 25299.24.

(b) If the department determines that there may be an adverse impact to water quality as a result of a petroleum release, the department shall notify the appropriate regional board prior to entering into the enforceable agreement pursuant to this section. The department may enter into an enforceable agreement pursuant to this section unless, within 60 days of the notification provided by the department, the regional board provides the department with a written notice that the regional board will assume oversight responsibility for the removal or remedial action.

(c) Agreements entered into pursuant to this section shall provide that the party will reimburse the department for all costs incurred including, but not limited to, oversight costs pursuant to the enforceable agreement associated with the performance of the removal or remedial actions and Chapter 6.66 (commencing with Section 25269) of Division 20.

Comment. Section 79005 continues former Section 25355(c)(2) without substantive change. Technical changes have been made to standardize cross-references.

See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

Article 7. Orders to Potentially Responsible Parties

§ 79020. Issuance of orders

79020. In exercising its authority at a hazardous substance release site pursuant to Sections 78870 or 79055, the department shall issue orders to the largest manageable number of potentially responsible parties after considering all of the following:

(a) The adequacy of the evidence of each potentially responsible party's liability.

(b) The financial viability of each potentially responsible party.

(c) The relationship or contribution of each potentially responsible party to the release, or threat of release, of hazardous substances at the site.

(d) The resources available to the department.

Comment. Section 79020 continues former Section 25356.1.3(a) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78145 ("responsible party"), 78155 ("site").

§ 79025. Meeting with potentially responsible parties

79025. The department shall schedule a meeting pursuant to Section 25269.5 and notify all identified potentially responsible parties of the date, time, and location of the meeting.

Comment. Section 79025 continues former Section 25356.1.3(b) without substantive change. See Sections 78050 ("department"), 78145 ("responsible party").

§ 79030. Request for issuance of order to potentially responsible party

79030. (a) A person issued an order pursuant to Section 78870 or 79055 may identify additional potentially responsible parties for the site to which the order is applicable and may request the department to issue an order to those parties. The request shall include, with appropriate documentation, the factual and legal basis for identifying those parties as potentially responsible parties for the site.

(b) The department shall review the request and accompanying information and, within a reasonable period of time, determine if there is a factual and legal basis for identifying other persons as potentially responsible parties, and notify the person that made the request of the action the department will take in response to the request.

Comment. Section 79030 continues former Section 25356.1.3(c) without substantive change. See Sections 78050 ("department"), 78085 ("person"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 79035. Determination not subject to judicial review

79035. Any determination made by the department regarding the largest manageable number of potentially responsible parties or the identification of other persons as potentially responsible parties pursuant to this article is not subject to judicial review. This section does not affect the rights of any potentially responsible party or the department under any other provision of this part.

Comment. Section 79035 continues former Section 25356.1.3(d) without substantive change. See Sections 78050 ("department"), 78085 ("person"), 78145 ("responsible party").

Article 8. Expenditures

§ 79055. Required actions before expenditures by department at listed site

79055. (a) Except as provided in Sections 79060 and 79065, no money shall be expended from the state account for removal or remedial actions on any site selected

for inclusion on the list established pursuant to Article 5 (commencing with Section 78760) of Chapter 4, unless the department first takes both of the following actions:

(1) The department issues one of the following orders or enters into the following agreement:

(A) The department issues an order specifying a schedule for compliance or correction pursuant to Section 25187.

(B) The department issues an order establishing a schedule for removing or remedying the release of a hazardous substance at the site, or for correcting the conditions that threaten the release of a hazardous substance. The order shall include, but is not limited to, requiring specific dates by which necessary corrective actions shall be taken to remove the threat of a release, or dates by which the nature and extent of a release shall be determined and the site adequately characterized, a remedial action plan shall be prepared, the remedial action plan shall be submitted to the department for approval, and a removal or remedial action shall be completed.

(C) The department enters into an enforceable agreement with a potentially responsible party for the site that requires the party to take necessary corrective action to remove the threat of the release, or to determine the nature and extent of the release and adequately characterize the site, prepare a remedial action plan, and complete the necessary removal or remedial actions, as required in the approved remedial action plan.

(2) The department determines, in writing, that the potentially responsible party or parties for the hazardous substance release site have not complied with all of the terms of an order issued pursuant to subparagraph (A) or (B) of paragraph (1) or an agreement entered into pursuant to subparagraph (C) of paragraph (1). Before the department determines that a potentially responsible party is not in compliance with the order or agreement, the department shall give the potentially responsible party written notice of the proposed determination and an opportunity to correct the noncompliance or show why the order should be modified. After the department has made the final determination that a potentially responsible party is not in compliance with the order or agreement, the department may expend money from the state account for a removal or remedial action.

(b) Any enforceable agreement entered into pursuant to this section may provide for the execution and recording of a written instrument that imposes an easement, covenant, restriction, or servitude, or combination thereof, as appropriate, upon the present and future uses of the site. The instrument shall provide that the easement, covenant, restriction, or servitude, or combination thereof, as appropriate, is subject to the variance or removal procedures specified in Sections 25223 and 25224. Notwithstanding any other provision of law, an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, executed pursuant to this section and recorded so as to provide constructive notice runs with the land from the date of recordation, is binding upon all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, or lessees of the owners, heirs,

successors, and assignees, and is enforceable by the department pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20.

Comment. Section 79055 continues former Section 25355.5(a) without substantive change. An undesignated paragraph in former Section 25355.5(a)(1)(C) has been recodified as subdivision (b) of this section. A cross-reference to former Sections 25233 and 25234 has been updated to reflect the repeal of those provisions. See 2012 Cal. Stat. ch. 39, § 38; see also 2012 Cal. Stat. ch. 39, § 75 (replacing cross-reference to former Sections 25233 and 25234 with cross-reference to Sections 25223 and 25224).

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 79060. Conditions where required actions not applicable for expenditure

79060. Section 79055 does not apply, and money from the state account shall be available, upon appropriation by the Legislature, for removal or remedial actions, if any of the following conditions apply:

(a) The department, after a reasonable effort, is unable to identify a potentially responsible party for the hazardous substance release site.

(b) The department determines that immediate corrective action is necessary, as provided in Section 78875.

(c) The director determines that removal or remedial action at a site is necessary because there may be an imminent and substantial endangerment to the public health or welfare or to the environment, as provided in Section 78870.

Comment. Section 79060 restates former Section 25355.5(b) without substantive change. In subdivision (c), a cross-reference to Section 78870 was added.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 79065. Authorized expenditures

79065. (a) Notwithstanding Section 79055, the department may expend funds, upon appropriation by the Legislature, from the state account to conduct activities necessary to verify that an uncontrolled release of hazardous substances has occurred at a suspected hazardous substance release site, to issue an order or enter into an enforceable agreement pursuant to paragraph (1) of subdivision (a) of Section 79055, and to review, comment upon, and approve or disapprove remedial action plans submitted by potentially responsible parties subject to the orders or the enforceable agreement.

(b) Notwithstanding Section 79055, the department may expend funds, upon appropriation by the Legislature, from the state account, to provide for oversight of removal and remedial actions, or, if the site is also listed on the National Priorities List by the United States Environmental Protection Agency pursuant to the federal act, to provide the state's share of a response action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

Comment. Section 79065 continues former Section 25355.5(c) and restates former Section 25355.5(d) without substantive change. A reference to "a removal or remedial action" was replaced with "a response action."

See Sections 78050 ("department"), 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 79070. Limitations on expenditures for sites owned or operated by federal, state, or local governments or agencies

79070. (a) Except as provided in subdivision (b), the department may not expend funds from the state account for a removal or remedial action with respect to a hazardous substance release site owned or operated by the federal government or a state or local agency at the time of disposal to the extent that the federal government or the state or local agency would otherwise be liable for the costs of that action, except that the department may expend those funds, upon appropriation by the Legislature, to oversee the carrying out of a removal or remedial action at the site by another party.

(b) Except as provided in subdivision (d), the department may expend funds from the state account, upon appropriation by the Legislature, to take a removal or remedial action at a hazardous substance release site that was owned or operated by a local agency at the time of release, if all of the following requirements are met:

(1) The department has substantial evidence that a local agency is not the only responsible party for the site.

(2) The department has issued a cleanup order to, or entered into an enforceable agreement with, the local agency pursuant to Section 79055 and has made a final determination that the local agency is not in compliance with the order or enforceable agreement.

(c) If a local agency is identified as a potentially responsible party in a remedial action plan prepared pursuant to Article 12 (commencing with Section 79190), and the department expends funds pursuant to this part to pay for the local agency's share of the removal and remedial action, the expenditure of these funds shall be deemed to be a loan from the state to the local agency. If the department determines that the local agency is not making adequate progress toward repaying the loan made pursuant to this section, the State Board of Equalization shall, upon notice by the department, withhold the unpaid amount of the loan, in increments from the sales and use tax transmittals made pursuant to Section 7204 of the Revenue and Taxation Code, to the city or county in which the local agency is located. The State Board of Equalization shall structure the amounts to be withheld so that complete repayment of the loan, together with interest and administrative charges, occurs within five years after a local agency has been notified by the department of the amount that it owes. The State Board of Equalization shall deposit any funds withheld pursuant to this section into the state account.

(d) The department may not expend funds from the state account for a removal or remedial action at any waste management unit owned or operated by a local agency if it meets both of the following conditions:

(1) It is classified as a class III waste management unit pursuant to Article 3 (commencing with Section 20240) of Subchapter 2 of Chapter 3 of Subdivision 1 of Division 2 of Title 27 of the California Code of Regulations.

(2) It was in operation on or after January 1, 1988.

Comment. Section 79070 continues former Section 25353, with the exception of subdivisions (c) and (e), without substantive change. An obsolete cross-reference to the California Administrative Code in paragraph (d)(1) has been updated to refer to the relevant provisions of the California Code of Regulations.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 79075. Limitation on expenditure for natural resources damages prior to September 25, 1981

79075. The department may not expend funds from the state account for the purposes specified in Section 79450 where the injury, degradation, destruction, or loss to natural resources, or the release of a hazardous substance from which the damages to natural resources resulted, has occurred prior to September 25, 1981.

Comment. Section 79075 continues former Section 25353(e) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site"), 78165 ("state account").

Article 9. Preliminary Endangerment Assessment

§ 79100. Required action prior to preliminary endangerment assessment or no further action letter

79100. (a) The department shall not agree to oversee the preparation of, or to review, a preliminary endangerment assessment for property if action is, or may be, necessary to address a release or threatened release of a hazardous substance, and the department shall not issue a letter stating that no further action is necessary with regard to property, unless the person who made the request does either of the following:

(1) Provides the department with all of the following:

(A) Proof of the identity of all current record owners of fee title to the property and their mailing addresses.

(B) Written evidence that the owners of record have been sent a notice that describes the actions completed or proposed by the requesting person.

(C) An acknowledgment of the receipt of the notice required in subparagraph (B), from the property owners or proof that the requesting person has made reasonable efforts to deliver the notice to the property owner and was unable to do so.

(2) Provides the department with proof of the identity of all current record owners of fee title to the property and proof that the requesting person has made reasonable efforts to locate the property owners and was unable to do so.

(b) The department shall take all reasonable steps necessary to accommodate property owner participation in the site remediation process and shall consider all input and recommendations received from the owner of property that is the subject of the proposed action.

(c)(1) This section only applies to instances where a person requests the department to oversee the preparation of, or to review, a preliminary endangerment assessment, or requests the department to issue a letter stating that no further action is necessary with regard to property.

(2) Nothing in this section imposes a condition upon, limits, or impacts in any way, the department's authority to compel any potentially responsible party to take any action in response to a release or threatened release of a hazardous substance or to recover costs incurred from any potentially responsible party.

Comment. Section 79100 restates former Section 25355.8 without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78095 ("preliminary endangerment assessment"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 79105. Reimbursement of department oversight costs for preliminary endangerment assessment

79105. (a) Except as provided in subdivisions (b) and (c), any potentially responsible party at a site, or any person who has notified the department of that person's intent to undertake removal or remediation at a site, shall reimburse the department, pursuant to Chapter 6.66 (commencing with Section 25269) of Division 20, for the costs incurred by the department for its oversight of any preliminary endangerment assessment at that site.

(b) This section does not apply to any notice of intent submitted to the department prior to July 1, 1998. Any person who submitted a notice of intent prior to July 1, 1998 shall pay the fee, if not already paid, as required by Section 25343 as it read on December 31, 1997, unless the department and that person mutually agree to enter into a reimbursement agreement in lieu of any unpaid portion of the required fee.

(c) The changes made in Section 25343 by Chapter 870 of the Statutes of 1997 do not require amendment of, or otherwise affect, any agreement entered into prior to July 1, 1998, pursuant to which any person has agreed to reimburse the department for the costs incurred by the department for its oversight of a preliminary endangerment assessment.

Comment. Section 79105 continues former Section 25343 without substantive change.

See Sections 78050 ("department"), 78085 ("person"), 78095 ("preliminary endangerment assessment"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

Article 10. Initiation of Removal or Remedial Actions

§ 79130. Authority to initiate removal or remedial action

79130. (a) The director may initiate removal or remedial action pursuant to this part unless these actions have been taken, or are being taken properly and in a timely fashion, by any responsible party.

(b) A responsible party who fails, as determined by the department in writing, to comply with an order issued pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a) of Section 79055, or to comply with all of the terms of an enforceable agreement entered into pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 79055, shall be deemed, for purposes of subdivision (a), to have failed to take action properly and in a timely fashion with respect to a hazardous substance release or a threatened release.

Comment. Subdivision (a) of Section 79130 continues former Section 25355(b) without substantive change.

Subdivision (b) continues former Section 25355.5(e) without substantive change.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party").

§ 79135. Actions required prior to initiation of removal or remedial action

79135. (a) At least 30 days before initiating removal or remedial actions, the department shall make a reasonable effort to notify the persons identified by the department as potentially responsible parties and shall also publish a notification of this action in a newspaper of general circulation pursuant to the method specified in Section 6061 of the Government Code. This subdivision does not apply to actions taken pursuant to Section 78870 or immediate corrective actions taken pursuant to Section 78875. A responsible party may be held liable pursuant to this part whether or not the person was given the notice specified in this subdivision.

(b) The department shall notify the owner of the real property of the site of a hazardous substance release within 30 days after listing a site pursuant to Article 5 (commencing with Section 78760) of Chapter 4, and at least 30 days before initiating a removal or remedial action pursuant to this part, by sending the notification by certified mail to the person to whom the real property is assessed, as shown upon the last equalized assessment roll of the county, at the address shown on the assessment roll. The requirements of this subdivision do not apply to actions taken pursuant to Section 78870 or to immediate corrective actions taken pursuant to Section 78875.

Comment. Section 79135 continues former Section 25355(c)(1) and (d) without substantive change. An erroneous cross-reference to former Section 25358.3(b) was corrected to refer to Section 78870, which continues former Section 25358.3(a).

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

Article 11. Local Government Removal or Remedial Actions

§ 79160. Prerequisites to local government-initiated removal or remedial actions

79160. A city or county may initiate a removal or remedial action for a site listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4 in accordance with this article. Except as provided in Section 79175, the city or county shall, before commencing the removal or remedial action, take all of the following actions:

(a) The city or county shall notify the department of the planned removal or remedial action. Upon receiving this notification, the department shall make a reasonable effort to notify any person identified by the department as a potentially responsible party for the site. If a potentially responsible party is taking the removal or remedial action properly and in a timely fashion, or if a potentially responsible party will commence the action within 60 days of this notification, the city or county may not initiate a removal or remedial action pursuant to this article.

(b) If a potentially responsible party for the site has not taken the action specified in subdivision (a), the city or county shall submit the estimated cost of the removal or remedial action to the department, which shall, within 30 days after receiving the estimate, approve or disapprove the reasonableness of the cost estimate. If the department disagrees with the cost estimate, the city or county and the department shall, within 30 days, attempt to enter into an agreement concerning the cost estimate.

(c) The city or county shall demonstrate to the department that it has sufficient funds to carry out the approved removal or remedial action without taking into account any costs of the action that may be, or have been, paid by a potentially responsible party.

Comment. Section 79160 continues former Section 25351.2(a) without substantive change. See Sections 78050 ("department"), 78085 ("person"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

§ 79165. Local government deemed to be acting in place of department

79165. If the director approves the request of the city or county to initiate a removal or remedial action and a final remedial action plan has been issued pursuant to Article 12 (commencing with Section 79190) for the hazardous substance release site, the city or county shall be deemed to be acting in place of the department for purposes of implementing the remedial action plan pursuant to this part.

Comment. Section 79165 continues former Section 25351.2(b) without substantive change. See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

§ 79170. Department recovery of costs reimbursed to local government

79170. Upon reimbursing a city or county for the costs of a removal or remedial action, the department shall recover these costs pursuant to Section 79650.

Comment. Section 79170 continues former Section 25351.2(c) without substantive change. See Sections 78050 ("department"), 78125 ("remedy"), 78135 ("remove").

§ 79175. Reimbursement eligibility of local government removal or remedial action costs

79175. (a) In order for a city or county to be reimbursed for the costs of a removal or remedial action incurred by the city or county from the state account, the city or county shall obtain the approval of the director before commencing the removal or remedial action.

(b) The director shall grant an approval only when all actions required by law prior to implementation of a remedial action plan have been taken.

Comment. Section 79175 continues former Section 25351.2(d) without substantive change. See Sections 78055 ("director"), 78125 ("remedy"), 78135 ("remove"), 78165 ("state account").

Article 12. Planning

§ 79195. Preparation or approval of plans

79195. Except as provided in Sections 79225 and 79230, the department, or, if appropriate, the regional board shall prepare or approve remedial action plans for the sites listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

Comment. Section 79195 continues former Section 25356.1(b) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78125 ("remedy"), 78155 ("site").

§ 79200. Request by party for preparation or approval of plan

79200. (a) A potentially responsible party may request the department or the regional board, when appropriate, to prepare or approve a remedial action plan for a site not listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4, if the department or the regional board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the regional board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt.

(b) This section does not affect the authority of a regional board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist order pursuant to Section 13301 of the Water Code.

Comment. Section 79200 continues former Section 25356.1(c) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 79205. Standards for plan

79205. All remedial action plans prepared or approved pursuant to this article shall be based upon Sections 78855 and 78860 and Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended, and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(a) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional board shall consider scientific data and reports that may have a relationship to the site.

(b) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(c) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses. The department or the regional board shall consider the extent to which remedial action measures are available that use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions that do not use this treatment. The department or the regional board shall not select remedial action measures that use offsite transport and disposal of untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(d) Site-specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(e) Cost-effectiveness of alternative remedial action measures. In evaluating the cost-effectiveness of proposed alternative remedial action measures, the department or the regional board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(f) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

Comment. Section 79205 restates former Section 25356.1(d) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

§ 79210. Content of plan

79210. A remedial action plan prepared pursuant to this article shall include the basis for the remedial action selected and shall include an evaluation of each alternative considered and rejected by the department or the regional board for a particular site. The plan shall include an explanation for rejection of alternative remedial actions considered but rejected. The plan shall also include an evaluation of the consistency of the selected remedial action with the requirements of the federal regulations and the factors specified in Section 79205, if those factors are not otherwise adequately addressed through compliance with the federal regulations. The remedial action plan shall also include a nonbinding preliminary

allocation of responsibility among all identifiable potentially responsible parties at a particular site, including those parties that may have been released, or may otherwise be immune, from liability pursuant to this part or any other provision of law.

Comment. Section 79210 continues the first four sentences of former Section 25356.1(e) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78145 ("responsible party"), 78155 ("site").

§ 79215. Public review and comment on plan

79215. (a) Before adopting a final remedial action plan, the department or the regional board shall prepare or approve a draft remedial action plan and shall do all of the following:

(1) Circulate the draft plan for at least 30 days for public comment.

(2) Notify affected local and state agencies of the removal and remedial actions proposed in the remedial action plan and publish a notice in a newspaper of general circulation in the area affected by the draft remedial action plan. The department or the regional board shall also post notices in the location where the proposed removal or remedial action would be located and shall notify, by direct mailing, the owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the removal and remedial actions, the potentially responsible parties for the removal and remedial actions, and the interested public, to provide the public with the information that is necessary to address the issues that concern the public. The information to be provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the removal and remedial actions, and a description of the proposed removal and remedial actions.

(4) Comply with Section 78930.

(b) After complying with subdivision (a), the department or the regional board shall review and consider any public comments, and shall revise the draft plan, if appropriate. The department or the regional board shall then issue the final remedial action plan.

Comment. Section 79215 continues the fifth sentence of former Section 25356.1(e), including paragraphs (e)(1)-(e)(4), inclusive, without substantive change. Section 79215 also continues former Section 25356.1(f) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party").

§ 79220. Judicial review of plan

79220. (a)(1) A potentially responsible party named in the final remedial action plan issued by the department or the regional board may seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section

1085 of the Code of Civil Procedure within 30 days after the final remedial action plan is issued by the department or the regional board. No action may be brought by a potentially responsible party to review the final remedial action plan if the petition for writ of mandate is not filed within 30 days of the date that the final remedial action plan was issued.

(2) Any other person who has the right to seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure shall do so within one year after the final remedial action plan is issued. No action may be brought by any other person to review the final remedial action plan if the petition for writ of mandate is not filed within one year of the date that the final remedial action plan was issued.

(3) The filing of a petition for writ of mandate to review the final remedial action plan shall not stay any removal or remedial action specified in the final plan.

(b) For purposes of judicial review, the court shall uphold the final remedial action plan if the plan is based upon substantial evidence available to the department or the regional board, as the case may be.

(c) This section does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 78305.

Comment. Paragraph (a)(1) of Section 79220 continues the first and third sentences of former Section 25356.1(g)(1) without substantive change.

Paragraph (a)(2) continues the second and fourth sentences of former Section 25356.1(g)(1) without substantive change.

Paragraph (a)(3) continues the fifth sentence of former Section 25356.1(g)(1) without substantive change.

Subdivision (b) continues former Section 25356.1(g)(2) without substantive change.

Subdivision (c) continues former Section 25356.1(g)(3) without substantive change.

See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party").

§ 79225. Situations in which plan not required

79225. (a) This article does not require the department or a regional board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment or, if the department, a regional board, or a responsible party takes a removal action at a site and the estimated cost of the removal action is less than two million dollars ($2,000,000).

(b) The department or a regional board shall prepare or approve a removal action work plan for all sites where a nonemergency removal action is proposed and where a remedial action plan is not required. For sites where removal actions are planned and are projected to cost less than two million dollars ($2,000,000), the department or a regional board shall make the local community aware of the hazardous substance release site and shall prepare, or direct the parties responsible for the removal action to prepare, a community profile report to determine the level of public interest in the removal action. Based on the level of expressed interest, the

department or regional board shall take appropriate action to keep the community informed of project activity and to provide opportunities for public comment that may include conducting a public meeting on proposed removal actions.

(c)(1) A remedial action plan is not required pursuant to Section 79195 if the site is listed on the National Priorities List by the United States Environmental Protection Agency pursuant to the federal act, if the department or the regional board concurs with the remedy selected by the United States Environmental Protection Agency's record of decision. The department or the regional board may sign the record of decision issued by the United States Environmental Protection Agency if the department or the regional board concurs with the remedy selected.

(2) Paragraph (1) does not apply to a removal action paid from the state account.

Comment. Section 79225 continues former Section 25356.1(h)(1), (2), and (5) without substantive change.

See Sections 78050 ("department"), 78065 ("federal act"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78130 ("removal action work plan"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 79230. Waiver from required standards for plan

79230. The department may waive the requirement that a remedial action plan meet the requirements specified in Section 79205 if all of the following apply:

(a) The responsible party adequately characterizes the hazardous substance conditions at a site listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

(b) The responsible party submits to the department, in a form acceptable to the department, all of the following:

(1) A description of the techniques and methods to be employed in excavating, storing, handling, transporting, treating, and disposing of materials from the site.

(2) A listing of the alternative remedial measures that were considered by the responsible party in selecting the proposed removal action.

(3) A description of methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action.

(4) A description of prior removal actions with similar hazardous substances and with similar public safety and environmental considerations.

(c) The department determines that the remedial action plan provides protection of human health and safety and for the environment at least equivalent to that which would be provided by a remedial action plan prepared in accordance with Section 79205.

(d) The total cost of the removal action is less than two million dollars ($2,000,000).

Comment. Section 79230 continues former Section 25356.1(h)(3) without substantive change. An erroneous cross-reference to "subdivision (c)" was corrected to refer to Section 79205, which continues subdivision (d) of former Section 25356.1.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

§ 79235. Costs of removal action

79235. For purposes of this article, the cost of a removal action includes the cleanup or removal of released hazardous substances from the environment or the taking of other actions that are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release, as further defined by Section 101(23) of the federal act (42 U.S.C. Sec. 9601(23)).

Comment. Section 79235 restates former Section 25356.1(h)(4) without substantive change. See Sections 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78135 ("remove").

§ 79240. Application of Water Code provisions

79240. Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to an action or failure to act by a regional board pursuant to this article.

Comment. Section 79240 continues former Section 25356.1(i) without substantive change. See Section 78100 ("regional board").

Article 13. Standards

§ 79260. Standards for response actions

79260. Any response action taken or approved pursuant to this part shall be based upon, and no less stringent than, all of the following requirements:

(a) The requirements established under federal regulation pursuant to Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended.

(b) The regulations established pursuant to Division 7 (commencing with Section 13000) of the Water Code, 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 all applicable 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, to the extent that the department or the regional board determines that those regulations, plans, and policies do not require a less stringent level of remediation than the federal regulations specified in subdivision (a) and to the degree that those regulations, plans, and policies do not authorize decisionmaking procedures that may result in less stringent response action requirements than those required by the federal regulations specified in subdivision (a).

(c) Any applicable provisions of this part, to the extent those provisions are consistent with the federal regulations specified in subdivision (a) and do not require a less stringent level of remediation than, or decisionmaking procedures that are at variance with, the federal regulations set forth in subdivision (a).

Comment. Section 79260 continues former Section 25356.1.5(a) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response").

§ 79265. Standards for risk assessment for response action

79265. (a) Any health or ecological risk assessment prepared in conjunction with a response action taken or approved pursuant to this part shall be based upon Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), the policies, guidelines, and practices of the United States Environmental Protection Agency developed pursuant to the federal act, and the most current sound scientific methods, knowledge, and practices of public health and environmental professionals who are experienced practitioners in the fields of epidemiology, risk assessment, environmental contamination, ecological risk, fate and transport analysis, and toxicology.

(b) Risk assessment practices shall include the most current sound scientific methods for data evaluation, exposure assessment, toxicity assessment, and risk characterization, documentation of all assumptions, methods, models, and calculations used in the assessment.

(c) Any health risk assessment shall include all of the following:

(1) Evaluation of risks posed by acutely toxic hazardous substances based on levels at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety.

(2) Evaluation of risks posed by carcinogens or other hazardous substances that may cause chronic disease based on a level that does not pose any significant risk to health.

(3) Consideration of possible synergistic effects resulting from exposure to, or interaction with, two or more hazardous substances.

(4) Consideration of the effect of hazardous substances upon subgroups that comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations, that are identifiable as being at greater risk of adverse health effects due to exposure to hazardous substances than the general population.

(5) Consideration of exposure and body burden level that alter physiological function or structure in a manner that may significantly increase the risk of illness and of exposure to hazardous substances in all media, including, but not limited to, exposures in drinking water, food, ambient and indoor air, and soil.

Comment. Section 79265 continues former Section 25356.1.5(b) without substantive change. See Sections 78065 ("federal act"), 78075 ("hazardous substance"), 78140 ("response").

§ 79270. Level of hazardous substance that is protective of public health

79270. If currently available scientific data are insufficient to determine the level of a hazardous substance at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety, or the level that poses no significant risk to public health, the risk assessment prepared in conjunction with a response

action taken or approved pursuant to this part shall be based on the level that is protective of public health, with an adequate margin of safety. This level shall be based exclusively on public health considerations, shall, to the extent scientific data are available, take into account the factors set forth in paragraphs (1) to (5), inclusive, of subdivision (c) of Section 79265, and shall be based on the most current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, risk assessment, fate and transport analysis, and toxicology.

Comment. Section 79270 continues former Section 25356.1.5(c) without substantive change. See Sections 78075 ("hazardous substance"), 78140 ("response").

§ 79275. Content of exposure assessment

79275. (a) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this part shall include the development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land use conditions at the site.

(b) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this part shall include the development of reasonable maximum estimates of exposure to volatile organic compounds that may enter structures that are on the site or that are proposed to be constructed on the site and may cause exposure due to accumulation of those volatile organic compounds in the indoor air of those structures.

Comment. Section 79275 continues former Section 25356.1.5(d) and (e) without substantive change.
See Sections 78140 ("response"), 78155 ("site").

Article 14. On-site Hazardous Waste Facility for Response Action

§ 79290. Discretion to exclude from permitting requirements

79290. To the extent consistent with the federal Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department may exclude any portion of a response action conducted entirely onsite from the hazardous waste facility permit requirements of Section 25201 if both of the following apply:

(a) The removal or remedial action is carried out pursuant to a removal action work plan or a remedial action plan prepared pursuant to Article 12 (commencing with Section 79190).

(b) The removal action work plan or the remedial action plan requires that the response action complies with all laws, rules, regulations, standards, and requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the hazardous substance release site and with any

other condition imposed by the department as necessary to protect public health and safety and the environment.

Comment. Section 79290 continues former Section 25358.9(a) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78130 ("removal action work plan"), 78135 ("remove"), 78140 ("response"), 78155 ("site").

§ 79295. Enforcement

79295. (a) The department may enforce in the court for the county in which a response action exempted pursuant to Section 79290 is located any federal or state law, rule, regulation, standard, requirements, criteria, or limitation with which the remedial or removal action is required to comply.

(b)(1) Any consent decree entered into pursuant to an enforcement action authorized by this section shall require the parties to attempt expeditiously to informally resolve any disagreements concerning the implementation of the response action with the appropriate federal and state agencies and shall provide for administrative enforcement.

(2) The consent decree shall stipulate that the penalty for violation of the consent decree shall be an amount not more than twenty-five thousand dollars ($25,000) per day, which may be enforced by the state. These penalties do not impair or affect the authority of the court to order compliance with the specific terms of the consent decree.

Comment. Section 79295 continues former Section 25358.9(b) without substantive change. See Sections 78050 ("department"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response").

Article 15. Operation and Maintenance

§ 79310. "Small business"

79310. For purposes of this article, "small business" is a business that meets the requirements set forth in subdivision (d) of Section 14837 of the Government Code.

Comment. Section 79310 continues former Section 25355.2(f) without substantive change.

§ 79315. Financial assurance for operation and maintenance

79315. Except as provided in subdivision (a) of Section 79325, the department or the regional board shall require any responsible party who is required to comply with operation and maintenance requirements as part of a response action, to demonstrate and to maintain financial assurance in accordance with this article. The responsible party shall demonstrate financial assurance prior to the time that operation and maintenance activities are initiated and shall maintain it throughout the period of time necessary to complete all required operation and maintenance activities.

Comment. Section 79315 continues former Section 25355.2(a) without substantive change. See Sections 78050 ("department"), 78080 ("operation and maintenance"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 79320. Valid financial assurance mechanisms

79320. (a) For purposes of Section 79315, the responsible party shall demonstrate and maintain one or more of the financial assurance mechanisms set forth in subsections (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations.

(b) As an alternative to the requirement of subdivision (a), a responsible party may demonstrate and maintain financial assurance by means of a financial assurance mechanism other than those specified in subdivision (a), if the alternative financial assurance mechanism has been submitted to, and approved by, the department or the regional board as being at least equivalent to the financial assurance mechanisms specified in subdivision (a). The department or the regional board shall evaluate the equivalency of the proposed alternative financial assurance mechanism principally in terms of the certainty of the availability of funds for required operation and maintenance activities and the amount of funds that will be made available. The department or the regional board shall require the responsible party to submit any information necessary to make a determination as to the equivalency of the proposed alternative financial assurance mechanism.

Comment. Section 79320 restates former Section 25355.2(b) without substantive change. A cross-reference to the California Code of Regulations was corrected to refer to "subsections" as opposed to "subdivisions."

See Sections 78050 ("department"), 78080 ("operation and maintenance"), 78100 ("regional board"), 78145 ("responsible party").

§ 79325. Conditions for waiver of financial assurance requirement

79325. (a) The department or the regional board shall waive the financial assurance required by Section 79315 if the department or the regional board makes one of the following determinations:

(1) The responsible party is a small business and has demonstrated all of the following:

(A) The responsible party cannot qualify for any of the financial assurance mechanisms set forth in subsections (b), (c), and (d) of Section 66265.143 of Title 22 of the California Code of Regulations.

(B) The responsible party financially cannot meet the requirements of subsection (a) of Section 66265.143 of Title 22 of the California Code of Regulations.

(C) The responsible party is not capable of meeting the eligibility requirements set forth in subsection (e) of Section 66265.143 of Title 22 of the California Code of Regulations.

(2) The responsible party is a small business and has demonstrated that the responsible party financially is not capable of establishing one of the financial assurance mechanisms set forth in subsections (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations while at the same time financing the operation and maintenance requirements applicable to the site.

(3) The responsible party is not separately required to demonstrate and maintain a financial assurance mechanism for operation and maintenance activities at a site because of all of the following conditions:

(A) The site is a multiple responsible party site.

(B) Financial assurance that operation and maintenance activities at the site will be carried out is demonstrated and maintained by a financial assurance mechanism established jointly by all, or some, of the responsible parties.

(C) The financial assurance mechanism specified in subparagraph (B) meets the requirements of Sections 79315 and 79320.

(4) The responsible party is a federal, state, or local government entity.

(b) The department or the regional board shall withdraw a waiver granted pursuant to paragraph (1) or (2) of subdivision (a) if the department or the regional board determines that the responsible party that obtained the waiver no longer meets the eligibility requirements for the waiver.

Comment. Section 79325 continues former Section 25355.2(c) and (d) without substantive change. The cross-references to the California Code of Regulations were corrected to refer to "subsections" as opposed to "subdivisions."

See Sections 78050 ("department"), 78080 ("operation and maintenance"), 78100 ("regional board"), 78145 ("responsible party"), 78155 ("site"), 79310 ("small business").

§ 79330. Reporting on financial assurance

79330. On or before January 15, 2001, the department shall report to the Legislature all of the following:

(a) The number of requests the department and the regional boards have received for waivers from the financial assurance requirements of this article during the period between May 26, 1999, and January 1, 2001.

(b) The disposition of the requests that were received and the reasons for granting the waivers that were allowed and rejecting the waivers that were disallowed.

(c) The total number of businesses or other entities that were required by this article to demonstrate and maintain financial assurance, the number of businesses or other entities that were able to comply with the requirement, the number that were unable to comply and the reasons why they could not or did not comply, and the history of compliance with this part and Chapter 6.5 (commencing with Section 25100) of Division 20 by responsible parties that requested waivers.

(d) Financial assurance mechanisms other than the financial assurance mechanisms referenced in subdivision (a) of Section 79320 that may be available to responsible parties.

Comment. Section 79330 continues former Section 25355.2(e) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78145 ("responsible party").

Article 16. Illegal Drug Lab Cleanup

§ 79350. Expenditures and contracting

79350. (a) The department may expend funds appropriated from the Illegal Drug Lab Cleanup Account created pursuant to Section 78370 to pay the costs of removal actions required by this article.

(b) The department may enter into oral contracts, not to exceed ten thousand dollars ($10,000) in obligation, when, in the judgment of the department, immediate corrective action to a hazardous substance subject to this article is necessary to remedy or prevent an emergency.

Comment. Section 79350 continues the second and third sentences of former Section 25354.5(b)(1) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78125 ("remedy"), 78135 ("remove").

§ 79355. Notice to department by law enforcement

79355. A state or local law enforcement officer or investigator or other law enforcement agency employee who, in the course of an official investigation or enforcement action regarding the manufacture of an illegal controlled substance, comes in contact with, or is aware of, the presence of a substance that the person suspects is a hazardous substance at a site where an illegal controlled substance is or was manufactured, shall notify the department for the purpose of taking removal action, as necessary, to prevent, minimize, or mitigate damage that might otherwise result from the release or threatened release of the hazardous substance, except for samples required under Section 11479.5 to be kept for evidentiary purposes.

Comment. Section 79355 continues former Section 25354.5(a) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78135 ("remove"), 78155 ("site").

§ 79360. Department obligation upon receipt of notice

79360. Notwithstanding any other provision of law, upon receipt of a notification pursuant to Section 79355, the department shall take removal action, as necessary, with respect to a hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, a material intended to be used in the unlawful manufacture of a controlled substance, and a container for the material, a waste material from the unlawful manufacture of a controlled substance, or any other item contaminated with a hazardous substance used or intended to be used in the manufacture of a controlled substance.

Comment. Section 79360 continues the first sentence of former Section 25354.5(b)(1) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78125 ("remedy"), 78135 ("remove").

§ 79365. Notification of local environmental health officer

79365. The department shall, as soon as the information is available, report the location of a removal action that will be carried out pursuant to Section 79360, and the time that the removal action will be carried out, to the local environmental health officer within whose jurisdiction the removal action will take place, if the local environmental officer does both of the following:

(a) Requests, in writing, that the department report this information to the local environmental health officer.

(b) Provides the department with a single 24-hour telephone number to which the information can be reported.

Comment. Section 79365 continues former Section 25354.5(b)(2) without substantive change. See Sections 78050 ("department"), 78135 ("remove").

§ 79370. Generator of hazardous waste and substances at site

79370. (a) For purposes of Chapter 6.5 (commencing with Section 25100) of Division 20, Chapter 6.9.1 (commencing with Section 25400.10) of Division 20, or this part, a person who is found to have operated a site for the purpose of manufacturing an illegal controlled substance or a precursor of an illegal controlled substance is the generator of a hazardous substance at, or released from, the site that is subject to removal action pursuant to this article.

(b) During the removal action, for purposes of complying with the manifest requirements in Section 25160, the department, the county health department, the local environmental health officer, or their designee may sign the hazardous waste manifest as the generator of the hazardous waste. In carrying out that action, the department, the county health department, the local environmental health officer, or their designee shall be considered to have acted in furtherance of their statutory responsibilities to protect the public health and safety and the environment from the release, or threatened release, of hazardous substances, and the department, the county health department, the local environmental health officer, or their designee is not a responsible party for the release, or threatened release, of the hazardous substances.

(c) The officer, investigator, or agency employee specified in Section 79355 is not a responsible party for the release, or threatened release, of hazardous substances at, or released from, the site.

Comment. Section 79370 continues former Section 25354.5(c) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

§ 79375. Regulations

79375. The department may adopt regulations to implement this article in consultation with appropriate law enforcement and local environmental agencies.

Comment. Section 79375 continues former Section 25354.5(d) without substantive change. See Section 78050 ("department").

§ 79380. Methods, standards, and procedures

79380. (a) The department shall develop sampling and analytical methods for the collection of methamphetamine residue.

(b) The department shall, to the extent funding is available, develop health-based target remediation standards for iodine, methyl iodide, and phosphine.

(c) To the extent that funding is available, the department, using guidance developed by the Office of Environmental Health Hazard Assessment, may develop additional health-based target remediation standards for additional precursors and byproducts of methamphetamine.

(d) The department shall adopt investigation and cleanup procedures for use in the remediation of sites contaminated by the illegal manufacturing of methamphetamine. The procedures shall ensure that contamination by the illegal manufacturing of methamphetamine can be remediated to meet the standards adopted pursuant to subdivisions (b) and (c), to protect the health and safety of all future occupants of the site.

(e) The department shall implement this section in accordance with Section 79375.

Comment. Section 79380 continues former Section 25354.5(e) without substantive change. See Sections 78050 ("department"), 78155 ("site").

§ 79385. Applicability of article contingent on funding

79385. The responsibilities assigned to the department by this article apply only to the extent that sufficient funding is made available for that purpose.

Comment. Section 79385 continues former Section 25354.5(g) without substantive change. See Section 78050 ("department").

Article 17. Judicial Review of Response Actions

§ 79400. Judicial review of response action adequacy

79400. (a) In any judicial action under this part, judicial review of any issues concerning the adequacy of any response action taken or ordered by the department shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(b) If the court finds that the selection of the response action was not in accordance with law, the court shall award only the response costs or damages that are not inconsistent with the National Contingency Plan, as specified in Part 300 (commencing with Section 300.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations, and any other relief that is consistent with the National Contingency Plan.

(c) In reviewing an action brought by the department under this part, in which alleged procedural errors by the department are raised as a defense, the court may impose costs or damages only if the errors were serious and related to matters of

central relevance to the action, so that the action would have been significantly changed had the errors not been made.

Comment. Section 79400 continues former Section 25357.5 without substantive change. See Sections 78050 ("department"), 78140 ("response").

CHAPTER 6. SITE-SPECIFIC RULES RELATED TO CLEANUP

Article 1. Financial Provisions

§ 79450. Site-specific appropriations for state account monies

79450. (a) Money deposited in the state account may also be appropriated by the Legislature to the department on a specific site basis for the following purposes:

(1) For all costs incurred in restoring, rehabilitating, replacing, or acquiring the equivalent of, any natural resource injured, degraded, destroyed, or lost as a result of any release of a hazardous substance, to the extent the costs are not reimbursed pursuant to the federal act and taking into account processes of natural rehabilitation, restoration, and replacement.

(2) For all costs incurred in assessing short-term and long-term injury to, degradation or destruction of, or any loss of any natural resource resulting from a release of a hazardous substance, to the extent that the costs are not reimbursed pursuant to the federal act.

(b) No costs may be incurred for any release of a hazardous substance from any facility or project pursuant to subdivision (a) for injury, degradation, destruction, or loss of any natural resource where the injury, degradation, destruction, or loss was specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement prepared under the authority of the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), or was identified as a significant environmental effect to the natural resources that cannot be avoided in an environmental impact report prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and a decision to grant a permit, license, or similar authorization for any facility or project is based upon a consideration of the significant environmental effects to the natural resources, and the facility or project was otherwise operating within the terms of its permit, license, or similar authorization at the time of release.

Comment. Section 79450 continues former Section 25352(a) and (b) without substantive change.

See Sections 78050 ("department"), 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site"), 78165 ("state account").

Article 2. Santa Susana Field Laboratory

§ 79465. Santa Susana Field Laboratory

79465. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 25187 of the Health and Safety Code, the department may use any legal remedies available pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20 to compel a responsible party or parties to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment at the Santa Susana Field Laboratory site in Ventura County.

(b) A response action taken or approved at the Santa Susana Field Laboratory site shall be conducted in accordance with the provisions of this chapter.

(c) A response action taken or approved pursuant to this chapter for the Santa Susana Field Laboratory site shall be based upon, and be no less stringent than, the provisions of Section 25356.1.5. In calculating the risk, the cumulative risk from radiological and chemical contaminants at the site shall be summed, and the land use assumption shall be either suburban residential or rural residential (agricultural), whichever produces the lower permissible residual concentration for each contaminant. In the case of radioactive contamination, the department shall use as its risk range point of departure the concentrations in the Preliminary Remediation Goals issued by the Superfund Office of the United States Environmental Protection Agency in effect as of January 1, 2007.

(d) Notwithstanding any other provision of law regarding transfers of land, no person or entity shall sell, lease, sublease, or otherwise transfer land presently, or formerly occupied by the Santa Susana Field Laboratory, except as provided in subdivision (e).

(e) As a condition for a sale, lease, sublease, or transfer of land presently or formerly occupied by the Santa Susana Field Laboratory, the Director of the Department of Toxic Substances Control or his or her designee shall certify that the land has undergone complete remediation pursuant to the most protective standards in subdivisions (a) to (c), inclusive.

Comment. Section 79465 continues former Section 25359.20 without substantive change.

See Sections 78050 (“department”), 78085 (“person”), 78125 (“remedy”), 78135 (“remove”), 78140 (“response”), 78145 (“responsible party”), 78155 (“site”).

Article 3. Stringfellow Quarry Class I Hazardous Waste Disposal Site

§ 79490. Use of onsite treatment, storage, transfer, or disposal facility

79490. Any treatment, storage, transfer, or disposal facility built on the Stringfellow Quarry Class I Hazardous Waste Disposal Site, that was built for the purpose of a remedial or removal action at that site, shall only be used to treat, store, transfer, or dispose of hazardous substances removed from that site.

Comment. Section 79490 continues former Section 25351.7 without substantive change.

See Section 78075 ("hazardous substance"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

§ 79495. Priority of removal and remedial actions

79495. Notwithstanding any other provision of law, including, but not limited to, Article 5 (commencing with Section 78760) of Chapter 4, the department shall place the highest priority on taking removal and remedial actions at the Stringfellow Quarry Class I Hazardous Waste Disposal Site and shall devote sufficient resources to accomplish the tasks required by this section.

Comment. Section 79495 continues former Section 25351.8 without substantive change. The cross-reference to Section 25334.5 was not continued. That cross-reference is obsolete, because Section 25334.5 has been repealed. See 1999 Cal. Stat. ch. 23, § 1.

See Section 78050 ("department"), 78125 ("remedy"), 78135 ("remove").

CHAPTER 7. ENFORCEMENT

Article 1. Noncompliance with Order

§ 79550. Penalty for noncompliance with order

79550. Any person subject to a removal or remedial action order or other order issued pursuant to Section 78660, 78870, or 79055 who does not comply with that order without sufficient cause shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day of noncompliance. Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to Section 79590.

Comment. Section 79550 continues former Section 25359.2 without substantive change.

See Sections 78085 ("person"), 78125 ("remedy"), 78135 ("remove").

§ 79555. Treble damages from noncompliant contribution defendant

79555. (a)(1) A responsible party who has entered into an agreement with the department and is in compliance with the terms of that agreement, or who is in compliance with an order issued by the department, may seek, in addition to contribution, treble damages from any contribution defendant who has failed or refused to comply with any order or agreement, was named in the order or agreement, and is subject to contribution.

(2) A contribution defendant from whom treble damages are sought in a contribution action shall not be assessed treble damages by any court where the contribution defendant, for sufficient cause, as determined by the court, failed to comply with an agreement or with an order issued by the department, or where the contribution defendant is an owner of real property who did not generate, treat, transport, store, or dispose of the hazardous substance on, in, or at the facility located on that real property, as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)), or where the principles of fundamental fairness would be violated, as determined by the court.

(3) A party seeking treble damages pursuant to this section shall show that the party, the department, or another entity provided notice, by means of personal service or certified mail, of the order or agreement to the contribution defendant from whom the party seeks treble damages.

(b)(1) One-half of any treble damages awarded pursuant to this section shall be paid to the department, for deposit in the state account.

(2) Nothing in this subdivision affects the rights of any party to seek contribution pursuant to any other statute or under common law.

(c) A contribution defendant from whom treble damages are sought pursuant to this section shall be deemed to have acted willfully with respect to the conduct that gave rise to this liability for purposes of Section 533 of the Insurance Code.

Comment. Section 79555 continues former Section 25359.4.5 without substantive change.

See Sections 78050 ("department"), 78065 ("federal act"), 78075 ("hazardous substance"), 78145 ("responsible party"), 78165 ("state account").

Article 2. Response Actions

§ 79570. Treble damages for failure to provide response action

79570. (a) Any person who is liable for a release, or threat of a release, of hazardous substances and who fails, without sufficient cause, as determined by the court, to properly provide a removal or remedial action upon either an order of the director, pursuant to Section 78870, or an order of the court, pursuant to Section 78660, is liable to the department for damages equal to three times the amount of any costs incurred by the state account pursuant to this part as a result of the failure to take proper action.

(b) No treble damages shall be imposed under this section against an owner of real property who did not generate, treat, transport, store, or dispose of any hazardous substance on, in, or at the facility located on that real property, as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

Comment. Section 79570 restates former Section 25359 without substantive change.

See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78165 ("state account").

Article 3. Natural Resources Damages

§ 79580. Prohibition on recovery of damages for certain losses occurring before September 25, 1981

79580. There shall be no recovery of punitive damages under Section 79570 for an injury to or loss of natural resources that occurred wholly before September 25, 1981. This section shall not be construed as precluding the recovery of punitive damages for injury to or loss of natural resources in an action brought pursuant to any other provision of law.

Comment. Section 79580 continues former Section 25359.1 without substantive change.

Article 4. Administrative Process for Penalty Collection

§ 79590. Complaint for penalties

79590. (a)(1) The department may issue a complaint to any person subject to a penalty pursuant to Sections 78680 and 79550.

(2) The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed penalty.

(3) The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing.

(b)(1) Any person served with a complaint pursuant to this section may, within 45 days after service of the complaint, request a hearing by filing a notice of defense with the department. A notice of defense is deemed to be filed within a 45-day period if it is postmarked within the 45-day period.

(2) If no notice of defense is filed within 45 days after service of the complaint, the department shall issue an order setting liability in the amount proposed in the complaint, unless the department and the party have entered into a settlement agreement, in which case the department shall issue an order setting liability in the amount specified in the settlement agreement.

(3) Where the party has not filed a notice of defense or where the department and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

Comment. Section 79590 continues former Section 25359.3(a) without substantive change. See Sections 78050 ("department"), 78085 ("person").

§ 79595. Hearing for penalties

79595. (a) Any hearing required under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all powers granted by those provisions.

(b) In making a determination, the administrative law judge shall consider 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 and safety or the environment, the violator's ability to pay the proposed penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole.

Comment. Section 79595 continues former Section 25359.3(b) without substantive change. See Section 78050 ("department").

§ 79600. Deposit and expenditure of penalties

79600. All penalties collected under this article and Section 79550 shall be deposited in the state account and shall be available for expenditure by the department upon appropriation by the Legislature.

Comment. Section 79600 continues former Section 25359.3(c) without substantive change. See Sections 78050 ("department"), 78165 ("state account").

CHAPTER 8. COST RECOVERY

Article 1. General Provisions

§ 79650. Recovery of costs generally

79650. (a) A cost incurred by the department or regional board in carrying out or overseeing a response or a corrective action under this part or Chapter 6.5 (commencing with Section 25100) of Division 20 shall be recoverable pursuant to state or federal law by the Attorney General, upon the request of the department or regional board, from the liable person.

(b) The amount of response or corrective action costs incurred by the department or regional board shall be recoverable at the discretion of the department or regional board, either in a separate action or by way of intervention as of right in an action for contribution or indemnity.

(c) The amount of any response or corrective action costs that may be recovered pursuant to this section shall include interest on any amount paid.

(d) A person who is liable for response or corrective action costs incurred at a site shall have the liability reduced by any reimbursements that were paid by that person for that site pursuant to Section 79105.

(e) Nothing in this section deprives a party of any defense that the party may have.

(f) Moneys recovered by the Attorney General pursuant to this section shall be deposited in the state account.

Comment. Section 79650 restates former Section 25360 without substantive change. The phrase "liable person or persons" has been singularized. This is a nonsubstantive change. See Section 13. See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 79655. Interest on liability to department

79655. (a)(1) Until June 30, 2021, except as provided in subdivision (b), a monetary obligation to the department pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20 shall be subject to interest from the date of the demand at an interest rate of 7 percent per annum.

(2) Commencing July 1, 2021, except as provided in subdivision (b), a monetary obligation to the department pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20 shall be subject to interest from the date of the

demand at an interest rate of 10 percent per annum, except that, for obligations of local governments, the interest rate shall be 7 percent per annum.

(b)(1) The department shall waive the interest described in subdivision (a) if the obligation is satisfied within 60 days from the date of invoice.

(2) If, within 45 days of receiving an invoice, the liable person provides written notice to the department in accordance with its invoice dispute resolution procedures disputing in good faith the monetary obligation specified in the invoice, or a portion thereof, the department shall waive the interest until the dispute is resolved.

Comment. Section 79655 restates former Section 25360.1 without substantive change. The phrase "liable person or persons" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78050 ("department"), 78145 ("responsible party").

§ 79660. Judgment not bar to future action

79660. The entry of judgment against any party to the action shall not be deemed to bar any future action by the state account against any person who is later discovered to be potentially liable for costs and expenditures paid by the state account.

Comment. Section 79660 continues former Section 25365 without substantive change.

See Section 78085 ("person"), 78165 ("state account").

§ 79665. Strict liability

79665. The standard of liability for costs recoverable pursuant to this part is strict liability.

Comment. Section 79665 continues former Section 25363(c) without substantive change.

§ 79670. Contribution and indemnity

79670. (a) A person who has incurred response or corrective action costs in accordance with this part, Chapter 6.5 (commencing with Section 25100) of Division 20, or the federal act may seek contribution or indemnity from any person who is liable pursuant to this part.

(b) An action to enforce a claim may be brought as a cross-complaint by any defendant in an action brought pursuant to Section 79650 or this section, or in a separate action after the person seeking contribution or indemnity has paid response or corrective action costs in accordance with this part, Chapter 6.5 (commencing with Section 25100) of Division 20, or the federal act.

(c) A plaintiff or cross-complainant seeking contribution or indemnity shall give written notice to the director upon filing an action or cross-complaint under this section.

(d) In resolving claims for contribution or indemnity, the court may allocate costs among liable parties using appropriate equitable factors.

Comment. Section 79670 continues former Section 25363(d) without substantive change.

See Sections 78055 ("director"), 78065 ("federal act"), 78085 ("person"), 78140 ("response").

Article 2. Recovery of Specific Costs or Funds

§ 79680. Recovery of costs incurred and payable prior to July 1, 2006

79680. Notwithstanding any provision of Section 78165, any costs incurred and payable from the Hazardous Substance Account, the Hazardous Waste Control Account, or the Site Remediation Account prior to July 1, 2006, to implement this part, shall be recoverable from the liable person pursuant to Section 79650 as if the costs were incurred and payable from the state account.

Comment. Section 79680 restates former Section 25324(b) without substantive change. The phrase "liable person or persons" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78145 ("responsible party"), 78165 ("state account").

§ 79685. Recovery for natural resource damages

79685. Notwithstanding Section 78850, the Governor, or the authorized representative of the state, shall act on behalf of the public as trustee of the natural resources to recover costs expended pursuant to Section 79450.

Comment. Section 79685 continues former Section 25352(c) without substantive change.

§ 79690. Recovery of funds expended at sites owned or operated by federal, state, or local governments or agencies

79690. The department shall recover any funds expended pursuant to subdivision (a) or (b) of Section 79070 to the maximum possible extent pursuant to Section 79650.

Comment. Section 79690 continues former Section 25353(c) without substantive change.

See Section 78050 ("department").

Article 3. Parties

§ 79700. State account

79700. The state account shall be a party in any action for recovery of costs or expenditures under this part incurred from the state account.

Comment. Section 79700 continues former Section 25361(a) without substantive change.

See Sections 78165 ("state account").

§ 79705. State account as party to recover costs in an action for penalties

79705. (a) In the event a district attorney or a city attorney has brought an action for civil or criminal penalties pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 against any person for the violation of any provision of that chapter, or any rule, regulation, permit, covenant, standard, requirement, or order issued, adopted, or executed thereunder, and the department has expended moneys from the state account pursuant to Section 78875 for immediate corrective action in response to a release, or threatened release, of a hazardous substance that has resulted, in whole or in part, from the person's acts or omissions, the state account

may be made a party to that action for the purpose of recovering the costs against that person.

(b)(1) If the state account is made a party to the action, the Attorney General shall represent the state account for the purpose of recovering the moneys expended from the account.

(2) Notwithstanding any other provision of law, and under terms that the Attorney General and the department deem appropriate, the Attorney General may delegate the authority to recover the costs to the district attorney or city attorney who has brought the action pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20.

(c) The failure to seek the recovery of moneys expended from the state account as part of the action brought pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 does not foreclose the Attorney General from recovering the moneys in a separate action.

Comment. Section 79705 continues former Section 25361(b) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response"), 78165 ("state account").

§ 79710. Joinder of potentially liable person

79710. Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures of the type recoverable under this part.

Comment. Section 79710 continues former Section 25362 without substantive change.

See Section 78085 ("person").

Article 4. Timing

§ 79725. Commencement prior to expiration of limitations period

79725. An action may be commenced under Section 79650 or 79685 at any time prior to expiration of the applicable limitations period provided for by this article.

Comment. Section 79725 continues former Section 25360.4(d) without substantive change.

§ 79730. Cost recovery actions

79730. (a)(1) Except as provided in paragraph (2) and subdivision (b), an action under Section 79650 for the recovery of costs incurred by the department or a regional board in carrying out or overseeing a response or corrective action pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20, or as otherwise authorized by law, shall be commenced within three years after completion of all response or corrective actions has been certified by the department or a regional board.

(2) If operation and maintenance is required as part of the response or corrective action, the action for recovery of costs incurred by the department or a regional

board shall be commenced within three years after completion of operation and maintenance has been certified by the department or a regional board.

(b) No action described in subdivision (a) may be brought that, as of December 31, 2015, had not been commenced by the department within three years after the certification of the completion of the removal or remedial action.

Comment. Section 79730 continues former Section 25360.4(a) without substantive change. See Sections 78050 ("department"), 78080 ("operation and maintenance"), 78100 ("regional board"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response").

§ 79735. Recovery actions for natural resources damages

79735. An action under Section 79685 for costs incurred by the department for the purposes specified in Section 79450 shall be commenced within three years after certification by the department of the completion of the activities authorized under Section 79450.

Comment. Section 79735 continues former Section 25360.4(b) without substantive change. See Section 78050 ("department").

§ 79740. Reserved and continuing jurisdiction

79740. (a)(1) In an action described in Section 79730 or 79735 for recovery of response or corrective action costs, oversight costs, or damages, where the court has entered a judgment for past costs or damages, the court shall also enter an order reserving jurisdiction over the case and the court shall have continuing jurisdiction to determine any future liability and the amount of the future liability.

(2) The department or regional board may immediately enforce the judgment for past costs and damages.

(b) The department or the regional board may apply for a court judgment for further costs and damages that have been incurred during the response or corrective action, operation and maintenance, or during the performance of the activities authorized by Section 79450, but the application shall be made not later than three years after the certification of completion of the response or corrective action, operation and maintenance, or activities authorized pursuant to Section 79450.

Comment. Section 79740 continues former Section 25360.4(c) without substantive change. See Sections 78050 ("department"), 78080 ("operation and maintenance"), 78100 ("regional board"), 78140 ("response").

§ 79745. Article inapplicable to cost recovery under Water Code

79745. This article does not apply to a cost recovery action brought by a regional board under the Water Code.

Comment. Section 79745 continues former Section 25360.4(e) without substantive change. See Section 78100 ("regional board").

Article 5. Scope of Liability

§ 79760. Determination of party's liability

79760. (a) Except as provided in Section 79765, a party found liable for costs recoverable under this part who establishes by a preponderance of the evidence that only a portion of those costs are attributable to that party's actions shall be required to pay only for that portion.

(b) Except as provided in Section 79765, if the trier of fact finds the evidence insufficient to establish each party's portion of costs under subdivision (a), the court shall apportion those costs, to the extent practicable, according to equitable principles, among the defendants.

Comment. Section 79760 continues former Section 25363(a) and (b) without substantive change.

§ 79765. Contractor liability

79765. Notwithstanding this part, a response action contractor who is found liable for any costs recoverable under this part and who establishes by a preponderance of the evidence that only a portion of those costs are attributable to the response action contractor's actions shall be required to pay only that portion of the costs attributable to the response action contractor's actions.

Comment. Section 79765 continues former Section 25363(e) without substantive change. See Section 78140 ("response").

Article 6. Liability of Residential Property Owner

§ 79780. Definitions

79780. For purposes of this article, the following definitions apply:

(a) "Owner" means either (1) the owner of property who occupies a single-family residence or one-half of a duplex constructed on the property, or (2) the owner of common areas within a residential common interest development who owns those common areas for the benefit of the residential homeowners. This subdivision does not include the developer of the common interest development.

(b) "Property" means either (1) real property of five acres or less that is zoned for, and on which has been constructed, a single-family residence, or (2) common areas within a residential common interest development.

Comment. Section 79780 continues former Section 25360.2(a) without substantive change.

§ 79785. Relation to other law

79785. Notwithstanding any other provision of this part, this article governs liability pursuant to this part for an owner of property.

Comment. Section 79785 continues former Section 25360.2(e) without substantive change. Redundant language citing to the applicable definitions was not continued. See Section 79780 ("owner," "property").

§ 79790. Presumption

79790. (a) Notwithstanding any other provision of this part, an owner of property that is the site of a hazardous substance release is presumed to have no liability pursuant to this part for either of the following:

(1) A hazardous substance release that has occurred on the property.

(2) A release of a hazardous substance to groundwater underlying the property if the release occurred at a site other than the property.

(b) The presumption may be rebutted as provided in Section 79800.

Comment. Section 79790 continues former Section 25360.2(b) without substantive change. See Sections 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site"), 79780 ("owner," "property").

§ 79795. Certification required to bring action

79795. An action for recovery of costs or expenditures incurred from the state account pursuant to this part in response to a hazardous substance release may not be brought against an owner of property unless the department first certifies that, in the opinion of the department, one of the following applies:

(a) The hazardous substance release that occurred on the property occurred after the owner acquired the property.

(b) The hazardous substance release that occurred on the property occurred before the owner acquired the property and at the time of acquisition the owner knew or had reason to know of the hazardous substance release.

(c) The owner of property where there has been a release of a hazardous substance to groundwater underlying the property took, or is taking, one or more of the following actions:

(1) Caused or contributed to a release of a hazardous substance to the groundwater.

(2) Fails to provide the department, or its authorized representative, with access to the property.

(3) Interferes with response action activities.

Comment. Section 79795 continues former Section 25360.2(c) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78165 ("state account"), 79780 ("owner," "property").

§ 79800. Rebuttal of presumption

79800. In an action brought against an owner of property to recover costs or expenditures incurred from the state account pursuant to this part in response to a hazardous substance release, the presumption established in Section 79790 may be rebutted if it is established by a preponderance of the evidence that the facts upon which the department made the certification pursuant to subdivision (a), (b), or (c) of Section 79795 are true.

Comment. Section 79800 continues former Section 25360.2(d) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78165 ("state account"), 79780 ("owner," "property").

Article 7. Liability of Easement Holder or Special District

§ 79810. Definitions

79810. For the purposes of this article, the following terms have the following meaning:

(a) "Easement" means a conservation easement, as defined in Section 815.1 of the Civil Code.

(b) "Environmental assessment" means an investigation of real property, conducted by an independent qualified environmental consultant, to discover the presence or likely presence of a release or a threat of a release of a hazardous substance at, on, to, or from the real property. An environmental assessment shall include, but is not limited to, an investigation of the historical use of the real property, any prior releases, records, consultant reports and regulatory agency correspondence, a visual survey of the real property, and, if warranted, sampling and analytical testing.

(c) "Owner" means either of the following:

(1) An independent special district, as defined in Section 56044 of the Government Code.

(2) An entity or organization that holds an easement.

(d) "Property" means either of the following:

(1) Real property acquired by a special district by means of a gift or donation for which an environmental assessment was completed prior to the transfer or conveyance of the real property to the special district.

(2) An easement for which an environmental assessment was completed prior to the transfer or conveyance of the easement to an entity or organization authorized to accept the easement pursuant to Section 815.3 of the Civil Code.

Comment. Section 79810 continues former Section 25360.3(a) without substantive change. See Sections 78075 ("hazardous substance"), 78105 ("release").

§ 79815. Application

79815. (a) Notwithstanding any other provision of this part, this article governs liability pursuant to this part for an owner of property.

(b) This article is applicable only to property that is acquired by the owner on or after January 1, 1995.

Comment. Section 79815 continues former Section 25360.3(d) and (e) without substantive change. Redundant language citing to the applicable definitions was not continued. See Section 79810 ("owner," "property").

§ 79820. Presumption

79820. (a) Notwithstanding any other provision of this part, if an environmental assessment of property discovers no evidence of the presence or likely presence of a release or a threat of a release of a hazardous substance, and a hazardous substance release is subsequently discovered on, to, or from that property, the owner of that

property is entitled to a rebuttable presumption, affecting the burden of producing evidence, that the owner is not a liable person or responsible party for purposes of this part. An owner is entitled to this presumption whether the action is brought by the state or by a private party seeking contribution or indemnification.

(b) In an action brought against an owner of property to recover costs or expenditures incurred from the state account pursuant to this part in response to a hazardous substance release, the presumption may be rebutted if it is established by a preponderance of the evidence that the facts upon which the department made the certification pursuant to subdivision (a), (b), (c), or (d) of Section 79825 are true.

Comment. Section 79820 continues former Section 25360.3(b) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party"), 78165 ("state account"), 79810 ("environmental assessment," "owner," "property").

§ 79825. Certification required to bring action

79825. An action for recovery of costs or expenditures incurred from the state account pursuant to this part in response to a hazardous substance release shall not be brought against an owner of property unless the department first certifies that, as found by the department, one of the following situations applies:

(a) The hazardous substance release occurred on or after the date that the owner acquired the property.

(b) The hazardous substance release occurred before the date that the owner acquired the property and, at the time of the acquisition, the owner knew, or had reason to know, of the hazardous substance release.

(c) The environmental assessment applicable to the property was not properly carried out, was fraudulently completed, or involves the negligent or intentional nondisclosure of information.

(d) The hazardous substance release was discovered on or after the date of acquisition and the owner failed to exercise due care with respect to the release, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances.

Comment. Section 79825 continues former Section 25360.3(c) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78165 ("state account"), 79810 ("environmental assessment," "owner," "property").

Article 8. Liability of Operator for Household Hazardous Waste or Used Oil Collection Program

§ 79840. "Household hazardous waste collection program"

79840. For purposes of this article, "household hazardous waste collection program" means a program or facility, specified in Section 25218.1, in which hazardous wastes from households and conditionally exempt small quantity generators are collected and ultimately transferred to an authorized hazardous waste treatment, storage, or disposal facility.

Comment. Section 79840 continues former Section 25366.5(b) without substantive change.

§ 79845. Limitation on liability of HHW or used oil collection programs

79845. A public agency operating a household hazardous waste collection program or a person operating a household hazardous waste collection program under a written agreement with a public agency, or, for material received from the public as used oil, a person operating a certified used oil collection center as provided in Section 48660 of the Public Resources Code, shall not be held liable in a cost recovery action brought pursuant to Section 79650, including, but not limited to, an action to recover the fees imposed by Section 79105 or an action brought pursuant to Section 79670, for waste that has been properly handled and transported to an authorized hazardous waste treatment, storage, or disposal facility at a location other than that of the collection program.

Comment. Section 79845 continues former Section 25366.5(a) without substantive change. See Section 78085 ("person"), 79840 ("household hazardous waste collection program").

§ 79850. Effect on state or federal law obligations or liabilities

79850. Except as provided in Section 79845, this article does not affect or modify the obligations or liabilities of a person imposed pursuant to state or federal law.

Comment. Section 79850 continues former Section 25366.5(c) without substantive change. See Section 78085 ("person").

Article 9. Liability Agreements

§ 79860. Agreement not effective to transfer liability for recoverable costs or expenditures

79860. Except as provided in Article 10, no indemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer any liability for cost or expenditures recoverable under this part. This section shall not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this part.

Comment. Section 79860 continues former Section 25364 without substantive change.

§ 79865. Effect of repeal of Section 25364.6

79865. The repeal of Section 25364.6, pursuant to Chapter 1226 of the Statutes of 1998, shall not affect any indemnity provided pursuant to that section for any cause of action brought because of any act or omission that occurred before the repeal of that section.

Comment. Section 79865 restates former Section 25364.7 without substantive change. The cross-reference to the "repeal of Section 25364.6" has been updated to refer to the legislation that repealed the provision. See 1998 Cal. Stat. ch. 1226, § 1. The verb "occur" was made past tense, as all of the relevant acts or omissions would have happened prior to the repeal of former Section 25364.6.

Article 10. Former Kaiser Steel Corporation Steel Mill Site

§ 79875. Definitions

79875. For purposes of this article, the following definitions shall apply:

(a) "Affiliate" means any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the responsible party owner. For purposes of this subdivision, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, or ownership of shares or interests in the entity possessing more than 50 percent of the voting power.

(b) "Qualified independent consultant" means either a geologist who is registered pursuant to Section 7850 of the Business and Professions Code or a professional engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(c) "Responsible party owner" means the owner of all or part of the site on January 1, 1993, or if all or a part of the site is transferred to a joint venture formed for purposes of development of the site, the owner of the site immediately prior to that transfer.

(d) "Site" means the site of the former Kaiser Steel Corporation steel mill located near the City of Fontana.

Comment. Section 79875 continues former Section 25364.1(a) without substantive change. See Section 78155 ("site").

§ 79880. Authority of director to release specified persons from liability

79880. Notwithstanding any other provision of law, except as provided in Sections 79885 and 79890, the director may release from liability under this part or Chapter 6.5 (commencing with Section 25100) of Division 20, and from liability for any claims of the state for recovery of response costs under the federal act, any of the following persons, with regard to a removal or remedial action at the site:

(a) Any person who provides financing for all, or a substantial part of, the costs of performing a removal or remedial action at the site pursuant to a remedial action plan prepared by a qualified independent consultant and issued by the department pursuant to Section 79210 and subdivision (a) of Section 79215, except that the release from liability shall not release the person providing this financing from liability for any hazardous substance release or threatened release resulting from that person's exercise of decisionmaking control over the performance of the removal or remedial action while the responsible party owner remains in possession of the site.

(b) Any person who enters into an agreement with the responsible party owner to provide development services for the development of all, or a part of, the site, including a developer, who becomes a partner in a joint venture partnership with the responsible party owner, if the joint venture is formed for purposes of the development of the site and legal title to the site is transferred by the responsible

party owner to the joint venture. If a release from liability is granted to a developer pursuant to this subdivision and the legal title to the site is transferred by the responsible party owner to a joint venture between the developer and the responsible party owner of the site, the responsible party owner shall not be relieved of liability under this part.

(c) Any person who acquires an ownership or leasehold interest in all or a part of the site after performance of the removal or remedial action specified in the remedial action plan for the site, or part of the site, has been completed to the satisfaction of the department.

Comment. Section 79880 continues former Section 25364.1(b) without substantive change.

See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response"), 78155 ("site"), 79875 ("qualified independent consultant," "responsible party owner," "site").

§ 79885. Conditions required for release to be granted

79885. A release from liability shall not be granted pursuant to Section 79880 unless all of the following conditions are met:

(a) A responsible party owner has entered into a stipulated settlement of an order issued by the department pursuant to Section 25187, 78870, or 79055 to perform the removal or remedial action at the site in accordance with the remedial action plan and has arranged financing, contingent only upon obtaining releases from potential liability pursuant to Section 79880, for the costs of performing the removal or remedial action.

(b) A responsible party owner agrees to pay all applicable oversight fees required by Section 79105 and to pay any additional costs that are recoverable pursuant to Section 79650.

(c) No person to be released from liability pursuant to Section 79880 is a responsible party or an affiliate of a responsible party, with respect to any hazardous substance release existing at the site at the time the release from liability is granted.

(d) The stipulated settlement requires the responsible party owner to provide irrevocable financial assurances for full performance of the remedial action plan. The financial assurances may consist of one or more of the financial assurance instruments described in Section 66264.143 of Title 22 of the California Code of Regulations. Upon the approval of the department, the forms of these instruments may be revised as appropriate to apply to the costs of performing the removal or remedial action specified in the remedial action plan.

(e) The director finds that the release from liability to be granted will promote the purposes and goals of this part and encourage private investment in property that is in need of remediation.

Comment. Section 79885 continues former Section 25364.1(c) without substantive change.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 79875 ("affiliate," "responsible party owner," "site").

§ 79890. Limitations on release from liability

79890. Notwithstanding any other provision of this article, a release from liability granted pursuant to Section 79880 shall not extend to any of the following:

(a)(1) Any person who was a responsible party for a hazardous substance release existing at the site before the release from liability was granted

(2) Any entity that is an affiliate of a responsible party described in paragraph (1).

(b) Any contractor who prepares the remedial action plan or performs the removal or remedial action provided for in the remedial action plan.

(c) Any person who obtains a release pursuant to Section 79880 by fraud or negligent or intentional nondisclosure or misrepresentation.

(d) Any liability for a release or threatened release of a hazardous substance first deposited at the site by a person released from liability pursuant to Section 79880 after the release from liability is granted.

Comment. Section 79890 restates former Section 25364.1(e) without substantive change.

See Sections 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 79875 ("affiliate," "site").

§ 79895. Required content of release from liability

79895. Any release from liability granted by the director pursuant to this article shall contain the following provision: "If, for any reason, the responsible party does not complete the removal or remedial action, this release does not extend to any subsequent actions or activities performed by the released party that exacerbate the conditions at the site."

Comment. Section 79895 continues former Section 25364.1(f) without substantive change.

See Sections 78055 ("director"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 79875 ("site").

§ 79900. Subdivision of site to facilitate or secure financing for removal or remedial action

79900. The site may be subdivided to create subdivided parcels of land, pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), in order to facilitate removal or remedial action at the site, secure financing for removal or remedial action, or secure financing for development that would generate funds for removal or remedial action at the site.

Comment. Section 79900 continues former Section 25364.1(d) without substantive change.

See Sections 78125 ("remedy"), 78135 ("remove"), 78155 ("site"), 79875 ("site").

Article 11. Costs Incurred at BKK Landfill Site

§ 79910. Contribution towards liability

79910. (a) Notwithstanding any other provision of this chapter, the costs incurred by a state agency to take a hazardous substance response action at the BKK Landfills Site in West Covina shall be deemed to be a contribution towards any potential liability for response costs or damages imposed pursuant to state law upon a state

agency that arranged for the disposal or treatment of a hazardous substance at that site.

(b) The Legislature declares its intent that the costs incurred by a state agency to take action in response to a hazardous substance release at the BKK Landfills Site in West Covina shall be deemed to be a contribution towards any potential liability for response costs or damages imposed pursuant to the federal act upon a state agency that arranged for the disposal or treatment of a hazardous substance at that site.

Comment. Section 79910 continues former Section 25363.5 without substantive change.

See Sections 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78155 ("site").

Article 12. Settlement

§ 79920. Settlement involving minor portion of response costs

79920. (a) The department shall, if it determines that it is practicable and in the public interest, propose a final administrative or judicial expedited settlement with potentially responsible parties if the settlement involves only a minor portion of the response costs at a site and, if in the judgment of the department, either of the following conditions are met:

(1) The amount of hazardous substances and the toxic or other hazardous effects of the hazardous substances contributed by the potentially responsible party to the site are minimal in comparison to the amount and effects of other hazardous substances at the site.

(2) The potentially responsible party is the owner of the real property on or in which the site is located, did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the site, and did not contribute to the release or threat of release of a hazardous substance at the site through any act or omission. This paragraph does not apply if the potentially responsible party, at the time of the purchase of the real property, knew or should have known that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(b) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. A settlement under this section does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(c) Any person who enters into a settlement under this section shall provide any information relevant to the administration of this part that is requested by the department. In order to obtain the contribution protection provided by subdivision (b), a potentially responsible party participating in a de minimis settlement shall certify that it has responded fully and accurately to all of the department's requests

for information, and that it has provided all of the relevant documents pertaining to the site to the department.

(d) Nothing in this section shall be construed to affect the authority of the department or regional board to reach settlements with other potentially responsible parties under this part.

Comment. Section 79920 restates former Section 25360.6 without substantive change. For consistency, the term "site" was substituted for the term "facility." See Section 78155 ("site" has the same meaning as "facility" in federal act); see also Section 78035 (definitions in federal act apply to terms used in this part).

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78100 ("regional board"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party").

Article 13. Liens

§ 79935. Lien on real property

79935. (a)(1) Any costs or damages incurred by the department or regional board pursuant to this part constitute a claim and lien upon the real property owned by the responsible party that is subject to, or affected by, the removal and remedial action.

(2) The lien provided by this article shall continue until the liability for these costs or damages, or a judgment against the responsible party, is satisfied. However, if it is determined by the court that the judgment against the responsible party will not be satisfied, the department may exercise its rights under the lien.

(b) This lien shall attach regardless of whether the responsible party is insolvent.

(c) A lien established by this article shall be subject to the notice and hearing procedures required by due process of the law and shall arise at the time costs are first incurred by the department or regional board with respect to a response action at the site.

Comment. Section 79935 continues former Section 25365.6(a) and (c) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 79940. Force and effect of lien

79940. The lien imposed by this article shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located.

Comment. Section 79940 continues the first sentence of former Section 25365.6(d) without substantive change.

See Sections 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site").

§ 79945. Contents of lien

79945. (a) The lien shall contain the legal description of the real property, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll.

(b) The lien shall also contain a legal description of the property that is the site of the hazardous substance release, the assessor's parcel number for that property, and the name of the owner of record, as shown on the latest equalized assessment roll, of that property.

Comment. Section 79945 continues the second and third sentences of former Section 25365.6(d) without substantive change.

See Sections 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site").

§ 79950. Department not responsible party due to lien

79950. The department shall not be considered a responsible party for a hazardous substance release site because a claim and lien is imposed pursuant to this article.

Comment. Section 79950 continues former Section 25365.6(b) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78145 ("responsible party"), 78155 ("site").

§ 79955. Deposit of funds recovered

79955. All funds recovered pursuant to this article shall be deposited in the state account.

Comment. Section 79955 continues former Section 25365.6(e) without substantive change.

See Section 78165 ("state account").

CHAPTER 9. ORPHAN SHARE REIMBURSEMENT

Article 1. General Provisions

§ 80000. Definitions

80000. For purposes of this chapter, the following definitions shall apply:

(a) "Fund" means the Orphan Share Reimbursement Trust Fund established pursuant to Section 80020.

(b) "Orphan share" means the share of liability for the costs of response action that is attributable to the activities of persons who are defunct or insolvent, as determined pursuant to Section 80070.

Comment. Section 80000 continues former Section 25390 without substantive change.

See Sections 78085 ("person"), 78140 ("response").

§ 80005. Legislative findings and declarations

80005. The Legislature finds and declares all of the following:

(a) This chapter, which establishes an Orphan Share Reimbursement Trust Fund, operates in conjunction with the federal liability scheme under the federal act as in effect on July 1, 1998, for the recovery of response costs expended by government agencies.

(b) Under federal liability, at sites where there are insolvent or defunct parties that cannot contribute to the cost of cleanup, viable responsible parties pay the share of liability for that cleanup that may be attributable to insolvent and defunct parties.

(c) The Orphan Share Reimbursement Trust Fund is created to mitigate the payment of an insolvent or defunct party's liability share by viable responsible parties, to the extent money in the fund is available, and to encourage responsible parties to quickly and efficiently remediate contamination.

Comment. Section 80005 continues former Section 25390.1 without substantive change. See Sections 78065 ("federal act"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80000 ("fund").

§ 80010. Effect of chapter

80010. (a) This chapter does not prohibit, and is not intended to prohibit, the department, the regional board, or the Attorney General from pursuing any existing legal, equitable, or administrative remedies, pursuant to federal or state law, against any potentially responsible party.

(b) No liability or obligation is imposed upon the state pursuant to this chapter, and the state shall not incur a liability or obligation beyond the payment of claims pursuant to this chapter, to the extent that money is available and has been allocated by the administrator under subdivision (a) of Section 80050. No legal action may be brought against the Orphan Share Reimbursement Trust Fund in its own name.

Comment. Section 80010 continues former Section 25390.2 without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78125 ("remedy"), 78145 ("responsible party").

Article 2. Orphan Share Reimbursement Trust Fund

§ 80020. Creation, administration, and funding of Orphan Share Reimbursement Trust Fund

80020. (a) The Orphan Share Reimbursement Trust Fund is hereby created in the State Treasury.

(b) The administrator of the fund may expend the money deposited in the fund as provided in this chapter, upon appropriation by the Legislature. The administrator of the fund shall act in a fiduciary capacity, shall prudently administer the fund, and shall protect the fund from any unreasonable or unjustified claims, including any unreasonable or unjustified determinations of the orphan share percentage.

(c) If an appropriation from the General Fund is made to the fund in any fiscal year and an amount greater than five million dollars ($5,000,000) in unexpended funds, beyond any amount approved by the administrator of the fund to pay claims pursuant to this chapter from that General Fund appropriation, remain in the fund at the end of that fiscal year, and if the department determines that additional funding for orphan sites beyond that appropriated from the state account is required for the next fiscal year, the administrator may expend the amount in excess of five million dollars ($5,000,000) from the General Fund appropriation to pay for response costs incurred by the department or the regional boards under this part at sites listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4 where no viable responsible parties exist.

Comment. Section 80020 continues former Section 25390.3(a), (b), and (d) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account"), 80000 ("fund," "orphan share").

§ 80025. Permissible expenditures

80025. Except as provided in subdivision (b) of Section 78420 and subdivision (c) of Section 80020, the administrator of the fund may expend the money in the fund for all of the following purposes:

(a) To pay claims for reimbursement of all, or any part of, the orphan share at a site paid by the responsible party filed pursuant to Sections 80040, 80045, and 80050.

(b) For the costs of implementing this chapter.

(c) To pay the reasonable costs of the department and the regional board for performance of its duties under this chapter, including, but not limited to, its participation in the orphan share determination process set forth in Section 80070, unless those costs are paid by a potentially responsible party under an agreement specified in subdivision (c) of Section 80040. The expenditures from the fund for purposes of this subdivision shall not exceed 5 percent of the total amount appropriated from the fund in the annual Budget Act for purposes of this section for that fiscal year.

(d) To pay the portion of costs attributable to the orphan share incurred by the department and the regional boards to oversee actions of potentially responsible parties, unless those costs are paid by a potentially responsible party under an agreement specified in subdivision (c) of Section 80040.

Comment. Section 80025 continues former Section 25390.3(c) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80000 ("fund," "orphan share").

Article 3. Claims for Orphan Share Reimbursement

§ 80040. Persons who may file claim

80040. A potentially responsible party may file a claim pursuant to subdivision (a) of Section 80025 only if all of the following apply:

(a) The site is listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

(b) The department or the regional board has approved a final remedy for the site under Article 12 (commencing with Section 79190) of Chapter 5.

(c) The department and the potentially responsible party have entered into a written, enforceable cleanup agreement or order embodied in a consent order issued pursuant to Section 78870 or 79055, or the regional board and the potentially responsible party have entered into a written, enforceable cleanup agreement or order that provides for the completion of all response actions necessary at the site, conducted pursuant to this part and under the oversight and at the direction of the

department or the regional board. The agreement shall provide for the payment by the potentially responsible party of the department's or the regional board's response costs.

(d) The potentially responsible party demonstrates, and the department or the regional board finds, that the potentially responsible party has and will have sufficient financial resources to complete all required response actions.

(e) The potentially responsible party is in compliance with the agreement provided in subdivision (c), and with any other applicable order or agreement pertaining to the potentially responsible party's obligations with respect to the site.

(f) The potentially responsible party has prepared and provided the information required under subdivision (b) of Section 80070.

(g) The claim for reimbursement is for the costs incurred for response actions that were subject to the oversight and approval of the department or the regional board.

Comment. Section 80040 continues former Section 25390.4(a) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78125 ("remedy"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 80045. Forms and procedures for claims

80045. The administrator of the fund shall prescribe appropriate application forms and procedures for claims filed pursuant to subdivision (a) of Section 80025 that shall include all of the following:

(a) Requirements that the claimant provide, at a minimum, all of the following documentation:

(1) A sworn verification of the claim to the best of the information known to the claimant or within the claimant's possession or control.

(2) All records and information pertaining to the site and relevant to the ownership, operation, or control of the site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the site, within the possession or control of the claimant, including, but not limited to, the information specified in subdivision (a) of Section 78440.

(3) Certification of all response costs that have been, or will be, incurred at the site by the potentially responsible party, and an estimate of the total cost of completion of the approved final remedy at the site.

(b) Procedures specifying that claims shall be filed only at the two following specific time periods during the performance of a response action:

(1) After the final remedy is selected under Article 12 (commencing with Section 79190) of Chapter 5.

(2) After the department or the regional board determines that the response action is complete. The department or the regional board shall not include operation and maintenance activities in determining whether the response action is complete under this paragraph.

Comment. Section 80045 continues former Section 25390.4(b) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78125 ("remedy"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80000 ("fund").

§ 80050. Payment of claims

80050. (a) The administrator of the fund shall annually, on a fiscal year basis, pay claims for reimbursement from the fund filed by potentially responsible parties under subdivision (a) of Section 80025, in accordance with the following procedures:

(1) Claims for funds available during each fiscal year shall be filed with the administrator by July 30 of that fiscal year.

(2) For sites with multiple responsible parties, all potentially responsible parties that have entered into the cleanup agreement specified in subdivision (c) of Section 80040 shall file a single claim.

(3)(A) The administrator shall allocate the money available in the fund for the fiscal year among the claims filed by the July 30 deadline. The allocation shall be based on the determination of the orphan share percentage at the facility under the process set forth in Section 80070, the long-term financial stability and short-term resources available in the fund, and the administrator's fiduciary duty with respect to the fund. Except as provided in subparagraph (B), the administrator shall pay claims for funds in the order in which they are received.

(B) Notwithstanding subparagraph (A), if an appropriation from the General Fund is made to the fund in any fiscal year, the administrator may alter the order of payment of claims required by subparagraph (A) by using funds appropriated from the General Fund to pay claims based on the threat to public health or the environment posed by a site or the need to improve economic and environmental conditions in redeveloping communities.

(4) The total amount allocated to any one site shall not exceed 10 percent of the total amount available each fiscal year in the fund. If, due to this limit or to the unavailability of funds, a claimant receives only partial or no reimbursement of the orphan share paid by that claimant, the claim shall be paid in the following fiscal year and shall be given priority over all claims filed after the claim was initially received, subject to the discretion of the administrator set forth in paragraph (3).

(5) The administrator's proposed allocation shall be subject to public review and comment for 30 days.

(b) The state and the fund have no obligation to provide full reimbursement to a claimant. The fund shall be allocated at the discretion of the administrator, subject to the requirements of this chapter. In enacting this chapter, the Legislature intends that claimants be reimbursed only to the extent that money is available in the fund and is allocated to the claimant by the administrator.

Comment. Section 80050 continues former Section 25390.4(c) and (d) without substantive change.

See Sections 78145 ("responsible party"), 78155 ("site"), 80000 ("fund," "orphan share").

§ 80055. Sites for which claims not permitted

80055. A claim for reimbursement under subdivision (a) of Section 80025 shall not be filed for any of the following:

(a) Sites listed on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605(a)(8)(B)).

(b) Sites remediated pursuant to former Chapter 6.85 (commencing with Section 25396) of Division 20.

(c) Sites, or portions of sites, for which the potentially responsible party has agreed to take all response action required by the department or the regional board at the site, and that agreement is embodied in a written, enforceable settlement agreement, including, but not limited to, a judicial consent decree, entered into prior to January 1, 1999.

(d) Sites, or portions of sites, that have been fully remediated for which the department or the regional board has determined that the response action is complete prior to January 1, 1999. The department or the regional board shall not include operation and maintenance activities in determining whether the response action is complete under this section.

Comment. Section 80055 continues former Section 25390.7 without substantive change.

See Sections 78050 ("department"), 78065 ("federal act"), 78080 ("operation and maintenance"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

Article 4. Determination of Orphan Share

§ 80070. Manner of determination

80070. For the purposes of this chapter, the orphan share shall be determined in the following manner:

(a) The orphan share shall be expressed as a percentage in multiples of five, up to, and, including, but not greater than, 75 percent.

(b) The potentially responsible party filing a claim for reimbursement of the orphan share shall provide the administrator of the fund with a written potentially responsible party search report that shall include a list of all potentially responsible parties identified for the site, the factual and legal basis for identifying those parties, and a proposed orphan share percentage. The potentially responsible party shall also provide the administrator with the factual documentation necessary to support the proposed orphan share percentage.

(c) Upon receipt of the information required by subdivision (b), the administrator of the fund shall invite all identified potentially responsible parties and the department and the regional board to submit any additional information relating to the proposed orphan share percentage or to the list of identified potentially responsible parties.

(d) The administrator of the fund, in consultation with the department or the regional board, shall determine a final orphan share percentage based on the volume,

toxicity, and difficulty of removal of the contaminants contributed to the site by the party responsible for the orphan share. The administrator shall determine the orphan share timely and efficiently and is not required to precisely determine all relevant factors, as long as the determination is generally equitable. In addition, the administrator may consider the results of any apportionment or allocation conducted by voluntary arbitration or mediation or by a civil action filed by a potentially responsible party, or any other apportionment or allocation decision that is helpful when determining the orphan share percentage.

(e) A potentially responsible party shall not assert, and the administrator of the fund shall not determine, that the orphan share percentage includes the share of liability attributable to a potentially responsible party's acts that occurred before January 1, 1982, unless that share of responsibility is attributable to a person who is defunct or insolvent.

(f) In determining the orphan share percentage under this section, the administrator of the fund may perform any of the activities authorized in subdivisions (a) and (c) of Section 78440.

(g) The administrator of the fund shall issue all orphan share percentage determinations in writing, with notification to all appropriate parties. The decision of the administrator with respect to either apportionment or payment of claims is a final agency action for the purposes of judicial review of the decision by any party to the proceedings resulting in the decision; however, judicial review of the administrator's decision is limited to a showing of fraud by a party submitting information under this section. The administrator shall be represented by the Attorney General in any action brought under this chapter.

Comment. Section 80070 restates former Section 25390.5 without substantive change. The phrase "party or parties" has been singularized. This is a nonsubstantive change. See Section 13. An erroneous reference to "subdivision (a)" in subdivision (c) was corrected to refer to "subdivision (b)." An erroneous reference to "this subdivision" in subdivision (g) was corrected to refer to "this section."

See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 80000 ("fund," "orphan share").

Article 5. Enforcement and Cost Recovery

§ 80080. Recovery of costs paid from fund

80080. Any costs paid from the fund pursuant to subdivisions (a) and (d) of Section 80025 shall be recoverable by the Attorney General, at the request of the administrator of the fund, from any liable person who has not entered into, or is not in compliance with, a written cleanup agreement entered into pursuant to subdivision (c) of Section 80040 that provides for the completion of all response actions necessary at the site under the oversight and at the direction of the department or the regional board.

Comment. Section 80080 restates former Section 25390.6(a) without substantive change. The phrase "person or persons" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80000 ("fund").

§ 80085. Penalty for withholding information or submitting false information

80085. Any potentially responsible party who withholds information required to be submitted under this section or Section 80080, or who submits false information, is subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each piece of information withheld or for each piece of false information submitted.

Comment. Section 80085 continues former Section 25390.6(b) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 80090. Lien for incurred costs

80090. (a) Any costs incurred and payable from the fund by the administrator pursuant to this chapter shall constitute a claim and lien upon the real property owned by a responsible party that is subject to, or affected by, a response action. A lien established by this subdivision shall have all of the following properties:

(1) The lien shall not exceed the increase in fair market value of the site attributable to the response action at the time of a subsequent sale or other disposition of the site.

(2) The lien shall attach regardless of whether the responsible party property owner is solvent.

(3) The lien shall arise at the time costs to the fund are first incurred by the administrator.

(4) The lien shall be subject to the notice and hearing procedures that due process of the law requires.

(b) Neither the administrator of the fund nor the fund shall be considered a responsible party for a hazardous substance release site because a claim and lien is imposed pursuant to this section.

(c)(1) The lien imposed by this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located.

(2) The lien shall contain the legal description of the property, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll. The lien shall also contain a legal description of the property that is the site of the hazardous substance release, the assessor's parcel number for that property, and the name of the owner of record, as shown on the latest equalized assessment roll, of that property.

(d) All funds recovered pursuant to this section shall be deposited in the fund.

Comment. Section 80090 continues former Section 25390.8 without substantive change. A cross-reference to "this subdivision" in subdivision (d) has been corrected to refer to "this section." See Sections 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80000 ("fund").

Article 6. Operative Date

§ 80100. Operative date

80100. (a) This chapter shall become operative on the operative date of the statute that does either, or both, of the following:

(1) Appropriates funds to the fund to implement this chapter.

(2) Establishes a revenue source for the fund.

(b) Notwithstanding subdivision (a), the operation of this chapter shall be suspended during any fiscal year in which both no funds are appropriated to the fund to implement this chapter and no revenue source for the fund is operative.

Comment. Section 80100 continues former Section 25390.9 without substantive change. See Section 80000 ("fund").

CHAPTER 10. CLEANUP LOANS AND ENVIRONMENTAL ASSISTANCE TO NEIGHBORHOODS

Article 1. Definitions

§ 80200. Application of definitions

80200. For purposes of this chapter, the definitions contained in this article shall apply.

Comment. Section 80200 restates the initial clause of former Section 25395.20(a) without substantive change.

§ 80205. "Account"

80205. "Account" means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 80350.

Comment. Section 80205 continues former Section 25395.20(a)(1) without substantive change.

§ 80210. "Brownfield"

80210. (a) "Brownfield" means property that meets all of the following conditions:

(1) It is located in an urban area.

(2) It was previously the site of an economic activity that is no longer in operation at that location.

(3) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan pursuant to this chapter.

(b) "Brownfield" does not include any of the following:

(1) Property listed, or proposed for listing, on the National Priorities List pursuant to Section 105(a)(8)(B) of the federal act (42 U.S.C. Sec. 9605(a)(8)(B)).

(2) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is a brownfield described in paragraph (5) of subdivision (a) of Section 80230.

Comment. Section 80210 continues former Section 25395.20(a)(2) without substantive change. A technical change was made to conform to the standard citation format for the federal act. See Section 78065.

See Sections 78065 ("federal act"), 78155 ("site"), 80225 ("economic activity"), 80250 ("no longer in operation"), 80260 ("property"), 80280 ("urban area").

§ 80215. "Cleanup and abatement order"

80215. "Cleanup and abatement order" means an order issued by a regional board pursuant to Section 13304 of the Water Code.

Comment. Section 80215 continues former Section 25395.20(a)(3) without substantive change. See Section 78100 ("regional board").

§ 80220. "Cleanup Loans and Environmental Assistance to Neighborhoods Program" or "CLEAN"

80220. "Cleanup Loans and Environmental Assistance to Neighborhoods Program" or "CLEAN" means the loan program established by the department pursuant to Article 6 (commencing with Section 80450), to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property.

Comment. Section 80220 continues former Section 25395.20(a)(4) without substantive change. See Sections 78050 ("department"), 78105 ("release"), 78140 ("response"), 80230 ("eligible property"), 80235 ("hazardous material").

§ 80225. "Economic activity"

80225. "Economic activity" means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

Comment. Section 80225 continues former Section 25395.20(a)(5) without substantive change.

§ 80230. "Eligible property"

80230. (a) "Eligible property" means a site that is any of the following:

(1) A brownfield.

(2) An underutilized property that is a property described in paragraph (5) of subdivision (d) of Section 80275.

(3) An underutilized property that is a property located in any of the following:

(A) An enterprise zone established pursuant to the former Enterprise Zone Act (former Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code).

(B) A project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33330) of Chapter 4 of Part 1 of Division 24.

(C) An eligible area, as determined pursuant to paragraph (2) of subdivision (c) of former Section 7072 of the Government Code.

(4) An underutilized property that is a property, the redevelopment of which will result in any of the following:

(A) An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the economic activity located on the property before redevelopment occurred.

(B) An increase in property taxes paid to the local government that is at least 100 percent greater than the property taxes paid by the property owner before redevelopment occurred.

(C) Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the property after the redevelopment occurs.

(D) Housing for very low, low-, or moderate-income households, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

(E) The construction of new or expanded school facilities, public day care centers, parks, or community recreational facilities.

(5) A brownfield or an underutilized property described in paragraph (3) that will be the site of a contiguous expansion of an operating industrial or commercial facility owned or operated by one of the following:

(A) A small business.

(B) A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Religious Corporation Law (Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code).

(C) A small business incubator that is undertaking the expansion with the assistance of a loan guarantee provided pursuant to Section 63089.71 of the Government Code.

(b) "Eligible property" does not include any of the following:

(1) Property listed or proposed for listing on the National Priorities List pursuant to Section 105(a)(8)(B) of the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(2) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property meets the criteria specified in paragraph (5) of subdivision (a).

Comment. Section 80230 restates former Section 25395.20(a)(6) and (7) without substantive change. Technical changes were made to conform to the standard citation format for the federal act. See Section 78065. In paragraph (a)(3) and subparagraph (a)(5)(C), technical changes were made to correct obsolete or erroneous cross-references.

See Sections 78065 ("federal act"), 78155 ("site"), 80210 ("brownfield"), 80225 ("economic activity"), 80255 ("project"), 80260 ("property"), 80265 ("small business"), 80275 ("underutilized property").

§ 80235. "Hazardous material"

80235. (a) "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 subdivision (a) of Section 78075.

(2) A hazardous waste, as defined in Section 25117.

(3) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(4) A substance specified in subdivision (b) of Section 78075.

(b) "Hazardous material" does not include undisturbed naturally occurring hazardous material unless it will adversely affect the reasonable use of a property after response action is completed.

Comment. Section 80235 restates former Section 25395.20(a)(8) without substantive change.

See Sections 78075 ("hazardous substance"), 78140 ("response"), 80260 ("property").

§ 80240. "Investigating site contamination program"

80240. "Investigating site contamination program" means the loan program established by the department pursuant to Article 5 (commencing with Section 80400) to conduct a preliminary endangerment assessment of a brownfield or an underutilized urban property.

Comment. Section 80240 continues former Section 25395.20(a)(10) without substantive change.

See Sections 78050 ("department"), 78095 ("preliminary endangerment assessment"), 80210 ("brownfield"), 80260 ("property").

§ 80245. "Leaking underground fuel tank"

80245. "Leaking underground fuel tank" has the same meaning as "tank," as defined in Section 25299.24.

Comment. Section 80245 continues former Section 25395.20(a)(11) without substantive change.

§ 80250. "No longer in operation"

80250. "No longer in operation" means an economic activity that is, or previously was, located on a property that is not conducting operations on the property of the type usually associated with the economic activity.

Comment. Section 80250 continues former Section 25395.20(a)(12) without substantive change.

See Sections 80225 ("economic activity"), 80260 ("property").

§ 80255. "Project"

80255. "Project" means any response action, and the planned future development, included in an application for a loan pursuant to Article 6 (commencing with Section 80450).

Comment. Section 80255 continues former Section 25395.20(a)(13) without substantive change.

See Section 78140 ("response").

§ 80260. "Property"

80260. "Property" means real property, as defined in Section 658 of the Civil Code.

Comment. Section 80260 continues former Section 25395.20(a)(14) without substantive change.

§ 80265. "Small business"

80265. "Small business" means an independently owned and operated business, that is not dominant in its field of operation, that, together with affiliates, has 100 or fewer employees, and that has average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or a business that is a manufacturer, as defined in Section 14837 of the Government Code, with 100 or fewer employees.

Comment. Section 80265 continues former Section 25395.20(a)(15) without substantive change.

§ 80275. "Underutilized property"

80275. "Underutilized property" means property that meets all of the following conditions:

(a) It is located in an urban area.

(b) An economic activity is conducted on the property.

(c) It is the subject of a proposal for development pursuant to this chapter.

(d) One of the following applies:

(1) The economic activity on the property is irregular or intermittent in nature and uses the property for productive purposes less than four months in any calendar year.

(2) The economic activity on the property employs less than 25 percent of the property for productive purposes.

(3) The structures, infrastructure, and other facilities on the property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal.

(4) The economic activity conducted on the property is a parking facility or an activity that offers a similar marginal economic service and the facility or activity will be replaced when the property is redeveloped.

(5) The property is adjacent to one or more brownfields or underutilized properties that are the subject of a project under this chapter and its inclusion in the project is

necessary in order to ensure that the redevelopment of the brownfield or brownfields or underutilized property or underutilized properties occurs.

(e) An underutilized property does not include any of the following:

(1) Property listed or proposed for listing on the National Priorities List pursuant to Section 105(a)(8)(B) of the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(2) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is an underutilized property described in paragraph (5) of subdivision (a) of Section 80230.

Comment. Section 80275 continues former Section 25395.20(a)(16) without substantive change. A technical change was made to conform to the standard citation format for the federal act. See Section 78065.

See Sections 78065 ("federal act"), 78155 ("site"), 80210 ("brownfield"), 80225 ("economic activity"), 80255 ("project"), 80260 ("property"), 80280 ("urban area").

§ 80280. "Urban area"

80280. "Urban area" means either of the following:

(a) The central portion of a city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile.

(b) An urbanized area as defined in paragraph (2) of subdivision (b) of former Section 21080.7 of the Public Resources Code, as enacted by Section 6 of Chapter 1130 of the Statutes of 1993.

Comment. Section 80280 continues former Section 25395.20(a)(19) without substantive change. The cross-reference to the Public Resources Code Section 21080.7 was updated to reflect the repeal of that provision.

See Section 78085 ("person").

Article 2. General Provisions

§ 80300. Governing law

80300. Except as provided in Sections 80570 and 80575, any response action carried out under this chapter shall be conducted in accordance with the requirements of this part and Chapter 6.65 (commencing with Section 25260) of Division 20.

Comment. Section 80300 continues the first sentence of former Section 25395.27(a)(1) without substantive change.

See Section 78140 ("response").

§ 80305. Administering agency

80305. (a)(1) Notwithstanding Section 80300, for purposes of Section 25262, the administering agency for any site that is the subject of a loan under this chapter shall either be the department pursuant to this chapter, or a regional board, the state board,

or a local oversight program agency under contract with the state board pursuant to Article 11 (commencing with Section 80570).

(2) A person shall not request that a different agency be designated as an administering agency for the site under Chapter 6.65 (commencing with Section 25260) of Division 20.

(b)(1) For purposes of this article, the Site Designation Committee created by Section 25261 is not required to meet and formally designate the department, a regional board, the state board, or a local oversight program agency under contract with the state board, as specified in Article 11 (commencing with Section 80570), as the administering agency pursuant to Section 25262 for a site that is the subject of a loan under this chapter.

(2) Upon the approval of a loan under Article 7 (commencing with Section 80480), the department shall notify the Site Designation Committee of the administering agency for the site.

Comment. Section 80305 restates the second sentence of former Section 25395.27(a)(1) without substantive change. The section also continues former Section 25395.27(a)(2) without substantive change.

See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78155 ("site"), 78168 ("state board").

§ 80310. References to "hazardous substance"

80310. For sites that are the subject of a loan under this chapter, all references in this part to a hazardous substance shall be deemed to be a reference to a hazardous material.

Comment. Section 80310 continues former Section 25395.27(b) without substantive change.

See Sections 78075 ("hazardous substance"), 78155 ("site"), 80235 ("hazardous material").

§ 80315. Application of part

80315. Except as provided in Sections 80570 and 80575, this part shall apply to a site that is the subject of a loan under this chapter, regardless of whether the site is on the list created pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

Comment. Section 80315 continues former Section 25395.27(c) without substantive change.

See Section 78155 ("site").

§ 80320. Construction of chapter

80320. (a) Except as provided in Section 25264, this chapter shall not be construed to limit the authority of the department, the regional board, or the state board to take any action otherwise authorized under any other provision of law.

(b) This chapter shall not be construed to limit, extend, or affect local land use and zoning authority.

Comment. Subdivision (a) of Section 80320 continues former Section 25395.27(d) without substantive change. Subdivision (b) continues former Section 25395.26(e) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78168 ("state board").

§ 80325. Required posting

80325. (a)(1) The department shall post, and update at least monthly, a list of loan applications received pursuant to this chapter on the department's internet website.

(2) The list shall include the name of the applicant, the location of the property that is the subject of the loan application, the administering agency, and a contact at the department for further information.

(b) The department shall also annually post on that website a summary of the response action status for each site with a loan approved under Article 7 (commencing with Section 80480).

Comment. Section 80325 continues former Section 25395.27(e) without substantive change. See Sections 78050 ("department"), 78140 ("response"), 78155 ("site"), 80260 ("property").

Article 3. Financial Provisions

§ 80350. Cleanup Loans and Environmental Assistance to Neighborhoods Account

80350. The Cleanup Loans and Environmental Assistance to Neighborhoods Account is hereby established in the General Fund to provide low-interest loans to qualified applicants for the purpose of funding preliminary endangerment assessments and response actions at brownfields and underutilized properties located in the state pursuant to this chapter, and for any other purpose determined by the department to stimulate the redevelopment of brownfields and underutilized properties, if the department determines that the redevelopment will result in the overall improvement of the community in which the property is located and will provide a reasonable economic or social benefit, in accordance with Section 80355. All of the following moneys shall be deposited in the account:

(a) Funds appropriated by the Legislature for the purposes of this chapter.

(b) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.

(c) Proceeds from loan repayments.

(d) Proceeds from the sale, pursuant to this chapter, of property that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest.

Comment. Section 80350 restates former Section 25395.20(b) without substantive change. See Sections 78050 ("department"), 78095 ("preliminary endangerment assessment"), 78140 ("response"), 80205 ("account"), 80210 ("brownfield"), 80260 ("property").

§ 80355. Appropriation and expenditure

80355. (a) Except as provided in subdivision (b), notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated, without regard to fiscal years, to the department for the purpose of providing loans pursuant to Articles 5 (commencing with Section 80400) and 6 (commencing with Section 80450) and for the purpose of providing subsidies for environmental

insurance pursuant to Chapter 11 (commencing with Section 80680), the California Financial Assurance and Insurance for Redevelopment Program.

(b) The money in the account may be expended by the department, a regional board, the state board, and the agency for the implementation and administration of this article and for implementation and administration of the California Financial Assurance and Insurance for Redevelopment Program (Chapter 11 (commencing with Section 80680)), only upon appropriation by the Legislature in the annual Budget Act or in another measure.

Comment. Section 80355 continues former Section 25395.20(c) without substantive change. An erroneous citation to the California Financial Assurance and Insurance for Redevelopment Program was corrected.

See Sections 78040 ("agency"), 78050 ("department"), 78100 ("regional board"), 78168 ("state board"), 80205 ("account").

Article 4. Loans Generally

§ 80370. Ineligible persons

80370. The following persons are not eligible to apply for a loan under this chapter:

(a) A person who has been convicted of a felony or misdemeanor involving the regulation of hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under former Section 25395.13 (repealed by Section 73 of Chapter 39 of the Statutes of 2012).

(b) A person who has been convicted of a felony or misdemeanor involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering.

(c) A person who is in violation of an administrative order or agreement issued by or entered into with any federal, state, or local agency that requires response action at a site or a judicial order or consent decree that requires response action at a site.

(d) A person who knowingly made a false statement regarding a material fact or knowingly failed to disclose a material fact in connection with an application submitted to the secretary under this chapter.

Comment. Section 80370 restates former Section 25395.30 without substantive change. The cross-reference to Section 25395.13 has been updated to reflect the repeal of that provision.

See Sections 78085 ("person"), 78140 ("response"), 78150 ("secretary"), 78155 ("site"), 80235 ("hazardous material").

§ 80375. Interest rate for loans

80375. The rate of interest to be applied to loans made pursuant to this chapter shall be the same rate earned on investments in the Surplus Money Investment Fund during the loan repayment period. If a loan recipient defaults on a loan, the rate of interest to be applied to the loan shall be 10 percent from the date of default, or whatever greater rate is reflected in the agreement entered into pursuant to subdivision (a) of Section 80520.

Comment. Section 80375 continues former Section 25395.31 without substantive change.

§ 80380. Reporting on loan program

80380. On or before January 10 of each year when a loan under this chapter is made or repaid during the previous fiscal year, the secretary shall report to the Joint Legislative Budget Committee and to the chairs of the appropriate policy committees of the Senate and the Assembly, and shall post on the internet website of the agency, all of the following:

(a) The number and dollar amount of loans approved pursuant to Article 5 (commencing with Section 80400), the number and dollar amount of those loans that have been repaid, and, the number and dollar amount of those loans that are in default.

(b) The number and dollar amount of loans waived pursuant to Section 80425.

(c) The number and dollar amount of loans approved pursuant to Article 7 (commencing with Section 80480), the number and dollar amount of those loans that have been repaid, and the number and dollar amount of those loans that are in default.

(d) The number of preliminary endangerment assessments completed pursuant to agreements entered into under this chapter.

(e) The number of sites where necessary response actions have been completed pursuant to agreements entered into under this chapter.

Comment. Section 80380 continues former Section 25395.32 without substantive change.

See Sections 78040 ("agency"), 78095 ("preliminary endangerment assessment"), 78140 ("response"), 78150 ("secretary"), 78155 ("site").

Article 5. Investigating Site Contamination Program

§ 80400. Establishment of program

80400. The department, with the approval of the secretary, shall establish an Investigating Site Contamination Program to provide loans to eligible persons to conduct preliminary endangerment assessments of brownfields and underutilized properties. A loan provided pursuant to this article shall not be used for the cost of a phase I environmental assessment or the department's oversight of the preparation and approval of the preliminary endangerment assessment.

Comment. Section 80400 continues former Section 25395.21(a) without substantive change.

See Sections 78050 ("department"), 78085 ("person"), 78090 ("phase I environmental assessment"), 78095 ("preliminary endangerment assessment"), 78150 ("secretary"), 78155 ("site"), 80210 ("brownfield"), 80240 ("investigating site contamination program").

§ 80405. Loan application

80405. The department shall develop a loan application form for an investigating site contamination program loan and shall include, in the form, any provisions that the department considers to be appropriate. The application form shall be signed by

the loan applicant and shall be submitted to the department with all of the following documentation:

(a) The phase I environmental assessment for the property that is the subject of the loan application.

(b) Information that demonstrates that the property is a brownfield or an underutilized property.

(c) If the owner of the property that is the subject of the loan application is not the loan applicant, one of the following:

(1) Documentation that demonstrates that the owner consents to the performance of the preliminary endangerment assessment of the property.

(2) A copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(3) If the loan applicant is a local government entity, or a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, a demonstration to the department that the local government entity, or developer or prospective purchaser acting together with the local government entity pursuant to an enforceable agreement, has legal access to perform the preliminary endangerment assessment at the property, or will have legal access, prior to receiving loan funds.

(d) Any other information the department deems necessary.

Comment. Section 80405 continues former Section 25395.21(b) without substantive change. See Sections 78050 ("department"), 78090 ("phase I environmental assessment"), 78095 ("preliminary endangerment assessment"), 78155 ("site"), 80210 ("brownfield"), 80240 ("investigating site contamination program"), 80260 ("property"), 80275 ("underutilized property").

§ 80410. Decision on loan application

80410. The department shall determine whether to approve a loan application pursuant to this article based upon the information submitted pursuant to Section 80405. In making a decision regarding whether to approve a loan application, the department shall approve a loan pursuant to this article for a property only if the department determines the property is a brownfield or an underutilized property.

Comment. Section 80410 continues former Section 25395.21(c) without substantive change. See Sections 78050 ("department"), 80210 ("brownfield"), 80260 ("property"), 80275 ("underutilized property").

§ 80415. Maximum loan amount

80415. The maximum amount of a loan granted pursuant to this article shall not exceed one hundred thousand dollars ($100,000).

Comment. Section 80415 continues former Section 25395.21(d) without substantive change.

§ 80420. Loan repayment

80420. (a) Except as provided in subdivision (b) and in Section 80425, upon approval of the loan application by the department, the loan recipient shall execute

an agreement with the department to repay the loan over a period not to exceed three years.

(b) If the loan is to a local government entity, or to a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, the department may delay the beginning of the loan repayment period.

(c) Except as provided in subdivision (d), the agreement made pursuant to subdivision (a) shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the loan application, any money so recovered, except for reasonable costs and the fees incurred to recover that money, shall be used first to repay the loan or repay the grant.

(d) Notwithstanding subdivision (c), a loan recipient is not required to first use the money recovered to repay the loan or grant, if the recipient can demonstrate, to the satisfaction of the department, that the recovered money is necessary to, and is being applied to, the total environmental remediation of the property, and that the total of the recovered money and the loan amount does not exceed the cost of remediation.

Comment. Section 80420 continues former Section 25395.21(e) without substantive change. See Sections 78050 ("department"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80260 ("property").

§ 80425. Waiver of loan repayment

80425. If a loan recipient who is not the owner of the property and the department determine, after the completion of the preliminary endangerment assessment, that the sum of the cost of remediation and the property purchase price makes the redevelopment of the property not economically feasible, the department may waive the repayment of up to 75 percent of the loan, and the amount waived shall be deemed a grant to the loan recipient. If the department waives the repayment of part of the loan, the recipient shall repay the remaining portion of the loan within one year of that waiver.

Comment. Section 80425 continues former Section 25395.21(f) without substantive change. See Sections 78050 ("department"), 78095 ("preliminary endangerment assessment"), 80260 ("property").

§ 80430. Oversight agreement

80430. Upon approval of a loan, the recipient shall enter into an agreement with the department for the department to provide regulatory oversight of the preparation and approval of the preliminary endangerment assessment.

Comment. Section 80430 continues former Section 25395.21(g) without substantive change. See Sections 78050 ("department"), 78095 ("preliminary endangerment assessment").

§ 80435. Nonliability for oversight costs

80435. Notwithstanding any requirement of Division 20 or this part regarding cost recovery or reimbursement for oversight costs, a loan recipient is not liable for

paying the department's cost associated with the oversight of the preparation and approval of the preliminary endangerment assessment if the department determines there are sufficient funds in the account to reimburse the department for that oversight. If the department determines that the account has insufficient funds to pay for the oversight costs associated with the oversight of the preparation and approval of the preliminary endangerment assessment, the loan recipient shall pay the department the amount of those costs.

Comment. Section 80435 continues former Section 25395.21(h) without substantive change.

See Sections 78050 ("department"), 78095 ("preliminary endangerment assessment"), 80205 ("account").

Article 6. Cleanup Loans and Environmental Assistance to Neighborhoods Program

§ 80450. Establishment of CLEAN Program

80450. The department, with the approval of the secretary, shall establish a Cleanup Loans and Environmental Assistance to Neighborhoods Program to provide loans to finance the performance of any action necessary to respond to the release or threatened release of hazardous material at an eligible property.

Comment. Section 80450 continues the first sentence of former Section 25395.22(a) without substantive change.

See Sections 78050 ("department"), 78105 ("release"), 78140 ("response"), 78150 ("secretary"), 80220 ("Cleanup Loans and Environmental Assistance to Neighborhoods Program"), 80230 ("eligible property"), 80235 ("hazardous material").

§ 80455. CLEAN loan application

80455. The department shall develop an application form for a loan under the CLEAN program and shall include, in the form, any provisions that the department determines to be appropriate to carry out the CLEAN program. The application shall be signed by the loan applicant and shall be accompanied by all of the following:

(a) A preliminary endangerment assessment that has been approved by the department, or an environmental assessment with equivalent information, that discloses the presence of a release or threatened release of a hazardous material at the property at concentrations that may pose a risk to public health and safety and the environment.

(b) The name and address of the project coordinator for the site and the résumé of the coordinator that demonstrates that the coordinator possesses the requisite qualifications to manage the response action at the site.

(c) Documentation that the property is an eligible property and, if the department has implemented the priority scoring system set forth in Article 7 (commencing with Section 80480), sufficient information to enable the department to determine the priority score for the property.

(d) Documentation that the planned future development of the site is consistent with the current and reasonably foreseeable future land uses of the property.

(e) If the owner of the eligible property that is the subject of the loan application is not the loan applicant, one of the following:

(1) Documentation that demonstrates that the owner agrees to use the property as a security interest for the loan to finance necessary response action at the property.

(2) A copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(3) If the loan applicant is a local government entity, or a developer or prospective purchaser acting in concert with a local government entity pursuant to an enforceable agreement, a demonstration to the department that the local government entity, or developer or prospective purchaser acting in concert with a local government entity pursuant to an enforceable agreement, has legal access to perform any action necessary to respond to the release or threatened release of hazardous material at an eligible property, or will have legal access, prior to receiving loan funds.

(f) Any other information the department deems necessary.

Comment. Section 80455 continues former Section 25395.22(b) without substantive change.

See Sections 78050 ("department"), 78095 ("preliminary endangerment assessment"), 78105 ("release"), 78140 ("response"), 78155 ("site"), 80220 ("Cleanup Loans and Environmental Assistance to Neighborhoods Program"), 80230 ("eligible property"), 80235 ("hazardous material"), 80255 ("project"), 80260 ("property").

§ 80460. Use of CLEAN loan funds

80460. (a) A recipient of a loan to perform an action to respond to a release or threatened release of a hazardous material at an eligible property that is granted pursuant to this article may also use the loan funds to pay the premium for environmental insurance products to facilitate the development of the site, if the insurance company has an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger and is authorized to offer environmental insurance in California.

(b) A loan provided pursuant to this article shall not be used to pay for a phase I environmental assessment, a preliminary endangerment assessment, the department's oversight of actions necessary to respond to the release or threatened release of hazardous material at an eligible property, or any operation and maintenance activity at a site.

Comment. Section 80460 continues the second and fourth sentences of former Section 25395.22(a) without substantive change.

See Sections 78050 ("department"), 78090 ("phase I environmental assessment"), 78095 ("preliminary endangerment assessment"), 78105 ("release"), 78140 ("response"), 78155 ("site"), 80230 ("eligible property"), 80235 ("hazardous material").

§ 80465. Use of CLEAN loans by local government

80465. The department shall take those necessary actions to promote the use of loans under the CLEAN program by local governments.

Comment. Section 80465 continues the third sentence of former Section 25395.22(a) without substantive change.

See Section 78050 ("department"), 80220 ("Cleanup Loans and Environmental Assistance to Neighborhoods Program").

Article 7. Review of CLEAN Loan Applications

§ 80480. Approval of CLEAN loans

80480. (a) The department, after consultation with the secretary, the Secretary of Business, Transportation and Housing, and the Director of the Office of Planning and Research, may approve loan applications submitted pursuant to Article 6 (commencing with Section 80450).

(b) The department may approve a loan only for those response actions necessary to address a release or threatened release of a hazardous material at an eligible property.

Comment. Section 80480 continues former Section 25395.23(a) without substantive change. See Sections 78050 ("department"), 78105 ("release"), 78140 ("response"), 78150 ("secretary"), 80230 ("eligible property"), 80235 ("hazardous material").

§ 80485. Ranking loan applications

80485. If the department determines, based on estimates of the number of loan requests that will be submitted in any fiscal year and the amount of loan funds that will be available during that fiscal year, that sufficient funding to meet the demand for loans will not be available, the department shall establish a system for ranking loan applications based on priority scores. Priority scores shall be calculated for each loan application by scoring the project that is the subject of the loan application using scales that measure the factors listed in Section 80490. The department shall approve loans for a project based on its priority scores.

Comment. Section 80485 continues former Section 25395.23(b) without substantive change. See Section 78050 ("department"), 80255 ("project").

§ 80490. Factors for ranking loan applications

80490. The system for ranking loan applications pursuant to Section 80485 shall establish priority scores for projects that are the subjects of the loan applications using scales that measure all of the following factors:

(a) The degree of community support expressed for the project, including, but not limited to, letters of support from local governmental entities, state or local elected officials, community leaders, and the general public.

(b) Financial support for the project provided at the local level, including grants or other subsidies, and funding provided by the issuance of bonds pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) or financing under the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24).

(c) The potential for the project to provide additional protection of the public health and safety.

(d) The potential for the project to enhance strategic community development, including, but not limited to, all of the following:

(1) The creation of new jobs.

(2) Generation of additional tax revenue.

(3) The likelihood that the project will stimulate additional redevelopment in adjacent areas.

(4) The degree to which implementation of the project will improve local property values.

(5) The degree to which implementation of the project will result in the development of new parks.

(6) The extent to which the project may have a beneficial effect on the construction of new schools.

(7) The extent to which the project will result in the construction of affordable inner-city housing.

(8) The potential for the project to have a beneficial impact on existing local and regional infrastructure or projected infrastructure needs, or otherwise promote infill development.

(e) The economic viability of the project, including, but not limited to, an analysis of the current value of the property as compared to its projected value after all necessary response actions have been completed.

(f) The ability of the loan applicant to successfully perform the response action at the site and repay the loan if funding is provided.

(g) The geographic location of the project, taking into consideration the number and amounts of loans approved for projects located in that area, as compared to those approved for other needy areas throughout the state.

(h) The degree of likelihood that the response action would not be completed if a loan pursuant to Article 6 (commencing with Section 80450) is not made, including whether any necessary response action is already being paid for by a responsible party pursuant to an administrative order, an agreement issued or entered into with a federal, state, or local agency, a judicial order, or a consent decree.

(i) The ability to obtain conventional financing absent a loan under this program.

Comment. Section 80490 restates former Section 25395.23(c) without substantive change. An erroneous cross-reference to the Mello-Roos Community Facilities Act of 1982 was corrected.

See Sections 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80255 ("project"), 80260 ("property").

Article 8. Conditions for Loan Approval

§ 80500. Maximum loan amount

80500. The department may approve all, or part of, a loan request pursuant to Article 7 (commencing with Section 80480), except the maximum amount of a loan approved pursuant to Article 7 (commencing with Section 80480) shall not exceed two million five hundred thousand dollars ($2,500,000).

Comment. Section 80500 continues former Section 25395.24(a) without substantive change. See Section 78050 ("department").

§ 80505. Percentage of debt to future value

80505. The department shall not approve a loan pursuant to Article 7 (commencing with Section 80480) if the total debt against the eligible property subject to the release or threatened release of a hazardous material on which the response action will be taken exceeds 80 percent of the estimated value of the property after all necessary response actions are complete.

Comment. Section 80505 continues former Section 25395.24(b) without substantive change. See Sections 78050 ("department"), 78105 ("release"), 78140 ("response"), 80230 ("eligible property"), 80235 ("hazardous material"), 80260 ("property").

Article 9. Obligations of Loan Recipient

§ 80520. Obligations

80520. Upon the approval of a loan pursuant to Article 7 (commencing with Section 80480), the loan recipient shall do all of the following:

(a) Enter into an agreement with the department to repay the loan over a period of not more than seven years. If the loan is to a local government entity, or to a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, the department may delay the beginning of the loan repayment period.

(1) The agreement shall include those terms and conditions that the department deems appropriate.

(2)(A) The agreement shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the response action pursuant to the agreement, the loan recipient shall use the recovered money, except for reasonable costs and the fees incurred to recover that money, first to satisfy the loan.

(B) Notwithstanding subparagraph (A), a loan recipient is not required to first use the money recovered to repay the loan or grant if the recipient can demonstrate, to the satisfaction of the department, that the recovered money is necessary to, and is being applied to, the total environmental remediation of the property, and that the total of the recovered money and the loan amount does not exceed the cost of remediation.

(b)(1) Enter into an agreement with the department or with the regional board or state board pursuant to Article 11 (commencing with Section 80570) for the oversight and approval of the response action at the site. This agreement shall include any necessary conditions and assurances to ensure that post-completion, ongoing operation and maintenance activities, and any necessary institutional controls on future uses of the property, are complied with. This agreement shall be

provided to the department before the department may release any loan funds to the loan recipient.

(2) Notwithstanding any requirement of Division 20 or this part regarding cost recovery or reimbursement for oversight costs, a loan recipient is not liable for paying the department's costs pursuant to this chapter or the regional board's or state board's costs pursuant to Article 11 (commencing with Section 80570) associated with the oversight of the response action at the site subject to the agreement, if the department determines there are sufficient funds in the account to reimburse the department's costs pursuant to this chapter or the regional board's or state board's costs pursuant to Article 11 (commencing with Section 80570) for that oversight. If the department determines that the account has insufficient funds to pay for the oversight costs associated with the oversight of the response action at the site subject to the agreement, the loan recipient shall pay the department's costs pursuant to this chapter or the regional board's or state board's costs pursuant to Article 11 (commencing with Section 80570) for the amount of those costs.

(c)(1) Except as provided in paragraph (2), obtain secured creditor insurance, as defined in Section 80730, from the insurance company selected by the secretary pursuant to Section 80760, or comparable insurance from any insurance company with an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger that is authorized to offer environmental insurance in California. This insurance shall be obtained before the department may release any loan funds to the loan recipient.

(2) The secretary may waive the requirement of paragraph (1) to obtain insurance or any specific insurance coverage if either of the following apply:

(A) No money is available for the environmental insurance subsidies authorized pursuant to Section 80800.

(B) The secretary determines that the scope of the response action is limited and the cost of the premiums of the prenegotiated package of environmental insurance products equals or exceeds the estimated response action costs, or is otherwise not commercially feasible.

Comment. Section 80520 continues former Section 25395.25 without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party"), 78150 ("secretary"), 78155 ("site"), 78168 ("state board"), 80205 ("account"), 80260 ("property").

Article 10. Security for Loan

§ 80540. Security required

80540. (a) A loan approved pursuant to Article 7 (commencing with Section 80480) shall be secured by the property subject to the release or threatened release of the hazardous material on which the response action will be taken or by another form of security that the department determines will adequately protect the state's interest.

(b) The department shall obtain an appropriate security interest in the property or other alternative form of security approved by the department.

(c)(1) The department may foreclose on property, or the alternative form of security approved by the department, that is subject to a security interest pursuant to this article.

(2) Any funds received through a foreclosure or through the enforcement of any other security interest pursuant to this chapter shall be deposited in the account.

Comment. Section 80540 continues former Section 25395.26(a) without substantive change.

See Sections 78050 ("department"), 78105 ("release"), 78140 ("response"), 80205 ("account"), 80235 ("hazardous material"), 80260 ("property").

§ 80545. Liability of security interest holder

80545. (a) The state, the secretary, the department, and the account are not liable under any state or local statute, regulation, or ordinance because the department holds the security interest identified in Section 80540 or because the department acquired property through foreclosure or its equivalent in satisfaction of a loan issued pursuant to this chapter.

(b) Chapter 6.96 (commencing with Section 25548) of Division 20 does not apply to the state, the secretary, the department, the agency, or the account with regard to a loan secured pursuant to Section 80540.

Comment. Section 80545 continues former Section 25395.26(b) and (c) without substantive change.

See Sections 78040 ("agency"), 78050 ("department"), 78150 ("secretary"), 80205 ("account"), 80260 ("property").

§ 80550. Application of other laws

80550. (a) Notwithstanding any other provision of law, no approval or review shall be required from the Department of General Services to obtain any security interest or exercise any rights, including, but not limited to, foreclosure, under any security interest or other agreement made pursuant to this chapter.

(b) The acquisition of a property pursuant to this chapter through foreclosure or its equivalent is not subject to Article 2 (commencing with Section 14660) of Chapter 2 of Part 5.5 of Division 3 of Title 2 of the Government Code.

(c) The department shall promptly dispose of any property acquired through the exercise of any security interest pursuant to this chapter at the property's current market value and the disposal of this property is exempt from Section 11011.1 of the Government Code and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code.

Comment. Section 80550 continues former Section 25395.26(d) without substantive change.

See Section 78050 ("department"), 80260 ("property").

Article 11. Administering Agency

§ 80570. Administering agency for leaking underground fuel tank property

80570. (a) Except as provided in subdivision (b) and Section 80575, upon the request of a regional board or the state board, the administering agency for any site that is the subject of a loan approved under Article 7 (commencing with Section 80480) shall be a regional board, the state board, or a local oversight program agency under contract with the state board in accordance with Chapter 6.7 (commencing with Section 25280) of Division 20 and Chapter 6.75 (commencing with Section 25299.10) of Division 20, if the property is subject to a release from a leaking underground fuel tank and the release from the leaking underground fuel tank is the principal threat at that property, as determined by the regional board, the state board, and the department.

(b) If the site specified in subdivision (a) was not subject to oversight by a local oversight program agency prior to the date the loan application was submitted to the department pursuant to Article 6 (commencing with Section 80450), the regional board shall serve as the administering agency.

(c) Any response action for a property subject to this section for a leaking underground fuel tank shall be carried out under Chapter 6.65 (commencing with Section 25260), Chapter 6.7 (commencing with Section 25280), and Chapter 6.75 (commencing with Section 25299.10) of Division 20.

Comment. Section 80570 continues former Section 25395.28(a) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78105 ("release"), 78140 ("response"), 78155 ("site"), 78168 ("state board"), 80245 ("leaking underground fuel tank"), 80260 ("property").

§ 80575. Administering agency for site subject to Water Code orders or agreements

80575. (a) Upon the request of a regional board, the regional board shall be the administering agency for a property specified in Section 80570, if the site is subject to one or more of the following orders or agreements under Division 7 (commencing with Section 13000) of the Water Code prior to the date the loan application was submitted to the department pursuant to Article 6 (commencing with Section 80450):

(1) A cleanup and abatement order.

(2) Another cleanup order issued by a regional board.

(3) A written voluntary agreement with a regional board.

(b) Any response action for a site subject to this section shall be carried out pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20.

Comment. Section 80575 continues former Section 25395.28(b) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78155 ("site"), 80215 ("cleanup and abatement order"), 80260 ("property").

§ 80580. Request for department to be administering agency

80580. Notwithstanding Sections 80570 and 80575, the regional board and the state board, in consultation with the department, may request the department to be the administering agency for a property subject to this article.

Comment. Section 80580 continues former Section 25395.28(c) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78168 ("state board"), 80260 ("property").

§ 80585. Administering agency for site subject to multiple agreements or orders

80585. Notwithstanding Section 80575, if a regional board has issued a cleanup order or entered into a written voluntary agreement under Division 7 (commencing with Section 13000) of the Water Code for a site and the department has issued an order or entered into an enforceable agreement under Chapter 6.5 (commencing with Section 25100) of Division 20 or this part, the regional board and the department shall consult and determine which agency shall be the administering agency for the site under this chapter.

Comment. Section 80585 continues former Section 25395.28(d) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78155 ("site").

§ 80590. Notice of loan application

80590. The department shall provide a written notice of the receipt of a loan application under Article 6 (commencing with Section 80450), including the name and address of the loan applicant and the location of the property, to both of the following:

(a) A regional board for any property within that regional board's jurisdiction.

(b) The state board for any property that contains a leaking underground fuel tank.

Comment. Section 80590 continues former Section 25395.28(e) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78168 ("state board"), 80245 ("leaking underground fuel tank"), 80260 ("property").

§ 80595. Election to oversee response action

80595. The regional board or state board shall respond with a written notice to the department within 20 working days after receipt of the notice or information provided pursuant to Section 80590 indicating whether the regional board or a local oversight program agency under contract with the state board will oversee the response action pursuant to this article. If the regional board or state board does not provide this notice within that time period, the regional board or state board shall be deemed to have elected not to oversee the response action.

Comment. Section 80595 continues former Section 25395.28(f) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78168 ("state board").

§ 80600. Reimbursement for oversight costs

80600. (a) If a regional board or a local oversight program agency under contract with the state board oversees a response action pursuant to this article, the department shall reimburse the regional board or state board from the account for oversight costs, if all of the following occur:

(1) The department determines, pursuant to paragraph (2) of subdivision (b) of Section 80520, that there are sufficient funds in the account.

(2) The department receives the report required upon completion of the response action under Section 80605.

(3) The regional board or a local oversight program agency under contract with the state board, as appropriate, certifies that it is not eligible to be reimbursed for oversight costs from any other fund or account, including, but not limited to, the Underground Storage Tank Cleanup Fund pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20.

(b) If the department determines pursuant to paragraph (2) of subdivision (b) of Section 80520 that the account has insufficient funds, the regional board or state board shall recover its oversight costs from the loan recipient, and the department shall not be liable for these oversight costs.

(c) If a regional board or a local oversight program agency under contract with the state board oversees a response action pursuant to this article, the recipient of a loan approved pursuant to Article 7 (commencing with Section 80480) shall enter into an agreement with the regional board or the state board under paragraph (1) of subdivision (b) of Section 80520 for the oversight and approval of the response action at the site, prior to the release of loan funds by the department. The agreement shall meet the requirements specified in the regulations adopted pursuant to Article 12 (commencing with Section 80620).

Comment. Section 80600 continues former Section 25395.28(g) and (h) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78105 ("release"), 78140 ("response"), 78155 ("site"), 78168 ("state board"), 80205 ("account").

§ 80605. Reporting and notification of completion

80605. If the regional board or a local oversight program agency under contract with the state board serves as the administering agency pursuant to this article, the regional board or the state board shall do both of the following:

(a) Annually provide information to the department about the status of the response action, including any response action decision document that includes limitations on land use or other institutional controls.

(b) Notify the department upon completion of the response action.

Comment. Section 80605 continues former Section 25395.28(i) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78168 ("state board").

§ 80610. Application of article

80610. This article does not apply to any site subject to Chapter 1 (commencing with Section 17210) of Part 10.5 of Division 1 of Title 1 of the Education Code.

Comment. Section 80610 continues former Section 25395.28(j) without substantive change. See Section 78155 ("site").

Article 12. Emergency Regulations

§ 80620. Authority to adopt emergency regulations

80620. (a) The department may adopt regulations to implement this chapter as emergency regulations. The Office of Administrative Law shall consider the situation addressed by those regulations to be an emergency for purposes of Section 11349.6 of the Government Code.

(b) Notwithstanding the time period specified in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 80620 restates former Section 25395.29(a) without substantive change. See Sections 78050 ("department"), 78150 ("secretary").

§ 80625. Authority to adopt emergency regulations for Chapter 548 of the Statutes of 2001

80625. (a) The department may adopt emergency regulations to implement the changes made by Chapter 548 of the Statutes of 2001. The Office of Administrative Law shall consider the situation addressed by those regulations an emergency for purposes of Section 11349.6 of the Government Code.

(b) Notwithstanding the time period specified in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 80625 restates former Section 25395.29(b) without substantive change. See Sections 78050 ("department"), 78150 ("secretary").

CHAPTER 11. CALIFORNIA FINANCIAL ASSURANCE AND INSURANCE FOR REDEVELOPMENT PROGRAM

Article 1. Definitions

§ 80680. Application of definitions

80680. For purposes of this chapter, the definitions contained in this article shall apply.

Comment. Section 80680 restates the initial clause of former Section 25395.40 without substantive change.

§ 80685. "CLEAN Program"

80685. "CLEAN Program" means the Cleanup Loans and Environmental Assistance to Neighborhoods Program established pursuant to Section 80450.

Comment. Section 80685 continues former Section 25395.40(a) without substantive change.

§ 80690. "Cost overrun insurance"

80690. (a) "Cost overrun insurance" means insurance that covers some, or all of the response costs caused by a known pollution condition at a site, that exceed the estimated response action costs that have been accepted and approved by the insurer, based on information from the department and other relevant sources at the time the insurance is first obtained.

(b) Cost overrun insurance shall, at a minimum, provide for all of the following:

(1) The response costs in excess of the estimated response action costs that have been accepted and approved by the insurer.

(2) A policy period of sufficient length to cover the duration of the response activities, not including post-completion operation and maintenance.

(3) A self-insured retention amount not to exceed 25 percent of the estimated response action costs that have been accepted and approved by the insurer.

Comment. Section 80690 continues former Section 25395.40(b) without substantive change. See Sections 78050 ("department"), 78140 ("response"), 78155 ("site"), 80705 ("estimated response action costs"), 80720 ("pollution condition"), 80735 ("self-insured retention amount").

§ 80695. "Eligible property"

80695. "Eligible property" has the same meaning as defined in subdivision (a) of Section 80230.

Comment. Section 80695 continues former Section 25395.40(c) without substantive change.

§ 80700. "Environmental insurance"

80700. "Environmental insurance" means insurance intended to limit the liability associated with the discovery and cleanup of a hazardous material release, including secured creditor insurance, pollution liability insurance, and cost overrun insurance,

and any other insurance product that the secretary selects to be provided pursuant to Article 2 (commencing with Section 80750).

Comment. Section 80700 restates former Section 25395.40(d) without substantive change. The phrase "hazardous materials release" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78105 ("release"), 78150 ("secretary"), 80690 ("cost overrun insurance"), 80710 ("hazardous material"), 80725 ("pollution liability insurance"), 80730 ("secured creditor insurance").

§ 80705. "Estimated response action costs"

80705. "Estimated response action costs" means the projected costs of taking a response action in implementing an approved removal action work plan or remedial action plan prepared to address a pollution condition at a site.

Comment. Section 80705 continues former Section 25395.40(e) without substantive change.

See Sections 78125 ("remedy"), 78130 ("removal action work plan"), 78140 ("response"), 78155 ("site"), 80720 ("pollution condition").

§ 80710. "Hazardous material"

80710. "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:

(a) A hazardous substance, as defined in Section 25281 or subdivision (a) of Section 78075, including the substances specified in subdivision (b) of Section 78075.

(b) A hazardous waste, as defined in Section 25117.

(c) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

Comment. Section 80710 continues former Section 25395.40(g) without substantive change.

See Section 78075 ("hazardous substance").

§ 80715. "Insurance company"

80715. "Insurance company" means an insurance company authorized in California to offer environmental insurance and that has an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger.

Comment. Section 80715 continues former Section 25395.40(h) without substantive change.

See Section 80700 ("environmental insurance").

§ 80720. "Pollution condition"

80720. "Pollution condition" means a release or threatened release of a hazardous material and any resulting impact upon the environment.

Comment. Section 80720 continues former Section 25395.40(i) without substantive change.

See Section 78105 ("release"), 80710 ("hazardous material").

§ 80725. "Pollution liability insurance"

80725. (a) "Pollution liability insurance" means insurance that covers damages caused by a pollution condition from, or at, a site that is preexisting and unknown, or was otherwise unknown at the time the insurance is first obtained, and, at a minimum, provides for all of the following:

(1) A minimum policy period of five years after the completion of remediation activities, not including post-completion operation and maintenance.

(2) A duty to defend and pay for defense costs in an amount at least up to the amount of coverage available under the policy, irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the damages, so long as there already exists a reasonably quantifiable legal obligation to pay those damages.

(b) For purposes of this section, "damages" means either of the following:

(1) Property damage incurred at a site as an unforeseen and unexpected result of a pollution condition.

(2) Bodily injury, property damage, and response action costs sustained or incurred by a third party as a result of a pollution condition at a site.

(c) For purposes of this section, "damages" includes the property damage, bodily injury, and response costs specified in subdivision (b), irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the property damage, bodily injury, or response costs, so long as there exists a reasonably quantifiable legal obligation to pay for those damages.

Comment. Section 80725 continues former Section 25395.40(j) without substantive change. See Sections 78140 ("response"), 78155 ("site"), 80720 ("pollution condition").

§ 80730. "Secured creditor insurance"

80730. "Secured creditor insurance" means insurance made available to an insured that covers all of the following:

(a) Response costs at a site incurred by the lender after a default by the borrower or foreclosure by the lender that occurs as a result of a pollution condition at the site, and the costs are reasonably necessary to remediate the site for its intended use so that it can be sold.

(b) Damages or other liability for a pollution condition at a site incurred by a lender as a result of that lender exercising a foreclosure option.

(c) Loss or damages incurred by a lender as a result of a borrower's inability to satisfy a loan obligation or due to the existence of an unforeseen and unexpected pollution condition.

(d) A duty to defend and pay for defense costs in an amount at least up to the amount of coverage available under the policy, irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the loss, damages, or liability, so long as there exists a reasonably quantifiable legal obligation to pay damages.

Comment. Section 80730 continues former Section 25395.40(k) without substantive change.

See Sections 78140 ("response"), 78155 ("site"), 80720 ("pollution condition").

§ 80735. "Self-insured retention amount"

80735. "Self-insured retention amount" means response action costs in excess of the estimated response action costs that have been accepted and approved by the insurer that the insured is obligated to pay before being eligible to make a claim of an insurer under a cost overrun insurance policy.

Comment. Section 80735 continues former Section 25395.40(*l*) without substantive change. See Sections 78140 ("response"), 80690 ("cost overrun insurance"), 80705 ("estimated response action costs").

Article 2. Environmental Insurance Products

§ 80750. Request for proposal

80750. (a) The secretary shall solicit proposals for a package of environmental insurance products from insurance companies through a competitive bidding process.

(b)(1) The request for proposal prepared by the secretary shall identify the objectives of this chapter and the specific types and coverage limits of the insurance products desired, including endorsements and exclusions.

(2) The request for proposal shall require that the proposal allow a purchaser the opportunity to pay for additional coverage without losing the lower transaction costs structure of the prenegotiated policy.

(c) The secretary shall hold at least one public workshop in both the northern and the southern part of the state to present and solicit comments on the request for proposal prior to receiving any proposals.

Comment. Section 80750 continues former Section 25395.41(a) without substantive change. See Sections 78150 ("secretary"), 80700 ("environmental insurance").

§ 80755. Factors for evaluation of proposals

80755. The secretary shall evaluate the extent to which each proposal submitted pursuant to Section 80750 meets the objectives of the request for proposal and shall also evaluate each proposal and interested party using all of the following factors:

(a) Product pricing.

(b) Claims history.

(c) Underwriting history.

(d) Company financial strength and size.

(e) Scope of policy coverages, including endorsements and exclusions.

(f) Marketing and distribution of the insurance products.

(g) Any other factor that the secretary determines will affect the ability of the selected insurance company to meet the requirements of this chapter and provide the environmental insurance products in the most effective and efficient manner and at the least cost to the state and to persons seeking that insurance.

Comment. Section 80755 continues former Section 25395.41(b)(1) without substantive change.
See Sections 78085 ("person"), 78150 ("secretary"), 80700 ("environmental insurance"), 80715 ("insurance company").

§ 80760. Selection of state-designated provider

80760. (a) The secretary shall select one or more insurance companies that have submitted a proposal pursuant to Section 80750 to be the exclusive state-designated provider of environmental insurance under this chapter for a period of three years from the date of selection.

(b) The secretary shall select a company that, in the secretary's determination, has submitted a proposal that best meets the requirements of this chapter and the objectives stated in the request for proposal at the best possible price.

Comment. Section 80760 continues the first two sentences of former Section 25395.41(b)(2) without substantive change.
See Sections 78150 ("secretary"), 80700 ("environmental insurance").

§ 80765. Bidding every three years

80765. Every three years, the secretary shall repeat the competitive bidding process specified in this article.

Comment. Section 80765 continues the third sentence of former Section 25395.41(b)(2) without substantive change.
See Section 78150 ("secretary").

§ 80770. Offer of insurance products

80770. (a) An insurance company selected to provide prenegotiated environmental insurance products pursuant to Section 80760 shall offer this prenegotiated package of insurance products to any interested recipient of a loan under the CLEAN Program.

(b) The insurance company shall also offer the environmental insurance products made available under this chapter to any other person who conducts a response action in the state.

Comment. Section 80770 continues former Section 25395.41(c) without substantive change.
See Sections 78085 ("person"), 78140 ("response"), 80685 ("CLEAN Program"), 80700 ("environmental insurance"), 80715 ("insurance company").

§ 80775. Consultation with state agencies and interested parties

80775. The secretary shall implement this article in consultation with representatives of other appropriate state agencies, including the Business, Transportation and Housing Agency, the Office of Planning and Research, the Pollution Control Financing Authority, the Department of Insurance, the state board, the department, and with other interested parties, including developers, lenders, insurers, and representatives from environmental organizations.

Comment. Section 80775 continues the first sentence of former Section 25395.41(d) without substantive change.
See Sections 78050 ("department"), 78150 ("secretary"), 78168 ("state board").

§ 80780. Consistency with requirements for state procurement of services

80780. The secretary shall implement this article in a manner that is consistent with the requirements for state procurement of services set forth in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

Comment. Section 80780 continues the second sentence of former Section 25395.41(d) without substantive change.

See Section 78150 ("secretary").

Article 3. Subsidies

§ 80800. Funds for subsidies

80800. The secretary shall expend the funds from the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 80350 that are made available in the annual Budget Act for expenditure to subsidize the cost of the environmental insurance products offered by the insurance company selected pursuant to Section 80760, in accordance with Section 80805.

Comment. Section 80800 continues former Section 25395.42(a) without substantive change.

See Sections 78150 ("secretary"), 80700 ("environmental insurance"), 80715 ("insurance company").

§ 80805. Amount of subsidies

80805. The secretary shall provide the following subsidies, in accordance with the application process specified in this article, from the funds made available pursuant to Section 80800:

(a) Up to 50 percent of the cost of the premiums for the environmental insurance products provided pursuant to Section 80770.

(b)(1) Up to 80 percent of the self-insured retention amount of the cost overrun insurance provided pursuant to Section 80770, up to a maximum of five hundred thousand dollars ($500,000).

(2) The secretary may expend the funds available to pay a portion of the self-insured retention amount of the cost overrun insurance provided pursuant to Section 80770 only under all of the following conditions:

(A) The insured demonstrates that it exercised reasonably prudent business judgment in insuring the cost overrun, consistent with an attempt to minimize the incurred costs, and incurred the costs through no fault of its own.

(B) The insured pays, at a minimum, the first 20 percent of the self-insured retention amount.

(C) The secretary determines that the amount of the payment is in the best interests of the state, taking into account the environmental and economic benefits of the specified project, as compared to the benefit of conserving funds for assistance at other sites.

Comment. Section 80805 continues former Section 25395.42(b) without substantive change. In paragraph (b)(2), an erroneous cross-reference to "subdivision (b) of Section 25395.41" was corrected to refer to "Section 80770," which continues Section 25395.41(c).

See Sections 78150 ("secretary"), 78155 ("site"), 80690 ("cost overrun insurance"), 80700 ("environmental insurance"), 80735 ("self-insured retention amount").

§ 80810. Eligibility for subsidies

80810. (a) Any person who is conducting a response action at an eligible property under the oversight of the department or a regional board and who purchases the prenegotiated environmental insurance products from the insurance company selected pursuant to Section 80760 may apply to the secretary for the subsidies that are made available pursuant to this article.

(b) To the extent that the funds that are made available in the annual Budget Act for expenditure to subsidize the cost of the environmental insurance products provided pursuant to this chapter are available, an applicant is eligible for a subsidy in the order in which the applicant's application is received.

Comment. Section 80810 continues former Section 25395.43(a) without substantive change.

See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78140 ("response"), 78150 ("secretary"), 80695 ("eligible property"), 80700 ("environmental insurance"), 80715 ("insurance company").

§ 80815. Information to be provided by applicant

80815. An applicant for a subsidy made available pursuant to this article shall provide the secretary with all information necessary to demonstrate to the secretary that the applicant is eligible to receive a subsidy.

Comment. Section 80815 continues former Section 25395.43(b) without substantive change.

See Section 78150 ("secretary").

§ 80820. No obligation to provide subsidy funds

80820. The state and the Cleanup Loans and Environmental Assistance to Neighborhoods Account do not have any obligation to provide funds to any person that applies for a subsidy pursuant to this chapter.

Comment. Section 80820 continues the first sentence of former Section 25395.43(c) without substantive change.

See Section 78085 ("person").

§ 80825. Subsidy availability limited to reserved funds

80825. The secretary shall provide an applicant with a subsidy only to the extent that money in the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 80350 has been reserved in the annual Budget Act for the purpose of providing environmental insurance and the money that has been reserved for this purpose is available.

Comment. Section 80825 continues the second sentence of former Section 25395.43(c) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78150 ("secretary"), 80700 ("environmental insurance").

Article 4. Liability

§ 80840. Immunity from liability

80840. Notwithstanding any other provision of law, the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions or their employees, shall not be liable to any person for any of the following:

(a) Any acts or omissions by the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions or their employees, in implementing this chapter.

(b) Any acts or omissions by an insurance company selected to provide prenegotiated environmental insurance products pursuant to Section 80760.

(c) Any acts or omissions by any person that purchases a prenegotiated environmental insurance product made available pursuant to this chapter.

Comment. Section 80840 restates former Section 25395.44(a) without substantive change. See Sections 78040 ("agency"), 78085 ("person"), 78150 ("secretary"), 80700 ("environmental insurance"), 80715 ("insurance company").

§ 80845. Immunity includes specified acts

80845. The immunity from liability set forth in Section 80840 specifically includes, but is not limited to, immunity if an insurance company selected to provide prenegotiated environmental insurance products pursuant to Section 80760 does any of the following:

(a) Cancels, rescinds, or otherwise terminates its contract with the secretary.

(b) Fails, for any reason, to compensate an insured for a loss covered by a policy.

(c) Delays payment to an insured, or otherwise breaches a duty or covenant imposed by law or required by a policy or contract with an insured that purchased an environmental insurance product pursuant to this chapter.

Comment. Section 80845 continues former Section 25395.44(b) without substantive change. See Sections 78150 ("secretary"), 80700 ("environmental insurance"), 80715 ("insurance company").

§ 80850. Immunity in addition to other immunities and defenses

80850. The immunity set forth in this article is in addition to other immunities and defenses otherwise available to the agency, the secretary, the state, their respective employees and agents, and any of the state's political subdivisions and employees thereof.

Comment. Section 80850 continues former Section 25395.44(c) without substantive change. See Sections 78040 ("agency"), 78150 ("secretary").

§ 80855. Application of Insurance Code to acts under this chapter

80855. In implementing this chapter, the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions and employees thereof, may not:

(a) Be construed to be an insurer, as defined in Section 23 of the Insurance Code, an insurance agent, as defined in Sections 31 and 1621 of the Insurance Code, an insurance solicitor, as defined in Sections 34 and 1624 of the Insurance Code, or an insurance broker, as defined in Sections 33 and 1623 of the Insurance Code.

(b) Be construed to be transacting insurance, as defined in Section 35 of the Insurance Code.

(c) Be required to obtain a license or other authorization pursuant to any provision of the Insurance Code.

Comment. Section 80855 continues former Section 25395.44(d) without substantive change. See Sections 78040 ("agency"), 78150 ("secretary").

Article 5. Regulations

§ 80870. Adoption of regulations

80870. (a) The agency may adopt regulations to implement this chapter pursuant to this section.

(b)(1) The regulations adopted to implement this chapter shall be deemed to be emergency regulations for purposes of Section 11346.1 of the Government Code.

(2) Notwithstanding the time period specified in subdivision (e) of Section 11346.1 of the Government Code, those emergency regulations may remain in effect for up to 180 days.

Comment. Section 80870 continues former Section 25395.45 without substantive change. See Section 78040 ("agency").

CHAPTER 12. COMPENSATION

Article 1. Financial Provisions

§ 80900. Funds for payment of claims

80900. (a) Claims approved by the Department of General Services pursuant to this chapter shall be paid from the state account.

(b) The Legislature may appropriate up to two million dollars ($2,000,000) annually from the state account to be used by the Department of General Services for the payment of awards pursuant to this chapter.

(c) Claims against or presented to the Department of General Services shall not be paid in excess of the amount of money appropriated for this purpose from the state account. These claims shall be paid only when additional money is collected, appropriated, or otherwise added to that account.

Comment. Section 80900 continues former Section 25381(b)-(d), inclusive, without substantive change. See Section 78165 ("state account").

§ 80905. Funds for administration of program

80905. The Department of General Services may expend from the state account those sums of money as are reasonably necessary to administer and carry out this chapter.

Comment. Section 80905 continues former Section 25382 without substantive change. See Section 78165 ("state account").

Article 2. Claims for Compensation

§ 80920. Conditions for application for compensation

80920. Any person may apply to the Department of General Services, pursuant to Section 80925, for compensation of a loss caused by the release, in California, of a hazardous substance if any of the following conditions are met:

(a) The source of the release of the hazardous substance, or the identity of the party liable for damages in connection with the release or responsible for the costs of removal of the hazardous substance, is unknown or cannot, with reasonable diligence, be determined.

(b) The loss was not compensable pursuant to law, including Chapter 6.5 (commencing with Section 25100) of Division 20, because there is no liable party or the judgment could not be satisfied, in whole or part, against the party determined to be liable for the release of the hazardous substance.

(c) The person has presented a written demand for compensation, which sets forth the basis for the claim, to the party that the person reasonably believes is liable for a loss specified in subdivision (a) of Section 80940 that was incurred by that person and is compensable pursuant to this chapter, the person has presented the Department of General Services with a copy of the demand, and, within 60 days after presenting the demand, the party has either rejected, in whole or in part, the demand to be compensated for a loss specified in subdivision (a) of Section 80940, or has not responded to the demand. Only losses specified in subdivision (a) of Section 80940 are compensable under a claim filed pursuant to this subdivision.

Comment. Section 80920 restates former Section 25372 without substantive change. See Sections 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78135 ("remove"), 78140 ("response").

§ 80925. Forms and procedures

80925. (a) The Department of General Services shall prescribe appropriate forms and procedures for claims filed pursuant to this chapter, which shall include, as a minimum, all of the following:

(1) A provision requiring the claimant to make a sworn verification of the claim to the best of the claimant's knowledge.

(2) A full description, supported by appropriate evidence from government agencies of the release of the hazardous substance claimed to be the cause of the physical injury or illness or loss of income.

(3) Certification by the claimant of dates and places of residence for the five years preceding the date of the claim.

(4) Certification of the medical history of the claimant for the five years preceding the date of the claim, along with certification of the alleged physical injury or illness and expenses for the physical injury or illness. The certification shall be made by hospitals, physicians, or other qualified medical authorities.

(5) The claimant's income as reported on the claimant's federal income tax return for the preceding three years in order to compute lost wages or income.

(b) Any person who knowingly gives, or causes to be given, any false information as a part of any claim pursuant to this chapter shall be guilty of a misdemeanor and shall, upon conviction, be fined up to five thousand dollars ($5,000), or imprisoned for not more than one year, or both.

Comment. Section 80925 restates former Section 25373 without substantive change. See Sections 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release").

§ 80930. Time for presenting claims

80930. No claim may be presented to the Department of General Services pursuant to this chapter later than three years from the date of discovery of the loss or from January 1, 1982, whichever is later.

Comment. Section 80930 continues former Section 25376 without substantive change.

Article 3. Compensable Losses

§ 80940. Types of losses

80940. If the Department of General Services makes the determination, specified in Section 80945, that losses resulted from the claimant's damages, injury, or disease, only the following losses are compensable pursuant to this chapter:

(a) One hundred percent of uninsured, out-of-pocket medical expenses, for up to three years from the onset of treatment.

(b) Eighty percent of any uninsured, actual lost wages, or business income in lieu of wages, caused by injury to the claimant or the claimant's property, not to exceed fifteen thousand dollars ($15,000) per year for three years.

(c)(1) One hundred percent of uninsured, out-of-pocket expenses for remedial action on the claimant's property undertaken to address a release of a hazardous substance when all of the following apply:

(A) The claimant's property is an owner-occupied single-family residence.

(B) The remedial action was ordered by federal, state, or local authorities due to a release of a hazardous substance.

(C) The department makes one of the following determinations:

(i) The release of the hazardous substance originated outside the boundaries of the property.

(ii) The release of the hazardous substance occurred on the property, was the result of an action that violated state or federal law, and the responsible party cannot be

identified or cannot be located, or a judgment against the responsible party cannot be satisfied.

(2) The maximum compensation under this subdivision is limited to twenty-five thousand dollars ($25,000) per residence and to one hundred thousand dollars ($100,000) for five contiguous residential properties. Any compensation provided shall be reduced by the amount that the remedial action results in a capital improvement to the claimant's residence.

(d)(1) One hundred percent of the fair market value of owner-occupied real property that is rendered permanently unfit for occupancy because of the release of a hazardous substance.

(2) For purposes of this subdivision, real property is rendered permanently unfit for occupancy only if a state or federal agency requires that it be evacuated for a period of six or more months because of the release of a hazardous substance.

(3) The fair market value of the real property shall be determined by an independent appraiser, and shall be considered by the independent appraiser as being equal to the value of the real property prior to the release of the hazardous substance that caused the evacuation of the property.

(4) Where compensation is made by the Department of General Services pursuant to this subdivision, sole ownership of the real property shall be transferred to the state and any proceeds resulting from the final disposition of the real property shall be deposited into the state account, for expenditure by the department upon appropriation by the Legislature.

(5) To be eligible for compensation pursuant to this subdivision, claims for compensation shall be made within 12 months of the date on which the evacuation was ordered.

(e)(1) One hundred percent of the expenses incurred due to the evacuation of a residence ordered by a state or federal agency.

(2) For purposes of this subdivision, "evacuation expenses" include the cost of shelter and any other emergency expenditures incurred due to an evacuation ordered by a state or federal agency.

(3) The Department of General Services may provide compensation, pursuant to this subdivision, only if it finds that the evacuation expenses represent reasonable costs for the goods or services purchased, and would not have been incurred if an evacuation caused by a hazardous substance release had not occurred.

(4) The Department of General Services may provide compensation for these evacuation expenses only if they were incurred within 12 months from the date on which evacuation was ordered.

Comment. Section 80940 continues former Section 25375(a) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78145 ("responsible party"), 78165 ("state account").

§ 80945. Required findings

80945. A loss specified in Section 80940 is compensable if the Department of General Services makes all of the following findings, based upon a preponderance of the evidence:

(a) A release of a hazardous substance occurred.

(b) The claimant or the claimant's property was exposed to the release of the hazardous substance.

(c) The exposure of the claimant to the release of the hazardous substance was of such a duration, and to such a quantity of the hazardous substance, that the exposure caused the damages, injury, or disease that resulted in the claimant's loss.

(d) For purposes of subdivisions (d) and (e) of Section 80940, the hazardous substance release, or the order that resulted in the claim for compensation occurred on or after January 1, 1986.

(e) The conditions and requirements of this chapter including, but not limited to, the conditions of Sections 80920 and 80925, have been met.

Comment. Section 80945 continues former Section 25375(b) without substantive change. See Sections 78075 ("hazardous substance"), 78105 ("release").

§ 80950. Noncompensable claim

80950. No money shall be used for the payment of any claim authorized by this part, where the claim is the result of long-term exposure to ambient concentrations of air pollutants.

Comment. Section 80950 continues former Section 25375(c) without substantive change.

Article 4. Claim Proceedings

§ 80970. Applicable law

80970. (a) Except as specified in subdivision (b), the procedures specified in Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to the proceedings conducted by the Department of General Services pursuant to this chapter.

(b) Notwithstanding subdivision (a), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to the proceedings conducted by the Department of General Services pursuant to this chapter.

(c) The Department of General Services may consider evidence presented by any person against whom a demand was made pursuant to subdivision (c) of Section 80920. The evidence presented by that person shall become a part of the record upon which the Department of General Services shall base its decision.

Comment. Section 80970 restates former Section 25375.5 without substantive change. See Section 78085 ("person").

§ 80975. Decisions

80975. (a) All decisions rendered by the Department of General Services shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to the Department of General Services unless all the parties to the claim agree in writing to an extension of time.

(b) The decision shall be considered a final agency action for the purposes of judicial review of the decision by any party to the proceedings resulting in the decision.

Comment. Section 80975 continues former Section 25374 without substantive change. See Section 78040 ("agency").

Article 5. Relationship to Other Remedies

§ 80990. Claim not condition precedent to other remedies

80990. Nothing in this chapter shall require, or be deemed to require, pursuit of any claim against the Department of General Services as a condition precedent to any other remedy.

Comment. Section 80990 continues former Section 25377 without substantive change. See Section 78125 ("remedy").

§ 80995. Compensation from other sources

80995. (a) Compensation of any loss pursuant to this chapter shall preclude indemnification or reimbursement from any other source for the identical loss, and indemnification or reimbursement from any other source shall preclude compensation pursuant to this chapter.

(b) If a claimant recovers any compensation from a party in a civil or administrative action for a loss for which the claimant has received compensation pursuant to this chapter, the claimant shall reimburse the state account in an amount equal to the compensation that the claimant has received from the state account pursuant to this chapter. The Attorney General may bring an action against the claimant to recover the amount that the claimant is required to reimburse the state account, and until the account is reimbursed, the state shall have a lien of first priority on the judgment or award recovered by the claimant. If the state account is reimbursed pursuant to this subdivision, the state shall not acquire, by subrogation, the claimant's rights pursuant to Article 7 (commencing with Section 81030).

(c) The Legislature hereby finds and declares that it is the purpose of this section to prevent double recovery for a loss compensable pursuant to this chapter.

Comment. Section 80995 continues former Section 25378 without substantive change. See Section 78165 ("state account").

Article 6. Nonadmissibility of Evidence in Other Proceedings

§ 81010. Evidence not admissible

81010. (a) The following evidence is not admissible as evidence in any civil or criminal proceeding, including a subrogation action by the state pursuant to Article 7 (commencing with Section 81030), to establish the liability of any person for any damages alleged to have been caused by a release of a hazardous substance:

(1) A final decision made by the Department of General Services pursuant to this chapter.

(2) A decision made by the Department of General Services to admit or not admit any evidence.

(3) Any finding of fact or conclusion of law entered by the Department of General Services in a proceeding for a claim pursuant to this chapter.

(4) The fact that any person has done any of the following in a proceeding for a claim pursuant to Section 80920:

(A) Chosen to participate or appear.

(B) Chosen not to participate or appear.

(C) Failed to appear.

(D) Settled or offered to settle the claim.

(b) Subdivision (a) does not apply to any civil action or writ by a claimant against the Department of General Services for any act, decision, or failure to act on a claim submitted by the claimant.

Comment. Section 81010 continues former Section 25379 without substantive change. See Sections 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release").

Article 7. State Recovery from Party Liable for the Loss

§ 81030. State acquisition of claimant's right to recover

81030. Compensation of any loss pursuant to this chapter shall be subject to the state's acquiring, by subrogation, all rights of the claimant to recover the loss from the party determined to be liable for the loss.

Comment. Section 81030 restates the first sentence of former Section 25380 without substantive change.

§ 81035. Action for recovery

81035. Upon the request of the Department of General Services, the Attorney General shall commence an action in the name of the people of the State of California to recover any amount paid in compensation for any loss pursuant to this chapter against any party who is liable to the claimant for any loss compensable pursuant to this chapter in accordance with the procedures set forth in Chapter 8 (commencing with Section 79650).

Comment. Section 81035 continues the second sentence of former Section 25380 without substantive change.

§ 81040. Deposit of recovered funds

81040. Moneys recovered pursuant to this article shall be deposited in the state account.

Comment. Section 81040 continues the third sentence of former Section 25380 without substantive change.

See Section 78165 ("state account").

Article 8. Implementing Rules and Regulations

§ 81050. Adoption and revision

81050. The Department of General Services shall, in consultation with the department, adopt, and revise when appropriate, all rules and regulations necessary to implement this chapter, including methods that provide for establishing that a claimant has exercised reasonable diligence in satisfying the conditions specified in Articles 3 (commencing with Section 80940) and 4 (commencing with Section 80970) and Sections 80920 and 80925, and regulations that specify the proof necessary to establish a loss compensable pursuant to this chapter.

Comment. Section 81050 continues former Section 25381(a) without substantive change.

See Section 78050 ("department").

UNCODIFIED

Operative date

SEC. ____. This act becomes operative on January 1, 2024.

Law Revision Commission Studies

SEC. ____. The California Law Revision Commission is authorized to study and to make recommendations to the Legislature and the Governor regarding minor substantive improvements to Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code, including improvements of that type identified in the report prepared by that commission pursuant to Resolution Chapter 46 of the Statutes of 2020.

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition, as reflected in this draft, of provisions in Chapter 6.8 of Division 20 of the Health and Safety Code (§§ 25300-25395.45), as the law existed on January 1, 2021. All statutory references are to the Health and Safety Code.

Existing Provision	New Provision
25300	78000(a)
25301	78005
25310	78035
25310.5	78040
25311	78045
25312	78050
25313	78055
25314	78060
25315	78065
25316	78075(a)
25317	78075(b)
25318.5	78080
25319	78085
25319.1	78090
25319.5	78095
25319.6	78100
25320	78105(a)
25321	78105(b)
25322	78125
25322.1	78115
25322.2	78120
25323	78135
25323.1	78130
25323.3	78140
25323.5	78145
25323.9	78155
25324(a)	78165
25324(b)	79680
25325	78070
25326	78110
25326.3	78150
25326.5	78160
25327	78170
25330.2	78265
25330.4(a)-(e), (f)(1)	78230
25330.4(f)(2)	Not cont'd
25330.5	78235
25331	78220
25334.7	78575
25337	78260
25342	78200
25343	79105
25350, 1st and 2nd sent.	78855
25350, 3rd sent.	78860
25351.2(a)	79160
25351.2(b)	79165
25351.2(c)	79170
25351.2(d)	79175
25351.5	78400
25351.7	79490
25351.8	79495
25352(a), (b)	79450
25352(c)	79685
25353(a), (b), (d), (f)	79070
25353(c)	79690
25353(e)	79075
25353.5	78210(b)-(g)
25354(a), 1st sent., (c), 2nd and 3rd sent., (d)	78240
25354(a), 2nd sent., (b)	78875
25354(c), 1st sent.	78580
25354.5(a)	79355
25354.5(b)(1), 1st sent.	79360
25354.5(b)(1), 2nd and 3rd sent.	79350
25354.5(b)(2)	79365
25354.5(c)	79370
25354.5(d)	79375
25354.5(e)	79380
25354.5(f)	78370
25354.5(g)	79385
25355(a)	78850
25355(b)	79130(a)
25355(c)(1), (d)	79135
25355(c)(2)	79005
25355.2(a)	79315
25355.2(b)	79320
25355.2(c), (d)	79325
25355.2(e)	79330
25355.2(f)	79310
25355.5(a)	79055
25355.5(b)	79060
25355.5(c), (d)	79065
25355.5(e)	79130(b)
25355.6(a)	78900
25355.6(b)	78905
25355.6(c), (d)	78910
25355.7	79000
25355.8	79100
25356(a)	78765
25356(b)	78760
25356(c)	78770
25356(d)	78775
25356(e)	78795
25356(f)	78780
25356(g)	78785
25356(h)	78790

Existing Provision	New Provision
25356.1(a) (“regional board”)	Not cont’d
25356.1(a) (“state board”)	78168
25356.1(b)	79195
25356.1(c)	79200
25356.1(d)	79205
25356.1(e), 1st-4th sent.	79210
25356.1(e), 5th sent., (f)	79215
25356.1(g)	79220
25356.1(h)(1), (2), (5)	79225
25356.1(h)(3)	79230
25356.1(h)(4)	79235
25356.1(i)	79240
25356.1.3(a)	79020
25356.1.3(b)	79025
25356.1.3(c)	79030
25356.1.3(d)	79035
25356.1.5(a)	79260
25356.1.5(b)	79265
25356.1.5(c)	79270
25356.1.5(d), (e)	79275
25357	78225
25357.5	79400
25358	78410
25358.1(a)	78435
25358.1(b)-(d)	78440
25358.1(e)-(h)	78450
25358.1(i)	78455
25358.1(j), (k)	78445
25358.1(*l*)	78460
25358.2(a)	78480
25358.2(b)	78490
25358.2(c)	78485
25358.2(d)	78495
25358.3(a)	78870
25358.3(b)	78650
25358.3(c), (d)	78655
25358.3(e)-(g)	78660
25358.4	78510
25358.5	78880
25358.6	78885
25358.6.1(a)	78590
25358.6.1(b)	78595
25358.6.1(c)(1)-(4)	78600
25358.6.1(c)(5)-(8)	78605
25358.6.1(d)	78610
25358.6.1(e)	78615
25358.6.1(f)	78620
25358.7	78930
25358.7.1(a), 1st and 4th sent.	78950
25358.7.1(a), 2nd sent.	78960
25358.7.1(a), 3rd sent.	78935
25358.7.1(b)	78955
25358.7.1(c)	78965
25358.7.1(d)	78970
25358.7.2(a), 1st sent., (b)-(d)	78420
25358.7.2(a), 2nd sent.	78925
25358.8	78975
25358.9(a)	79290
25358.9(b)	79295
25359	79570
25359.1	79580
25359.2	79550
25359.20	79465
25359.3(a)	79590
25359.3(b)	79595
25359.3(c)	79600
25359.4(a)-(c)	78675
25359.4(d)-(f)	78680
25359.4.5	79555
25359.5(a)	78720
25359.5(b), (c)	78725
25359.5(d)	78735
25359.5(e)	78730
25359.5(f)	78740
25359.6	78505
25359.7(a)	78700
25359.7(b)	78705
25360	79650
25360.1	79655
25360.2(a)	79780
25360.2(b)	79790
25360.2(c)	79795
25360.2(d)	79800
25360.2(e)	79785
25360.3(a)	79810
25360.3(b)	79820
25360.3(c)	79825
25360.3(d), (e)	79815
25360.4(a)	79730
25360.4(b)	79735
25360.4(c)	79740
25360.4(d)	79725
25360.4(e)	79745
25360.6	79920
25361(a)	79700
25361(b)	79705
25362	79710
25363(a), (b)	79760
25363(c)	79665
25363(d)	79670
25363(e)	79765
25363.5	79910
25364	79860
25364.1(a)	79875
25364.1(b)	79880
25364.1(c)	79885
25364.1(d)	79900
25364.1(e)	79890
25364.1(f)	79895
25364.7	79865

Existing Provision	New Provision
25365	79660
25365.6(a), (c)	79935
25365.6(b)	79950
25365.6(d), 1st sent.	79940
25365.6(d), 2nd and 3rd sent.	79945
25365.6(e)	79955
25366	78185
25366.5(a)	79845
25366.5(b)	79840
25366.5(c)	79850
25367(a) (except pt. of (a)(3) re Section 25358.3)	78470
25367(a)(3) (pt. re Section 25358.3)	78665
25367(b)	78465
25368	78525
25368.1	78530
25368.2	78535
25368.3	78540
25368.4	78545
25368.5	78550
25368.6	78555
25368.7	78560
25368.8	78565
25372	80920
25373	80925
25374	80975
25375(a)	80940
25375(b)	80945
25375(c)	80950
25375.5	80970
25376	80930
25377	80990
25378	80995
25379	81010
25380, 1st sent.	81030
25380, 2nd sent.	81035
25380, 3rd sent.	81040
25381(a)	81050
25381(b)-(d)	80900
25382	80905
25385	78280
25385.1	78285
25385.2	78290
25385.4	78295
25385.5	78300
25385.6	78305
25385.7	78310
25386	78315
25386.1	78320
25386.2	78325
25386.25	78330
25386.3	78335
25386.4	78340
25386.5	78345

Existing Provision	New Provision
25390	80000
25390.1	80005
25390.2	80010
25390.3(a), (b), (d)	80020
25390.3(c)	80025
25390.4(a)	80040
25390.4(b)	80045
25390.4(c), (d)	80050
25390.5	80070
25390.6(a)	80080
25390.6(b)	80085
25390.7	80055
25390.8	80090
25390.9	80100
25395.20(a), initial cl.	80200
25395.20(a)(1)	80205
25395.20(a)(2)	80210
25395.20(a)(3)	80215
25395.20(a)(4)	80220
25395.20(a)(5)	80225
25395.20(a)(6), (7)	80230
25395.20(a)(8)	80235
25395.20(a)(9)	Not cont'd
25395.20(a)(10)	80240
25395.20(a)(11)	80245
25395.20(a)(12)	80250
25395.20(a)(13)	80255
25395.20(a)(14)	80260
25395.20(a)(15)	80265
25395.20(a)(16)	80275
25395.20(a)(17)	Not cont'd
25395.20(a)(18)	78168
25395.20(a)(19)	80280
25395.20(b)	80350
25395.20(c)	80355
25395.21(a)	80400
25395.21(b)	80405
25395.21(c)	80410
25395.21(d)	80415
25395.21(e)	80420
25395.21(f)	80425
25395.21(g)	80430
25395.21(h)	80435
25395.22(a), 1st sent.	80450
25395.22(a), 2nd and 4th sent.	80460
25395.22(a), 3rd sent.	80465
25395.22(b)	80455
25395.23(a)	80480
25395.23(b)	80485
25395.23(c)	80490
25395.24(a)	80500
25395.24(b)	80505
25395.25	80520
25395.26(a)	80540
25395.26(b), (c)	80545

Existing Provision	New Provision
25395.26(d)	80550
25395.26(e)	80320(b)
25395.27(a)(1), 1st sent.	80300
25395.27(a)(1), 2nd sent., (a)(2)	80305
25395.27(b)	80310
25395.27(c)	80315
25395.27(d)	80320(a)
25395.27(e)	80325
25395.28(a)	80570
25395.28(b)	80575
25395.28(c)	80580
25395.28(d)	80585
25395.28(e)	80590
25395.28(f)	80595
25395.28(g), (h)	80600
25395.28(i)	80605
25395.28(j)	80610
25395.29(a)	80620
25395.29(b)	80625
25395.30	80370
25395.31	80375
25395.32	80380
25395.35	78360
25395.36	78365
25395.40, initial cl.	80680
25395.40(a)	80685
25395.40(b)	80690
25395.40(c)	80695

Existing Provision	New Provision
25395.40(d)	80700
25395.40(e)	80705
25395.40(f)	Not cont'd
25395.40(g)	80710
25395.40(h)	80715
25395.40(i)	80720
25395.40(j)	80725
25395.40(k)	80730
25395.40(*l*)	80735
25395.40(m)	Not cont'd
25395.41(a)	80750
25395.41(b)(1)	80755
25395.41(b)(2), 1st and 2nd sent.	80760
25395.41(b)(2), 3rd sent.	80765
25395.41(c)	80770
25395.41(d), 1st sent.	80775
25395.41(d), 2nd sent.	80780
25395.42(a)	80800
25395.42(b)	80805
25395.43(a)	80810
25395.43(b)	80815
25395.43(c), 1st sent.	80820
25395.43(c), 2nd sent.	80825
25395.44(a)	80840
25395.44(b)	80845
25395.44(c)	80850
25395.44(d)	80855
25395.45	80870

DERIVATION OF NEW LAW

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

New Provision	Existing Provision
78000(a)	25300
78000(b)	new
78005	25301
78010	new
78015	new
78020	new
78025	new
78030	new
78035	25310
78040	25310.5
78045	25311
78050	25312
78055	25313
78060	25314
78065	25315
78070	25325
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SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY

When the Legislature authorized the Commission to study Chapters 6.5 and 6.8 of Division 20 of the Health and Safety Code, the Legislature also directed the Commission to "include a list of substantive issues that the commission identifies in the course of its work, for possible future study." See 2018 Cal. Stat. res. ch. 158. The Legislature's grant of authority for this project precludes the Commission from making "any substantive changes to the law." See *id*.

In the course of the Commission's study of Chapter 6.8, the Commission identified the issues listed below for possible future study. Unless otherwise indicated, all statutory citations refer to provisions of the Health & Safety Code. All references to proposed provisions refer to provisions of the proposed legislation in this recommendation.

(1) Should the provision that governs the application of certain definitions (continued in proposed Section 78035) be revised to add an express exception to allow for a different meaning when appropriate (e.g., "unless the context requires otherwise")?

(2) Should the provision that provides for the application of definitions from the federal act (proposed Section 78035) be restated for clarity?

(3) Should limited-application definitions be adjusted to improve consistency for terminology used in this proposed part and Chapter 6.5 (commencing with Section 25100) of Division 20?

(4) Should the definition of "person" (proposed Section 78085) be restated for clarity?

(5) Should the definition of "release authorized or permitted pursuant to state law" (continued in proposed Section 78110) be restated for clarity?

(6) Should the definition of "remedy" (continued in proposed Section 78125) be restated for clarity?

(7) Are the uses of the undefined terms "remediate" and "remediation" problematic, in light of their similarity to the defined terms, "remedy" and "remedial action" in proposed Section 78125?

(8) Should the following provisions be repealed, in whole or in part, or revised to remove or update obsolete material?

- Proposed Section 78210(b)(2)
- Proposed Article 5 (commencing with Section 78280) of Chapter 2
- Proposed Section 78505(a)
- Proposed Section 78885(d)
- Proposed Section 78970(b)
- Proposed Section 79105(b), (c)
- Proposed Section 79330
- Proposed Section 79680

- Proposed Section 79730(b)
- Proposed Section 80490(b)
- Proposed Section 80625

(9) Should proposed Section 78210 be revised in light of changed circumstances regarding staffing needs?

(10) Is the provision discussing the successor fund to the Stringfellow Insurance Proceeds Account (proposed Section 78230(f)) current?

(11) Should the provision that provides for the application of the State General Obligation Bond Act to the Hazardous Substance Bond Act of 1984 (proposed Section 78290) be restated for clarity?

(12) Should proposed Section 78305(b)(2) (regarding conditions for expenditure of funds from bond proceeds) be restated for clarity?

(13) Should proposed Section 78420(d) (regarding expenditures for public participation activities) be restated for clarity?

(14) Should the provisions that govern the investigatory powers of the department (continued in proposed Article 4 (commencing with Section 78435) of Chapter 3) be restated to standardize terms, simplify the provisions, and improve readability?

(15) Should proposed Section 78440 be restated to clarify the scope of the authority to require a person to furnish relevant information?

(16) Should proposed Section 78450 (regarding the authority to enter, inspect, and sample property) be restated for clarity?

(17) Should proposed Section 78510, which provides for the accreditation of laboratories, be revised to permit TNI accreditation pursuant to Section 100825(c)(14)-(20)?

(18) Should the reference to "hazardous waste" in proposed Section 78560 instead refer to "hazardous substance"?

(19) Should the contents of proposed Article 9 (commencing with Section 78575) of Chapter 3, which relate to the required contents of a biennial report, be recodified with Section 25178?

(20) Should proposed Section 78575 be revised to reconcile the reporting requirements and rules in Section 25178 and Government Code Section 10231.5?

(21) Should the definition of "professional service" in proposed Section 78590 be adjusted for consistency with the definition of "architectural, landscape architectural, engineering, environmental, and land surveying services" in Government Code Section 4525?

(22) Should proposed Section 78655 be adjusted to address the following issues:

- To specify that the references are to the relevant acts "as amended"?
- To adjust the cross-reference to the federal Hazardous Materials Transportation Act?
- To clarify the treatment of exclusions from the defined terms "hazardous substance" and "hazardous waste"?

(23) Should the reference to "hazardous waste" in proposed Section 78720 instead refer to "hazardous substance"?

(24) Should proposed Section 78850 be amended to clarify the meaning of the "sites identified in Article 5 (commencing with Section 78760) of Chapter 4"?

(25) Should proposed Section 78855 be adjusted for consistency in identifying who (the director or the department) is authorized to make expenditures?

(26) Should proposed Section 78870 be adjusted for consistency with the operation of the defenses in Sections 101(35) and 107(b) of the federal act in practice?

(27) Should the scope of the exemption in proposed Section 78930 for emergency actions be expanded to include actions taken pursuant to proposed Section 78870?

(28) Should the scope of "business financial data and information" in proposed Section 78930 be clarified?

(29) Should the scope of "planned response action" in proposed Section 78935 be clarified?

(30) Should proposed Article 5 (commencing with Section 78950) of Chapter 5 be amended to address community advisory group transparency, conflicts of interest, funding, funding disclosure, membership, and technical expertise (see DTSC Independent Review Panel Fourth Report to the Governor and Legislature Pursuant to Health & Safety Code Section 57014(f), pp. 6-7 (Oct. 2016))?

(31) Should proposed Section 79020 be adjusted for consistency in identifying who (the director or the department) is authorized to issue orders?

(32) Should a provision be added to directly authorize the department to issue the orders and enter the agreements described in proposed Section 79055?

(33) Should the provisions regarding land use restrictions in proposed Section 79055(b) be recodified elsewhere?

(34) Should proposed Section 79100 be adjusted to specify what should occur when a person can provide identities and addresses for only some of the relevant property owners?

(35) Depending on the intended scope of the rule in proposed Section 79100(b) (regarding accommodating property owner participation in site remediation), should this provision be relocated elsewhere?

(36) Should the cross-reference to "Section 25343 as it read on December 31, 1997" in proposed Section 79105 be revised for ease of use?

(37) Should proposed Section 79160 (regarding prerequisites for local government-initiated response actions) be restated for clarity?

(38) Should proposed Section 79230(d) be repealed as redundant, given the rule in proposed Section 79225(a)?

(39) Should proposed Section 79235 be restated to improve consistency and clarity?

(40) Should proposed Section 79355 (regarding law enforcement notification regarding hazardous substances at illegal drug labs) be restated for clarity?

(41) Should proposed Article 2 (commencing with Section 79465) of Chapter 6 be repealed or amended in light of the 9th Circuit opinion in *Boeing Co. v. Movassaghi* (2014) 768 F.3d 832?

(42) Should the term "liable party [or parties]" in proposed Sections 79670 and 80920 refer instead to the defined term, "responsible party" or "liable person"?

(43) Should the provisions specifying how a presumption of nonliability may be rebutted (proposed Sections 79800 and 79820) apply to any action in which the presumption of nonliability may apply?

(44) Should the definitions of "owner" and "property" in proposed Section 79870 be restated to clarify the scope of these terms and to assess whether the scope of these definitions is consistent with the underlying legislative policy?

(45) Should proposed Section 79880 (regarding releases from liability for the former Kaiser Steel Corporation steel mill site) be restated for clarity?

(46) Does proposed Article 13 (commencing with Section 79935) of Chapter 8 regarding lien authority require adjustment to address situations in which the regional board incurred the costs or damages that constitute the lien?

(47) Should the referenced provisions in proposed Section 80085 be adjusted?

(48) Should proposed Section 80100(a) (regarding the operative date of the law on orphan share reimbursement) be discontinued as obsolete?

(49) Should proposed Section 80230 (defining "eligible property") and related provisions that cross-refer to this section be revised in light of the repeals and changes to the cross-referenced laws, which are used to determine whether a property is an "eligible property"?

(50) Should the definition of "hazardous material" in proposed Section 80235 be adjusted to exclude non-hazardous wastes?

(51) Should proposed Section 80280 (defining "urban area") be revised in light of the repeal of former Section 21080.7 of the Public Resources Code?

(52) Should proposed Section 80310 (deeming references to "hazardous substances" to be references to "hazardous materials") be restated for clarity?

(53) Should proposed Article 11 (commencing with Section 80570) of Chapter 10 (regarding the administering agency for a site) be restated for clarity?

(54) Should the definition of "hazardous material" in proposed Section 80710 be adjusted to address one or more of the following issues:

- To clarify whether the term includes a substance in proposed Section 78075(b)?
- To exclude non-hazardous waste from the definition?

(55) Should proposed Section 80730 (regarding persons ineligible to apply for loans) be restated for clarity?

(56) Should proposed Section 80900 be adjusted to clarify which funds are available for the payment of claims?

(57) Should proposed Section 80950 be adjusted to apply to any claim "under this chapter [Chapter 12 (commencing with Section 80900)]" as opposed to "under this part [Part 2 (commencing with Section 78000)]"?

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PROPOSED LEGISLATION

Health & Safety Code §§ 25300-25395.45 (repealed). Hazardous Substance Account

SEC. ___. Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code is repealed.

Comment. Chapter 6.8 is repealed. The substance of Chapter 6.8 has been continued as Part 2 (commencing with Section 78000) of Division 45. For background, see *Hazardous Substance Account Recodification Act,* __ Cal. L. Revision Comm'n Reports __ (2021).

Health & Safety Code §§ 78000-81050 (added). Hazardous substance response

SEC. ___. Division 45 (commencing with Section 78000) is added to the Health and Safety Code, to read:

DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE

PART 1. GENERAL PROVISIONS [RESERVED]

PART 2. HAZARDOUS SUBSTANCE ACCOUNT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Preliminary Provisions

§ 78000. Short title

78000. (a) This part shall be known and may be cited as the Carpenter-Presley-Tanner Hazardous Substance Account Act.

(b) This part recodifies the provisions of former Chapter 6.8 (commencing with Section 25300) of Division 20. The act that added this part, and the act that consists of conforming revisions to reflect the addition of this part, shall be known and may be cited as the "Hazardous Substance Account Recodification Act."

Comment. Subdivision (a) of Section 78000 continues former Section 25300 without substantive change. The Carpenter-Presley-Tanner Hazardous Substance Account Act was formerly codified as Chapter 6.8 (commencing with Section 25300) of Division 20 of this code.

Subdivision (b) is new. It provides a convenient means of referring to the recodification of former Chapter 6.8 (commencing with Section 25300) of Division 20. For background, see *Hazardous Substance Account Recodification Act,* __ Cal. L. Revision Comm'n Reports __ (2021) and *Hazardous Substance Recodification Act: Conforming Revisions*, __ Cal. L. Revision Comm'n Reports __ (2021).

§ 78005. Legislative intent

78005. It is the intent of the Legislature to do all of the following:

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

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

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

Comment. Section 78005 continues former Section 25301 without substantive change.

See Sections 78065 ("federal act"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response"), 78155 ("site").

Article 2. Effect of Recodification

§ 78010. Nonsubstantive reform

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 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.

Comment. Section 78010 is modeled on Penal Code Section 16005. It makes clear that the Hazardous Substance Account Recodification Act has no substantive effect. The act is intended solely to make the Carpenter-Presley-Tanner Hazardous Substance Account Act more user-friendly. For background, see *Hazardous Substance Account Recodification Act,* __ Cal. L. Revision Comm'n Reports __ (2021).

For specific guidance on the impact of a judicial decision interpreting a predecessor of a provision in this part, see Section 78020. For specific guidance on the impact of a judicial decision assessing the constitutionality of a predecessor of a provision in this part, see Section 78025.

See Section 78000(b) ("Hazardous Substance Account Recodification Act").

§ 78015. Continuation of existing law

78015. (a) A provision of this part, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation of the previously existing provision and not as a new enactment.

(b) 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.

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

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

Comment. Subdivision (a) of Section 78015 is similar to Section 2, which is a standard provision found in many codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2; Penal Code §§ 5, 16010(a); Prob. Code § 2(a); Veh. Code § 2.

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

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

Subdivision (d) is new. It is added to make clear that any delay in updating regulations to reflect the enactment of this part does not have any effect on the validity of the regulation. A regulation continues to be valid even if it refers to a provision of former Chapter 6.8 (commencing with Section 25300) of Division 20.

See Section 78000(b) ("Hazardous Substance Account Recodification Act").

§ 78020. Judicial decision interpreting former law

78020. (a) A judicial decision interpreting a previously existing provision is relevant in interpreting any provision of this part that restates and continues that previously existing provision.

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

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

Comment. Section 78020 is modeled on Penal Code Section 16020.

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

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

For specific guidance on the impact of a judicial decision assessing the constitutionality of a predecessor of a provision in this part, see Section 78025. For general guidance on the nonsubstantive impact of the Hazardous Substance Account Recodification Act, see Section 78010.

See Section 78000(b) ("Hazardous Substance Account Recodification Act").

§ 78025. Constitutionality

78025. (a) A judicial decision on the constitutionality of a previously existing provision is relevant in determining the constitutionality of any provision of this part that restates and continues that previously existing provision.

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

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

Comment. Section 78025 is modeled on Penal Code Section 16025.

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

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

For specific guidance on the impact of a judicial decision interpreting a predecessor of a provision in this part, see Section 78020. For general guidance on the nonsubstantive effect of the Hazardous Substance Account Recodification Act, see Section 78010.

See Section 78000(b) ("Hazardous Substance Account Recodification Act").

§ 78030. Conforming rule change

78030. (a) The department or another state agency may make a conforming rule change without complying with the rulemaking procedure specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, if the rule change meets all of the requirements of this section.

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

(1) A completed and signed form STD 400.

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

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

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

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

Comment. Section 78030 is new.

See Section 78050 ("department").

Article 3. Definitions

§ 78035. Applicable definitions

78035. The definitions set forth in this article govern the interpretation of this part. Unless the context requires otherwise and except as provided in this article, the definitions contained in Section 101 of the federal act (42 U.S.C. Sec. 9601) apply to the terms used in this part.

Comment. Section 78035 restates former Section 25310 without substantive change.

See Section 78065 ("federal act").

§ 78040. "Agency"

78040. "Agency" means the California Environmental Protection Agency.

Comment. Section 78040 continues former Section 25310.5 without substantive change.

§ 78045. "Contract competitor"

78045. "Contract competitor" means any person competing for a state contract pursuant to subdivision (a) of Section 78655.

Comment. Section 78045 continues former Section 25311 without substantive change. See Section 78085 ("person").

§ 78050. "Department"

78050. "Department" means the Department of Toxic Substances Control.

Comment. Section 78050 continues former Section 25312 without substantive change.

§ 78055. "Director"

78055. "Director" means the Director of Toxic Substances Control.

Comment. Section 78055 continues former Section 25313 without substantive change.

§ 78060. "Feasibility study"

78060. "Feasibility study" means the identification and evaluation of technically feasible and effective remedial action alternatives to protect public health and the environment, at a hazardous substance release site, or other activities deemed necessary by the department for the development of a remedial action plan.

Comment. Section 78060 continues former Section 25314 without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78155 ("site").

§ 78065. "Federal act"

78065. "Federal act" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

Comment. Section 78065 continues former Section 25315 without substantive change.

§ 78070. "Federally permitted release"

78070. "Federally permitted release" has the same meaning as defined in Section 101(10) of the federal act (42 U.S.C. Sec. 9601(10)).

Comment. Section 78070 continues former Section 25325 without substantive change. See Sections 78065 ("federal act"), 78105 ("release").

§ 78075. "Hazardous substance"

78075. (a) "Hazardous substance" means:

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

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

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

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

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

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

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

(b) "Hazardous substance" does not include:

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

(2) Ash produced by a resource recovery facility utilizing a municipal solid waste stream.

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

Comment. Subdivision (a) of Section 78075 continues former Section 25316 without substantive change.

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

See Section 78065 ("federal act").

§ 78080. "Operation and maintenance"

78080. "Operation and maintenance" means those activities initiated or continued at a hazardous substance release site following completion of a response action that are deemed necessary by the department or regional board in order to protect public health or safety or the environment, to maintain the effectiveness of the response action at the site, or to achieve or maintain the response action standards and objectives established by the final remedial action plan or final removal action work plan applicable to the site.

Comment. Section 78080 continues former Section 25318.5 without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78130 ("removal action work plan"), 78140 ("response"), 78155 ("site").

§ 78085. "Person"

78085. "Person" means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities, to the extent permitted by law.

Comment. Section 78085 continues former Section 25319 without substantive change.

§ 78090. "Phase I environmental assessment"

78090. "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 substance based on reasonably available information about the property and general vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records, current and historical land uses, prior releases of a hazardous material, database searches, reviews of relevant files of federal, state, and local agencies, visual and other surveys of the property and general vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of a phase I environmental assessment.

Comment. Section 78090 continues former Section 25319.1 without substantive change. See 78075 ("hazardous substance"), 78105 ("release").

§ 78095. "Preliminary endangerment assessment"

78095. "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous substance management practices have resulted in a release or threatened release of a hazardous substance that poses a threat to the public health or the environment and is conducted in a manner that complies with the guidelines published by the department entitled "Preliminary Endangerment Assessment: Guidance Manual," or as those guidelines may be amended by the department. A preliminary endangerment assessment includes all of the following activities:

(a) Sampling and analysis of a site.

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

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

Comment. Section 78095 continues former Section 25319.5 without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site").

§ 78100. "Regional board"

78100. "Regional board" means a California regional water quality control board.

Comment. Section 78100 continues former Section 25319.6 without substantive change.

§ 78105. "Release"

78105. (a) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

(b) "Release" does not include any of the following:

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

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

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

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

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

Comment. Subdivision (a) of Section 78105 continues former Section 25320 without substantive change.

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

See Sections 78065 ("federal act"), 78085 ("person"), 78140 ("response").

§ 78110. "Release authorized or permitted pursuant to state law"

78110. "A release authorized or permitted pursuant to state law" means any release into the environment that is authorized by statute, ordinance, regulation, or rule of any state, regional, or local agency or government or by any specific permit, license, or similar authorization from such an agency, including one of the foregoing, that recognizes a standard industry practice, including variances obtained from the agency that allow operations for facilities during a period of time when releases from the facilities do not conform with relevant statutes, ordinances, regulations, or rules. The term includes a federally permitted release, as defined by Section 78070, and releases that are in accordance with any court order or consent decree.

Comment. Section 78110 continues former Section 25326 without substantive change.

See Sections 78040 ("agency"), 78105 ("release").

§ 78115. "Remedial design"

78115. "Remedial design" means the detailed engineering plan to implement the remedial action alternative or initial remedial measure approved by the department.

Comment. Section 78115 continues former Section 25322.1 without substantive change. See Sections 78050 ("department"), 78125 ("remedy").

§ 78120. "Remedial investigation"

78120. "Remedial investigation" means those actions deemed necessary by the department to determine the full extent of a hazardous substance release at a site, identify the public health and environment threat posed by the release, collect data on possible remedies, and otherwise evaluate the site for purposes of developing a remedial action plan.

Comment. Section 78120 continues former Section 25322.2 without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78155 ("site").

§ 78125. "Remedy" or "remedial action"

78125. "Remedy" or "remedial action" includes all of the following:

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

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

(c) Site operation and maintenance.

Comment. Section 78125 continues former Section 25322 without substantive change. See Sections 78055 ("director"), 78065 ("federal act"), 78075 ("hazardous substance"), 78080 ("operation and maintenance"), 78105 ("release"), 78135 ("remove"), 78155 ("site").

§ 78130. "Removal action work plan"

78130. "Removal action work plan" means a work plan prepared or approved by the department or a regional board that is developed to carry out a removal action, in an effective manner, that is protective of the public health and safety and the environment. The removal action work plan shall include a detailed engineering plan for conducting the removal action, a description of the onsite contamination, the goals to be achieved by the removal action, and any alternative removal options that were considered and rejected and the basis for that rejection.

Comment. Section 78130 continues former Section 25323.1 without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78135 ("remove").

§ 78135. "Remove" or "removal"

78135. "Remove" or "removal" includes the cleanup or removal of released hazardous substances from the environment or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release, as further defined by Section 101(23) of the federal act (42 U.S.C. Sec. 9601(23)).

Comment. Section 78135 continues former Section 25323 without substantive change. See Sections 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release").

§ 78140. "Response," "respond," or "response action"

78140. "Response," "respond," or "response action" have the same meanings as defined in Section 101(25) of the federal act (42 U.S.C. Sec. 9601(25)). The enforcement and oversight activities of the department and regional board are included within the meaning of "response," "respond," or "response action."

Comment. Section 78140 continues former Section 25323.3 without substantive change. An erroneous cross-reference to "Section 9601(25) of the federal act" was corrected to refer to "Section 101(25) of the federal act."

See Sections 78050 ("department"), 78065 ("federal act"), 78100 ("regional board").

§ 78145. "Responsible party" or "liable person"

78145. (a)(1) "Responsible party" or "liable person," for the purposes of this part, means those persons described in Section 107(a) of the federal act (42 U.S.C. Sec. 9607(a)).

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

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

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

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

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

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

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

Comment. Section 78145 continues former Section 25323.5 without substantive change. See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78155 ("site").

§ 78150. "Secretary"

78150. "Secretary" means the Secretary for Environmental Protection.

Comment. Section 78150 continues former Section 25326.3 without substantive change.

§ 78155. "Site"

78155. "Site" has the same meaning as the term "facility" is defined by Section 101(9) of the federal act (42 U.S.C. Sec. 9601(9)).

Comment. Section 78155 continues former Section 25323.9 without substantive change. See Section 78065 ("federal act").

§ 78160. "Site cleanup evaluation"

78160. "Site cleanup evaluation" means an evaluation by the department of the effectiveness of a removal or remedial action conducted by a responsible party, to reduce or eliminate actual or potential public health and environmental threats posed by a hazardous substance release site if the action itself is not the subject of oversight by the department.

Comment. Section 78160 continues former Section 25326.5 without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

§ 78165. "State account"

78165. "State account" means the Toxic Substances Control Account established pursuant to Section 25173.6.

Comment. Section 78165 continues former Section 25324(a) without substantive change.

§ 78168. "State board"

78168. "State board" means the State Water Resources Control Board.

Comment. Section 78168 continues and generalizes the substance of former Sections 25356.1(a) and 25395.20(a)(18). The application of the definition of "state board" was broadened for drafting convenience.

§ 78170. "Tier"

78170. "Tier" means a grouping of hazardous substance release sites that require removal and remedial actions, that are listed alphabetically, and that are of a roughly equivalent priority for removal and remedial action.

Comment. Section 78170 continues former Section 25327 without substantive change.

See Sections 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

Article 4. Construction of Part

§ 78185. Construction as to liability

78185. (a) This part shall not be construed as imposing any new liability associated with acts that occurred on or before January 1, 1982, if the acts were not in violation of existing state or federal laws at the time they occurred.

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

(c) Except as provided in Sections 79650, 79665, and 79670 and Articles 3 (commencing with Section 79700) and 5 (commencing with 79760) of Chapter 8, nothing in this part shall affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of the hazardous substance.

Comment. Section 78185 restates former Section 25366 without substantive change.

See Sections 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78110 ("release authorized or permitted pursuant to state law"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response").

CHAPTER 2. FINANCIAL PROVISIONS

Article 1. Budget

§ 78200. Items to be scheduled in Budget Act

78200. The Director of Finance shall schedule in the annual proposed budget the projects proposed in any fiscal year, that will incur direct costs for removal and remedial actions at hazardous substance release sites.

Comment. Section 78200 restates former Section 25342 without substantive change.

See Section 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

Article 2. Externally-Funded Positions

§ 78210. Protection of positions funded by federal grant or responsible party

78210. (a) For the purposes of this section, an "externally-funded position" means either of the following:

(1) A direct or indirect position that provides oversight and related support of remediation and hazardous substance management at a military base, including a closed military base, that is funded through an agreement with a party responsible for paying the department's costs.

(2) A direct or indirect position that is funded by a federal grant that does not require a state match funded from the General Fund.

(b)(1) Notwithstanding Section 12439 of the Government Code, the Controller may not eliminate any externally-funded position.

(2) Notwithstanding any other provision of law, including Section 4.10 of the Budget Act of 2003, for the 2003–04 and 2004–05 fiscal years, the Director of Finance may not eliminate any externally-funded position.

(c) Neither the Controller nor the Department of Finance may impose any hiring freeze or personal services limitations, including any position reductions, upon any externally-funded position.

(d) The Controller and Department of Finance shall exclude, from the department's base for purposes of calculating any budget or position reductions required by any state agency or any state law, any externally-funded position and the specific amounts attributable to any externally-funded position.

(e) Notwithstanding any other provision of law, neither the Controller nor the Department of Finance may require the department to reduce authorized positions or other appropriations for other department programs, including personal services, to replace the reductions precluded by subdivisions (b), (c), and (d).

(f) Notwithstanding any other provision of law, upon the request of the department, and upon review and approval by the Department of Finance, the Controller shall augment any Budget Act appropriations, except for appropriations from the General Fund, necessary to implement this section.

(g)(1) This section does not apply to any department appropriation or expenditure of General Fund moneys.

(2) This section does not limit the authority of the Department of Finance to eliminate a position when funding for the position, through an agreement with a party or by a federal grant, is no longer available.

Comment. Subdivision (a) of Section 78210 is new. It was added for drafting convenience. Subdivisions (b)-(g) restate former Section 25353.5 without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance").

Article 3. State Account

§ 78220. Actions involving state account

78220. The state account may sue and be sued in its own name.

Comment. Section 78220 continues former Section 25331 without substantive change. See Section 78165 ("state account").

§ 78225. Excess expenditures

78225. Expenditures from the state account shall not be made in excess of the total amount of money in the state account at any one time. Expenditures in excess of that amount may be made only when additional money is collected or otherwise added to the state account.

Comment. Section 78225 continues former Section 25357 without substantive change. See Section 78165 ("state account").

§ 78230. Subaccount for funds for response action at specific site

78230. (a) Notwithstanding any other provision of law, the Controller shall establish a separate subaccount in the state account, for any funds received from a settlement agreement or the General Fund for a removal or remedial action to be performed at a specific site.

(b) Notwithstanding Section 13340 of the Government Code, funds deposited in the subaccount for those removal or remedial actions are hereby continuously appropriated to the department, without regard to fiscal years, for removal or remedial action at the specific site, and for administrative costs associated with the removal or remedial action at the specific site.

(c) Notwithstanding any other provision of law, money in the subaccount for those removal or remedial actions shall not revert to the General Fund or be transferred to any other fund or account in the State Treasury, except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from investment of the funds specified in subdivision (a) pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the subaccount for removal or remedial action at the specific sites.

(e) At the conclusion of all removal or remedial actions at the specific site, any unexpended funds in any subaccounts established pursuant to this section shall be transferred to the subaccount for site operation and maintenance established pursuant to Section 78235, if necessary, for those activities at the site, or, if not needed for site operation and maintenance at the site, to the state account.

(f) There is hereby created a subaccount in the state account as the successor fund to the Stringfellow Insurance Proceeds Account created pursuant to former Section 25330.6, as amended by Chapter 178 of the Statutes of 2007. All assets, liabilities,

and surplus in the Stringfellow Insurance Proceeds Account shall be transferred to, and become a part of, this subaccount for the Stringfellow Superfund Site in Riverside County, as provided in Section 16346 of the Government Code. All appropriations from the Stringfellow Insurance Proceeds Account, to the extent encumbered, shall continue to be available from the subaccount for expenditure for the same purposes and periods.

Comment. Section 78230 continues former Section 25330.4(a)-(e), inclusive, and (f)(1) without substantive change. For ease of reference, former paragraph (f)(1)'s reference to "former Section 25330.6, as that section read on January 1, 2013" has been replaced with a reference to the last statute to amend the section prior to that date.

Former Section 25330.4(f)(2) is obsolete and has not been continued.

See Sections 78050 ("department"), 78080 ("operation and maintenance"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site"), 78165 ("state account").

§ 78235. Subaccount for site operation and maintenance

78235. (a) The Controller shall establish a separate subaccount for site operation and maintenance in the state account. All of the following amounts shall be deposited in the subaccount:

(1) Funds received from responsible parties for site operation and maintenance.

(2) Funds received from the federal government pursuant to the federal act for site operation and maintenance.

(3) Funds received from cities, counties, or any other state or local agency for site operation and maintenance.

(4) Funds appropriated from the state account by the Legislature for site operation and maintenance.

(b) Notwithstanding Section 13340 of the Government Code, funds deposited in the subaccount for site operation and maintenance are hereby continuously appropriated to the department, without regard to fiscal years, for site operation and maintenance, and for administrative costs associated with site operation and maintenance.

(c) Notwithstanding any other provision of law, money in the subaccount for site operation and maintenance shall not revert to the General Fund or be transferred to any other fund or account in the State Treasury, except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from investment of the funds specified in subdivision (a) pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the subaccount for site operation and maintenance.

Comment. Section 78235 continues former Section 25330.5 without substantive change.

See Sections 78050 ("department"), 78065 ("federal act"), 78080 ("operation and maintenance"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 78240. Reserve account for emergencies

78240. (a) There is hereby continuously appropriated from the state account to the department the sum of one million dollars ($1,000,000) for each fiscal year as a reserve account for emergencies, notwithstanding Section 13340 of the Government Code. Funds in the reserve account are governed by Section 78875.

(b) Once the appropriation made pursuant to subdivision (a) is fully expended, the director may file a report with the Legislature if it is in session or, if it is not in session, with the Committee on Rules of the Assembly and the Senate as to the moneys expended pursuant to Section 78875. The Legislature may appropriate moneys from the state account, in addition to those moneys appropriated pursuant to subdivision (a), to the department for the purpose of taking corrective action pursuant to subdivision (a) of Section 78875.

(c) Except as provided in subdivision (b), the amount deposited in the reserve account and appropriated pursuant to this section shall not exceed one million dollars ($1,000,000) in any fiscal year. On June 30 of each year, the unencumbered balance of the reserve account shall revert to and be deposited in the state account.

Comment. The first sentence of subdivision (a) of Section 78240 continues the first sentence of former Section 25354(a).

The second sentence of subdivision (a) is new.

Subdivision (b) continues former Section 25354(c), with the exception of the first sentence.

Subdivision (c) continues former Section 25354(d).

See Sections 78050 ("department"), 78055 ("director"), 78165 ("state account").

Article 4. Site Remediation Account

§ 78260. Site Remediation Account

78260. (a) There is in the General Fund the Site Remediation Account, which shall be administered by the director. The account shall be funded by money transferred from the state account, upon appropriation by the Legislature. Consistent with the requirements of Section 104(c) of the federal act (42 U.S.C. Sec. 9604(c)), the moneys in the account may be expended by the department, upon appropriation by the Legislature, for direct site remediation costs.

(b)(1) For purposes of this section, "direct site remediation costs" means payments to contractors for investigations, characterizations, removal, remediation, or long-term operation and maintenance at sites contaminated or suspected of contamination by hazardous materials, where those actions are authorized pursuant to this part.

(2) "Direct site remediation costs" also means the state-mandated share pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

(3) "Direct site remediation costs" does not include the department's administrative expenses or the department's expenses for staff to perform oversight of investigations, characterizations, removals, remediations, or long-term operation and maintenance.

Comment. Section 78260 continues former Section 25337 without substantive change. In subdivision (a), an erroneous reference to "Section 114(c) of the federal act (42 U.S.C. Sec. 9614(c))" was corrected to refer to "Section 104(c) of the federal act (42 U.S.C. Sec. 9604(c))."

See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78080 ("operation and maintenance"), 78135 ("remove"), 78155 ("site"), 78165 ("state account").

§ 78265. Encumbrance and disbursement of funds

78265. Funds in the Site Remediation Account appropriated for removal or remedial action pursuant to this part are available for encumbrance for three fiscal years subsequent to the fiscal year in which the funds are appropriated and are available for disbursement in liquidation of encumbrances pursuant to Section 16304.1 of the Government Code.

Comment. Section 78265 continues former Section 25330.2 without substantive change.

See Section 78125 ("remedy"), 78135 ("remove").

Article 5. Hazardous Substance Cleanup Bond Act of 1984

§ 78280. Short title

78280. This article shall be known and may be cited as the Johnston-Filante Hazardous Substance Cleanup Bond Act of 1984.

Comment. Section 78280 continues former Section 25385 without substantive change.

§ 78285. Definitions

78285. For purposes of this article, and for purposes of Section 16722 of the Government Code as applied to this article, the following definitions apply:

(a) "Board" means the department.

(b) "Committee" means the Hazardous Substance Cleanup Committee created pursuant to Section 78295.

(c) "Director" means the director.

(d) "Fund" means the state account.

(e) "Orphan site" means a site with a release or threatened release of a hazardous substance with no reasonably identifiable responsible parties.

(f) "Orphan share" means those costs of removal or remedial action at sites with a release or threatened release of hazardous substances, which costs are in excess of amounts included in a cleanup agreement.

(g) "Responsible party" means a person who is, or may be, responsible or liable for carrying out, or paying for the costs of, a removal or remedial action.

Comment. Section 78285 continues former Section 25385.1 without substantive change.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 78290. Application of State General Obligation Bond Law

78290. The State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code) is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued pursuant to this article, and the provisions of that law are included in this article as though set out in full in this article, except that, notwithstanding anything in the State General Obligation Bond Law, the maximum maturity of bonds shall not exceed 30 years from the date of the bonds, or from the date of each respective series. The maturity of each respective series shall be calculated from the date of the series.

Comment. Section 78290 continues former Section 25385.2 without substantive change.

§ 78295. Creation of Hazardous Substance Cleanup Committee

78295. The Hazardous Substance Cleanup Committee, which is hereby created, shall consist of the Governor, the Director of Finance, the Treasurer, the Controller, and the secretary.

Comment. Section 78295 continues former Section 25385.4 without substantive change. See Section 78150 ("secretary").

§ 78300. Authority of committee to create debt for specified purposes

78300. The committee may create debts or liabilities of the State of California, in the aggregate of one hundred million dollars ($100,000,000), in the manner provided in this article. The debts or liabilities shall be created for the purpose of providing moneys, for deposit in the fund, for the purposes specified in Section 78305.

Comment. Section 78300 restates former Section 25385.5 without substantive change. The phrases "debt or debts" and "liability or liabilities" have been singularized. These are nonsubstantive changes. See Section 13. See Section 78285 ("committee" and "fund").

§ 78305. Authorized uses of funds from bond proceeds

78305. (a) The moneys in the state account that are the proceeds of bonds issued and sold pursuant to this article may be used, upon appropriation by the Legislature, for the purposes specified in this section.

(b) The board may expend moneys in the fund that are the proceeds of bonds issued and sold pursuant to this article upon the authorization of the committee, for all of the following purposes:

(1) To provide the state share of a removal or remedial action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)) if the site is the subject of a final remedial action plan issued pursuant to Article 12 (commencing with Section 79190) of Chapter 5.

(2) To pay all costs of a removal or remedial action incurred by the state, or by any local agency with the approval of the director, in response to a release or threatened release of a hazardous substance at a site that is listed in the priority

ranking of sites pursuant to Article 5 (commencing with Section 78760) of Chapter 4 and is the subject of a final remedial action plan issued pursuant to Article 12 (commencing with Section 79190) of Chapter 5, to the extent that the costs are not paid by responsible parties or are reimbursed by the federal act.

(3) To pay for site characterization of a release of hazardous substances, even if a remedial action plan has not been prepared, approved, adopted, or made final for that site.

Comment. Section 78305 continues former Section 25385.6 without substantive change.

See Sections 78055 ("director"), 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response"), 78155 ("site"), 78165 ("state account"), 78285 ("board", "committee," "director," "fund," and "responsible party").

§ 78310. Bonds as general obligations of state

78310. (a) All bonds authorized by this article, which are sold and delivered as provided in this article, constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California are hereby pledged for the punctual payment of both the principal of and the interest on the bonds.

(b) There shall be collected annually, in the same manner and at the same time as other state revenue is collected, that sum, in addition to the ordinary revenues of the state, which is required to pay the principal of, and interest on, the bonds as provided in this article, and all officers charged by law with any duty in regard to the collection of the revenue shall perform each and every act that is necessary to collect this additional sum.

Comment. Section 78310 restates former Section 25385.7 without substantive change.

§ 78315. Transfers to General Fund

78315. Notwithstanding Section 78345, the money deposited in the fund is available for transfer to the General Fund if money was deposited in the fund pursuant to any provision of law requiring repayments to the state for assistance financed by the proceeds of the bonds issued pursuant to this article. When transferred to the General Fund, that money shall be applied as a reimbursement to the General Fund for the principal and interest payments on the bonds that have been paid from the General Fund.

Comment. Section 78315 continues former Section 25386 without substantive change.

See Section 78285 ("fund").

§ 78320. Appropriation from General Fund

78320. There is hereby appropriated from the General Fund in the State Treasury, for the purpose of this article, an amount equal to the sum of all of the following:

(a) The sum, annually, that will be necessary to pay the principal of, and the interest on, the bonds issued and sold pursuant to this article, as the principal and interest become due and payable.

(b) The sum that is necessary to carry out Section 78325, which sum is appropriated without regard to fiscal years, notwithstanding Section 13340 of the Government Code.

Comment. Section 78320 continues former Section 25386.1 without substantive change.

§ 78325. Withdrawals from General Fund

78325. (a) For the purpose of carrying out this article, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of amounts not to exceed the amount of the unsold bonds that the committee has, by resolution, authorized to be sold for the purpose of carrying out this article.

(b) Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the board in accordance with this article.

(c) Any moneys made available pursuant to this section shall be returned to the General Fund from moneys received from the sale of bonds sold for the purpose of carrying out this article.

Comment. Section 78325 continues former Section 25386.2 without substantive change. See Section 78285 ("board," "committee," and "fund").

§ 78330. Tax-exempt funds

78330. Notwithstanding any other provision of this bond act, or of the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), if the Treasurer sells bonds pursuant to this bond act that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law, or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

Comment. Section 78330 continues former Section 25386.25 without substantive change.

§ 78335. Determination on issuance of bonds

78335. Upon the request of the board, and supported by a statement of the proposed actions to be taken pursuant to Section 78305, the committee shall determine whether it is necessary or desirable to issue any bonds authorized pursuant to this article in order to take these actions, and if so, the amount of bonds that should be issued and sold. Successive issues of bonds may be authorized and sold to take these actions progressively, and it is not necessary that all of the bonds authorized by this article to be issued are sold at any one time.

Comment. Section 78335 continues former Section 25386.3 without substantive change. See Section 78285 ("board" and "committee").

§ 78340. Authority to sell bonds

78340. The committee may authorize the Treasurer to sell all, or any part of, the bonds authorized under this article at the time or times as may be fixed by the Treasurer.

Comment. Section 78340 continues former Section 25386.4 without substantive change. See Section 78285 ("committee").

§ 78345. Uses of bond proceeds

78345. Except as provided in Section 78315, all proceeds from the sale of bonds, except those derived from premiums and accrued interest, are available for the purposes specified in Section 78305, but are not available for transfer to the General Fund to pay the principal of, and interest on, the bonds.

Comment. Section 78345 continues former Section 25386.5 without substantive change. A cross-reference to "subdivision (c) of Section 25385.3" has been deleted as obsolete because that section was repealed by its own terms on January 1, 2007. See 2006 Cal. Stat. ch. 77, § 39.

Article 6. Revolving Loans Fund

§ 78360. Definitions

78360. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Brownfield site" has the same meaning as defined in Section 101 of the federal act (42 U.S.C. Sec. 9601).

(b) "Brownfield law" means the federal Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107-118) as amending the federal act.

(c) "Federal Trust Fund" means the Federal Trust Fund established pursuant to Section 16360 of the Government Code.

(d) "Fund" means the Revolving Loans Fund established pursuant to this article.

Comment. Section 78360 continues former Section 25395.35 without substantive change. Technical changes were made to correct a federal law citation and conform to standard citation formats.

See Section 78065 ("federal act").

§ 78365. Revolving Loans Fund

78365. (a) The Revolving Loans Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated, without regard to fiscal year, to the department for expenditure in accordance with this part. The department is the state agency responsible for administering the fund.

(b) All of the following moneys shall be deposited in the fund:

(1) Notwithstanding Section 25173.6, moneys received pursuant to the brownfield law and transferred to the fund from the Federal Trust Fund.

(2) The amounts collected for loan services.

(3) Interest payments.

(4) Principal repayments.

(5) Notwithstanding Section 16475 of the Government Code, any interest earned upon the moneys deposited in the fund.

(c) The department may expend the moneys in the fund only for the purposes authorized by the brownfield law, as specified in subsection (k) of Section 104 of the federal act (42 U.S.C. Sec. 9604(k)), including providing financial assistance for both of the following:

(1) Issuing loans for response actions to eligible brownfield sites.

(2) Making subgrants for response actions to eligible brownfield sites.

(d) Any repayment of fund moneys, including interest payments, and all interest earned on, or accruing to, any moneys in the fund, that are deposited in the fund, as provided in subdivision (b), shall be available, in perpetuity, for expenditure for the purposes and uses authorized by the brownfield law.

Comment. Section 78365 continues former Section 25395.36 without substantive change. A technical change was made to conform to the standard citation format for the federal act. See Section 78065.

See Sections 78050 ("department"), 78065 ("federal act"), 78140 ("response"), 78360 ("brownfield site," "brownfield law," "Federal Trust Fund," and "fund").

Article 7. Illegal Drug Lab Cleanup Account

§ 78370. Illegal Drug Lab Cleanup Account

78370. The Illegal Drug Lab Cleanup Account is hereby created in the General Fund and the department may expend any money in the account, upon appropriation by the Legislature, to carry out the removal actions required by Article 16 (commencing with Section 79350) of Chapter 5 and to implement Section 79380, including, but not limited to, funding an interagency agreement entered into with the Office of Environmental Health Hazard Assessment to provide guidance services. The account shall be funded by moneys appropriated directly from the General Fund.

Comment. Section 78370 continues former Section 25354.5(f) without substantive change.

See Section 78050 ("department"), 78135 ("remove").

CHAPTER 3. GENERAL POWERS AND DUTIES

Article 1. Regulatory Authority

§ 78400. Authority to adopt regulations

78400. The department shall adopt any regulations necessary to carry out its responsibilities pursuant to this part, including, but not limited to, regulations governing the expenditure of, and accounting procedures for, moneys allocated to state, regional, and local agencies pursuant to this part.

Comment. Section 78400 continues former Section 25351.5 without substantive change.

See Section 78050 ("department").

Article 2. Federal Assistance

§ 78410. Obligation to seek federal funds and agreements

78410. The state shall actively seek to obtain all federal funds to which it is entitled under the federal act and shall take all actions necessary to enter into contractual or cooperative agreements under Sections 104(c)(3) and 104(d)(1) of the federal act (42 U.S.C. Sec. 9604(c)(3) and 42 U.S.C. Sec. 9604(d)(1)).

Comment. Section 78410 continues former Section 25358 without substantive change. See Section 78065 ("federal act").

Article 3. Public Outreach

§ 78420. Community service offices

78420. (a) The department and the State Water Resources Control Board shall establish two community service offices, one to serve northern California and the other to serve southern California.

(b) Notwithstanding Section 80025, the department and, if appropriate, the State Water Resources Control Board shall expend a total of four hundred thousand dollars ($400,000) per year from the Orphan Share Reimbursement Trust Fund established pursuant to Chapter 9 (commencing with Section 80000) on the operation of the community service offices established pursuant to this section. The offices shall use these funds to provide direct technical and logistical support to any community advisory group established pursuant to Section 78950. Funds allocated pursuant to this subdivision shall supplement, and not supplant, any funds expended for the purposes of developing and implementing other public participation activities required to be undertaken pursuant to this part, including, but not limited to, activities undertaken pursuant to the National Contingency Plan or the public participation plan required to be adopted by the department pursuant to Section 78930.

(c) The State Water Resources Control Board may contract with the department to provide this service on behalf of a regional board if the State Water Resources Control Board finds that it would be more practical and economical to do so.

(d) In implementing this section and Section 78925, the department and the regional boards are not obligated to expend funds beyond the amounts appropriated in any fiscal year for purposes of developing and implementing public participation activities required by other provisions of this part unless the Orphan Share Reimbursement Trust Fund contains funding at the level specified in subdivision (b).

Comment. Section 78420 continues former Section 25358.7.2, with the exceptions described in this comment, without substantive change. Obsolete language in subdivision (a) about the timing for the establishment of the community service offices is not continued. The second sentence of former Section 25358.7.2(a) is continued elsewhere in this part.

A reference to a "public participation workplan" in subdivision (b) was corrected to refer to a "public participation plan." See Section 78930.

See Sections 78050 ("department"), 78100 ("regional board").

Article 4. Investigatory Powers

§ 78435. Purpose of investigation

78435. The department, a representative of the department, or any person designated by the director may take the actions specified in this article only if there is a reasonable basis to believe that there has been or may be a release or threatened release of a hazardous substance, and only for the purpose of determining under this part the need for a response action, the choosing or taking of a response action, or otherwise for the purpose of enforcing this part.

Comment. Section 78435 continues former Section 25358.1(a) without substantive change.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response").

§ 78440. Authority to require person to provide relevant information

78440. (a) Any officer or employee of the department, a representative of the director, or a person designated by the director may require any person who has or may have information relevant to any of the following matters to furnish the information, upon reasonable notice:

(1) The identification, nature, and quantity of materials that have been, or are, generated, treated, stored, or disposed of at a hazardous substance release site or that have been, or are, transported to a hazardous substance release site.

(2) The nature or extent of a release or a threatened release of a hazardous substance at, or from, a hazardous substance release site.

(3) The ability of a person to pay for or to perform a response action, consistent with Section 104(e) of the federal act (42 U.S.C. Sec. 9604(e)).

(b) Any person required to furnish information pursuant to this article shall pay any costs of photocopying or transmitting the information.

(c) A person who is required to provide information pursuant to subdivision (a) shall, in accordance with Section 78455, allow the officer, employee, representative, or designee, upon reasonable notice and at reasonable times, to have access to, and copy, all records relating to the hazardous substances for purposes of assisting the department in determining the need for a response action.

Comment. Section 78440 continues former Section 25358.1(b)-(d), inclusive, without substantive change. A technical change was made to conform to the standard citation format for the federal act. See Section 78065.

See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response"), 78155 ("site").

§ 78445. Disclosure of information

78445. (a) The department may disclose information submitted pursuant to this article to authorized representatives, contractors, or other governmental agencies only in connection with the department's responsibilities pursuant to this part. The

department shall establish procedures to ensure that information submitted pursuant to this article is used only in connection with these responsibilities and is not otherwise disseminated without the consent of the person who provided the information to the department.

(b) The department may also make available to the United States Environmental Protection Agency any information required by law to be furnished to that agency. The sharing of information between the department and that agency pursuant to this article does not constitute a waiver by the department or of any affected person of any privilege or confidentiality provided by law that pertains to the information.

Comment. Section 78445 continues former Section 25358.1(j) and (k) without substantive change.

See Sections 78050 ("department"), 78085 ("person").

§ 78450. Entry, inspection, and sampling of property

78450. (a) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with Section 78455, enter, at reasonable times, any of the following properties:

(1) Any nonresidential establishment or other place or property where any hazardous substances may be, or have been, produced, stored, treated, disposed of, or transported from.

(2) Any nonresidential establishment or other place or property from which, or to which, a hazardous substance has been, or may have been, released.

(3) Any nonresidential establishment or other place or property where a hazardous substance release is, or may be, threatened.

(4) Any nonresidential establishment or other place or property where entry is needed to determine the need for a response action, or the appropriate remedial action, to effectuate a response action under this part.

(5) Any residential place or property that, if it were a nonresidential establishment or other place or property, would otherwise meet the criteria described in paragraphs (1) to (4), inclusive, if the department, representative, or person designated by the director is able to establish, based upon reasonably available evidence, that hazardous substances have been released onto or under the residential place or real property and if entry is made only at reasonable times and after reasonable notification to the owners and occupants.

(b) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with Section 78455, carry out any of the following activities:

(1) Inspect and obtain samples from any establishment or other place or property specified in subdivision (a) or from any location of any suspected hazardous substance.

(2) Inspect and obtain samples of any substances from any establishment or place or property specified in subdivision (a).

(3) Inspect and obtain samples of any containers or labeling for the suspected hazardous substances, and samples of the soil, vegetation, air, water, and biota on the premises.

(4) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous substances.

(5) Survey and determine the topographic, geologic, and hydrogeologic features of the land.

(6) Photograph any equipment, sample, activity, or environmental condition described in paragraphs (2) to (5), inclusive.

(c)(1) If photographs are to be taken pursuant to paragraph (6) of subdivision (b), the department shall do all of the following:

(A) Comply with all procedures established pursuant to Section 78490.

(B) Notify the person whose facility is photographed prior to public disclosure of the photographs.

(C) Upon the request of the person owning the facility, submit a copy of any photograph to the person for the purpose of determining whether trade secret information, as defined in Section 78480, or facility security, would be revealed by the photograph.

(2) "Disclosure," as used in Section 78485, for purposes of this paragraph, does not include the review of the photograph by a court of competent jurisdiction or by an administrative law judge. A court or judge may review the photograph in camera.

(d) An officer, employee, representative, or designee who enters a place, establishment, or property pursuant to this article shall make a reasonable effort to inform the owner or the owner's authorized representative of the inspection and shall provide split samples to the owner or the representative upon request.

Comment. Section 78450 continues former Section 25358.1(e)–(h) without substantive change. See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78140 ("response").

§ 78455. Entry to property without voluntary grant of access

78455. If the owner or the owner's authorized representative does not voluntarily grant access to a place, establishment, or property pursuant to this article, the officer, employee, representative, or designee shall first obtain a warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, if there is an emergency posing an immediate threat to public health and safety, the officer, employee, representative, or designee may enter the place, establishment, or property without the consent of the owner or owner's authorized representative and without the issuance of a warrant.

Comment. Section 78455 continues former Section 25358.1(i) without substantive change.

§ 78460. Immunity for entry and response action

78460. The department, and any person authorized by the department to enter upon any lands for the purpose of taking a response action pursuant to this part, shall

not be held liable, in either a civil or criminal proceeding, for trespass or for any other acts that are necessary to carry out the response action.

Comment. Section 78460 continues former Section 25358.1(*l*) without substantive change. See Sections 78050 ("department"), 78085 ("person"), 78140 ("response").

§ 78465. Order directing compliance

78465. If a person intentionally or negligently fails to furnish and transmit to any officer or employee of the department, a representative of the director, or a person designated by the director any information required to be disclosed pursuant to this article, the department may issue an order directing compliance with the request. The order shall be issued only after notice and opportunity for consultation as is reasonably appropriate under the circumstances.

Comment. Section 78465 continues former Section 25367(b) without substantive change. See Sections 78050 ("department"), 78055 ("director"), 78085 ("person").

§ 78470. Penalties for violations

78470. Any person who commits any of the following acts shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation, or for continuing violations, for each day during which that violation continues:

(a) Intentionally or negligently makes any false statement or representation in any report or information furnished pursuant to this article.

(b) Intentionally or negligently fails to provide any information requested pursuant to this article.

(c) Refuses or prevents, without sufficient cause, any activity authorized pursuant to this article.

Comment. Section 78470 continues former Section 25367(a), with the exception of part of paragraph (a)(3) (which is restated in Section 78665), without substantive change. See Section 78085 ("person").

Article 5. Protection of Trade Secrets

§ 78480. "Trade secrets"

78480. "Trade secrets," as used in this article, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that is not patented, that is known only to certain individuals within a commercial concern who are using it to fabricate, produce, develop, or compound an article of trade or a service having commercial value, and that gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

Comment. Section 78480 continues former Section 25358.2(a) without substantive change.

§ 78485. Identification of trade secret information

78485. Any person providing information pursuant to subdivision (a) of Section 78440 shall, at the time of its submission, identify all information that the person believes is a trade secret. Any information or record not identified as a trade secret is available to the public, unless exempted from disclosure by other provisions of law.

Comment. Section 78485 continues former Section 25358.2(c) without substantive change. See Sections 78085 ("person"), 78480 ("trade secrets").

§ 78490. Procedures for protection of trade secret information

78490. The department shall establish procedures to ensure that trade secret information is utilized by the department only in connection with the responsibilities of the department pursuant to this part and is not otherwise disseminated without the consent of the person who provided the information to the department. However, any information shall be made available to governmental agencies for use in making studies and for use in judicial review or enforcement proceedings involving the person furnishing the information.

Comment. Section 78490 continues former Section 25358.2(b) without substantive change. See Sections 78050 ("department"), 78085 ("person"), 78480 ("trade secrets").

§ 78495. Penalty for knowing and willful dissemination of trade secret information

78495. Any person who knowingly and willfully disseminates information protected by this article or procedures established by the department pursuant to Section 78490 shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000), imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment.

Comment. Section 78495 continues former Section 25358.2(d) without substantive change. See Sections 78050 ("department"), 78085 ("person").

Article 6. Abandoned Sites

§ 78505. Notice regarding abandoned sites

78505. (a) The director shall notify, within 20 working days, each of the appropriate county health officers as to all the potential abandoned sites of which the department has knowledge or that the department is investigating for releases of hazardous substances that may have occurred or might be occurring at abandoned sites. The county health officers may request quarterly updates on the status of the investigations of these sites.

(b) As used in this section, "abandoned site" means an inactive disposal, treatment, or storage facility that cannot, with reasonable effort, be traced to a specific owner, a site whose owner is the subject of an order for relief in bankruptcy, or a location where a hazardous substance has been illegally disposed.

(c) Within 10 working days of the identification of an abandoned site, the department or a county health officer shall notify the other agency of the status of the site. The department and the county health officer shall inform the other agency of orders to fence and post these sites and the status of compliance with those orders. The department or the county health officers may request quarterly updates of the testing, enforcement action, and remedial or removal actions that are proposed or ongoing.

Comment. Section 78505 continues former Section 25359.6 without substantive change. See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78105 ("release"), 78135 ("remove"), 78155 ("site").

Article 7. Laboratories

§ 78510. Accreditation requirement

78510. The analysis of any material that is required to demonstrate compliance with this part shall be performed by a laboratory accredited by the State Water Resources Control Board pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

Comment. Section 78510 restates former Section 25358.4 without substantive change. The reference to the "State Department of Health Services" in former Section 25358.4 has been replaced with a reference to the "State Water Resources Control Board." Formerly, the State Department of Health Services was the state agency authorized to accredit laboratories under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101. See former Section 100825(c)(1), (4), (18) as added by 2005 Cal. Stat. ch. 406, § 2. Currently, the State Water Resources Control Board is the agency authorized to accredit laboratories under that article. See Section 100825(c)(1), (4), (11), (12).

Article 8. Technology Demonstration Program

§ 78525. Technology demonstration program for treatment technologies

78525. Notwithstanding Section 79055, the department shall carry out a program of full-scale demonstrations to evaluate treatment technologies that can be safely utilized for removal and remedial actions to hazardous substance releases.

Comment. Section 78525 continues former Section 25368 without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78530 ("full-scale demonstration" and "treatment technologies").

§ 78530. Definitions

78530. For the purposes of this article, the following definitions apply:

(a) "Treatment technologies" means methods, techniques, or processes, including proprietary or patented methods, that permanently alter the composition of hazardous substances at hazardous substance release sites through chemical, biological, or physical means so as to make the substances nonhazardous or to significantly reduce the toxicity, mobility, or volume, or any combination of these characteristics, of the hazardous substances or contaminated materials being treated.

(b) "Full-scale demonstration" means a demonstration of a technology that is of a size or capacity that permits valid comparison of the technology to the technical performance and cost of conventional technologies, that is likely to be cost-effective, and that will result in a substantial or complete remedial or removal action to a hazardous substance release site.

Comment. Section 78530 restates former Section 25368.1 without substantive change.

See Sections 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

§ 78535. Criteria for selection

78535. The department shall select technology demonstration projects to be evaluated pursuant to this article using criteria that include, at a minimum, all of the following requirements:

(a) The project proposal includes complete and adequate documentation of technical feasibility.

(b) The project proposal includes evidence that a technology has been sufficiently developed for full-scale demonstration and can likely operate on a cost-effective basis.

(c) The department has determined that a site is available and suitable for demonstrating the technology, taking into account the following:

(1) The physical, biological, chemical, and geological characteristics of the site.

(2) The extent and type of contamination found at the site.

(3) The capability to conduct demonstration projects in a manner to ensure the protection of human health and the environment.

(d) The technology to be demonstrated preferably has widespread applicability in removal and remedial actions at other sites in the state.

(e) The project will be developed to the extent that a successful demonstration on a hazardous substance release site may lead to commercial utilization by responsible parties at other sites in the state.

(f) The department has determined that adequate funding is available from one or more of the following sources:

(1) Responsible parties.

(2) The United States Environmental Protection Agency.

(3) The state account.

Comment. Section 78535 restates former Section 25368.2 without substantive change. The phrase "technology or technologies" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account"), 78530 ("full-scale demonstration").

§ 78540. Selection of sites

78540. The department shall identify hazardous substance release sites, listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4, that are

particularly well-suited for technology demonstration projects. In identifying hazardous substance release sites, the department shall consider, at a minimum, all of the following:

(a) The state's priority ranking for removal and remedial actions to hazardous substance release sites adopted pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

(b) The volume and variability of the hazardous substance release at the site.

(c) The availability of data characterizing the hazardous substance release.

(d) The accessibility of the hazardous substance release.

(e) Availability of required utilities.

(f) Support of federal and local governments.

(g) Potential for adverse effects to public health and the environment.

Comment. Section 78540 continues former Section 25368.3 without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

§ 78545. Solicitation of proposals

78545. (a) The department shall annually, on or before July 1, publish a solicitation for proposals to conduct treatment demonstration projects that utilize technologies that are at a stage of development suitable for full-scale demonstrations at hazardous substance release sites. The solicitation notice shall prescribe information to be included in the proposal, including technical and economic data derived from the applicant's own research and development efforts, and any other information that may be prescribed by the department to assess the technology's potential and safety and the types of removal or remedial action to which it may be applicable.

(b) Any person, private entity, or public entity may submit an application to the department in response to the solicitation. The application shall contain a proposed treatment demonstration plan setting forth how the treatment demonstration project is to be carried out and any other information that the department may require.

Comment. Section 78545 restates former Section 25368.4 without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response"), 78155 ("site"), 78530 ("full-scale demonstration").

§ 78550. Selection of technology demonstration projects

78550. (a) On or before January 1, after reviewing all proposals submitted pursuant to Section 78545, the department shall annually select at least two treatment demonstration projects, to be commenced during that calendar year, using, at a minimum, the criteria specified in Section 78535.

(b) If the department determines that the required number of demonstrations required by subdivision (a) cannot be initiated consistent with the criteria specified in Section 78535 in any fiscal year, the department shall inform the appropriate

committees of the Legislature of the reasons for its inability to conduct these demonstration projects.

(c) Each treatment demonstration project selected pursuant to this section shall be performed by the applicant, or by a person approved by the applicant and the department.

Comment. Section 78550 continues former Section 25368.5 without substantive change. See Sections 78050 ("department"), 78085 ("person").

§ 78555. Recovery of incremental costs

78555. Notwithstanding Section 79650, if the department determines that using an alternative treatment technology to conduct a removal or remedial action at a hazardous substance release site listed pursuant to Section 78760 would be more costly than another available and feasible removal or remedial action method that would also achieve satisfactory results, the department may determine not to attempt to recover from the liable person the incremental costs of the removal or remedial action attributable to the alternative treatment technology.

Comment. Section 78555 continues former Section 25368.6 without substantive change. An obsolete reference to "paragraph (2) or (3) of subdivision (b) of Section 25356" was updated to refer to "Section 78760."

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78530 ("treatment technologies").

§ 78560. Technology transfer program

78560. (a) The department shall conduct a technology transfer program that shall include the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative hazardous substance treatment technologies demonstrated pursuant to this article.

(b) The information in subdivision (a) shall include all of the following:

(1) An evaluation of each treatment demonstration project's efficacy relating to performance and cost in achieving permanent and significant reduction in risks from hazardous substance releases.

(2) Documentation of the testing procedures utilized in the project, the data collected, and the quality assurance and quality control that was conducted.

(3) The technology's applicability, pretreatment and posttreatment measurements, and the technology's advantages or disadvantages compared to other available technologies.

Comment. Section 78560 restates former Section 25368.7 without substantive change. An erroneous reference to "hazardous waste" was corrected to refer to "hazardous substance."

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78530 ("treatment technologies").

§ 78565. Consideration of cost-effectiveness

78565. Notwithstanding subdivision (e) of Section 79205, when preparing or approving a remedial action plan for a site listed pursuant to Section 78760, that has

been selected for a treatment demonstration project pursuant to this article, the department shall consider the cost-effectiveness of the project but is not required to choose the most cost-effective measure.

Comment. Section 78565 continues former Section 25368.8 without substantive change. An erroneous cross-reference to "paragraph (5) of subdivision (c) of Section 25356.1" was corrected to refer to "subdivision (e) of Section 79205," which continues former Section 25356.1(d)(5). An obsolete reference to "paragraph (2) or (3) of subdivision (b) of Section 25356" was updated to refer to "Section 78760."

See Section 78050 ("department"), 78125 ("remedy"), 78155 ("site").

Article 9. Content of Biennial Report

§ 78575. San Gabriel Valley groundwater sites

78575. (a) The department shall report to the Governor and the Legislature on the progress of the cleanup of the San Gabriel Valley groundwater sites in Los Angeles County, and on the progress of enforcement actions relating to those sites, in the biennial report specified in Section 25178. The report shall include, but not be limited to, all of the following:

(1) State expenditures and planned expenditures.

(2) Actions accomplished at the sites.

(3) Actions planned, including a time schedule for the accomplishment of planned actions.

(b) The report may be prepared in cooperation with other state and federal agencies involved with the sites, and shall include a summary of the activities of those additional agencies.

Comment. Section 78575 continues former Section 25334.7 without substantive change.

See Section 78050 ("department"), 78155 ("site").

§ 78580. Accounting of expenditures from emergency reserve account

78580. The department shall include in the biennial report specified in Section 25178 an accounting of the moneys expended pursuant to Section 78875.

Comment. Section 78580 continues the first sentence of former Section 25354(c) without substantive change.

See Section 78050 ("department").

Article 10. Contracting

§ 78590. Definitions

78590. For purposes of this article, the following definitions shall apply:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of engineering, architecture, environmental, landscape architecture, construction project management, or land surveying.

(b) "Prequalified list" means a short list of professional service firms that possess the qualifications established by the department to perform a specific type of professional service, with each firm ranked in order of its qualifications and costs, pursuant to subdivision (c) of Section 78600.

(c) "Professional service" includes a professional service of an engineering, architectural, environmental, landscape architectural, construction project management, land surveying, or similar nature, as well as an incidental service that members of these professions and those in their employ may logically or justifiably perform.

Comment. Section 78590 restates former Section 25358.6.1(a) without substantive change.

The definition of "prequalified list" was restated to make clear that the "prequalified list" is the ranked short list of firms prepared pursuant to Section 78600(c).

The defined term "engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services" was simplified to "professional service" and implementing changes were made.

See Section 78050 ("department").

§ 78595. Application of article to contracts less than or equal to $1,000,000

78595. Notwithstanding Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, the department may advertise and award a contract, in accordance with this article, for a professional service pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20, if the contract is individually in an amount equal to, or less than, one million dollars ($1,000,000).

Comment. Section 78595 continues former Section 25358.6.1(b) without substantive change.

See Sections 78050 ("department"), 78590 ("firm," "professional service").

§ 78600. Prequalified lists

78600. The department may establish prequalified lists of professional service firms in accordance with the following process:

(a) For each type of professional service work for which the department elects to use this article for advertising and awarding contracts, the department may request annual statements of qualifications from interested firms. The request for statements of qualifications shall be announced statewide through the California State Contracts Register and publications, internet websites, or electronic bulletin boards of respective professional societies that are intended, designed, and maintained by the professional societies to communicate with their memberships. Each announcement shall describe the general scope of services to be provided within each generic project category for a professional service that the department anticipates may be awarded during the period covered by the announcement.

(b) The department shall define a generic project category so that each specific project to be awarded within that generic project category is substantially similar to all other projects within that generic project category, may be within the same size range and geographical area, and requires substantially similar skills and magnitude of professional effort as every other project within that generic project category. The

generic categories shall provide a basis for evaluating and establishing the type, quality, and costs, including hourly rates for personnel and field activities and equipment, of the services that would be provided by the firm.

(c) The department shall evaluate the statements of qualifications received pursuant to subdivision (a) and the department shall develop a short list of the most qualified firms that meet the criteria established and published by the department. The department shall hold discussions regarding each firm's qualifications with all firms listed on the short list. The department shall then rank the firms listed on the short list according to each firm's qualifications and the evaluation criteria established and published by the department.

(d) The department shall maintain prequalified lists of professional service firms on an ongoing basis, except that no firm may remain on a list developed pursuant to subdivision (c) based on a single qualification statement for more than three years. The department shall include in each prequalified list no less than three firms, unless the department certifies that the scope of the prequalified list is appropriate for the department's needs, taking into account the nature of the work, that the department made reasonable efforts to solicit qualification statements from qualified firms, and that the efforts were unsuccessful in producing three firms that met the established criteria. A firm may remain on the prequalified list up to three years without resubmitting a qualification statement, but the department may add additional firms to that list and may annually rank these firms. For purposes of annual adjustment to the ranking of firms already on the prequalified list, the department shall rely on that firm's most recent annual qualification statement, if the statement is not more than three years old.

Comment. Section 78600 restates former Section 25358.6.1(c)(1)-(4), inclusive, without substantive change. Subdivision (d) was revised to remove superfluous cross-references. See Section 78590 ("prequalified list").

See Sections 78050 ("department"), 78590 ("firm," "prequalified list," "professional service").

§ 78605. Contracting using prequalified lists

78605. (a) During the term of the prequalified list, as specific projects are identified by the department as being eligible for contracting under the procedures adopted pursuant to Section 78610, the department shall contact the highest ranked firm on the appropriate prequalified list to determine if that firm has sufficient staff and is available for performance of the project. If the highest ranked firm is not available, the department shall continue to contact firms on the prequalified list in order of rank until a firm that is available is identified.

(b) The department may enter into a contract for the services with a firm identified pursuant to subdivision (a), if the contract is for a total price that the department determines is fair and reasonable to the department and otherwise conforms to all matters and terms previously identified and established upon participation in the prequalified list.

(c)(1) If the department is unable to negotiate a satisfactory contract with a firm identified pursuant to subdivision (b), the department shall terminate the negotiations with that firm and the department shall undertake negotiations with the next ranked firm that is available for performance. If a satisfactory contract cannot be negotiated with the second identified firm, the department shall terminate these negotiations and the department shall continue the negotiation process with the remaining qualified firms, in order of their ranking, until the department negotiates a satisfactory contract.

(2) The department may award a contract to a firm on a prequalified list that is to be executed, including amendments, for a term that extends beyond the expiration date of that firm's tenure on the prequalified list.

(3) If the department is unable to negotiate a satisfactory contract with a firm on two separate occasions, the department may remove that firm from the prequalified list.

(d) Once a satisfactory contract is negotiated and awarded to a firm from any prequalified list for a generic project category involving a site or facility investigation or characterization, a feasibility study, or a remedial design, for a specific response action or corrective action, including, but not limited to, a corrective action carried out pursuant to Section 25200.10, the department shall not enter into a contract with that firm for purposes of construction or implementation of any part of that same response action or corrective action.

Comment. Section 78605 restates former Section 25358.6.1(c)(5)-(8), inclusive, without substantive change. Subdivision (a) was revised to remove superfluous cross-references. See Section 78590 ("prequalified list").

See Sections 78050 ("department"), 78060 ("feasibility study"), 78115 ("remedial design"), 78135 ("remove"), 78140 ("response"), 78155 ("site"), 78590 ("firm," "prequalified list").

§ 78610. Authority to adopt guidelines or regulations

78610. The department may adopt guidelines or regulations as necessary and consistent with this article, to define the manner of advertising, generic project categories, type, quantity and cost of services, qualification standards and evaluation criteria, content and submittal requirements for statements of qualification, procedures for ranking of firms and administration of the prequalified list, the scope of matters addressed by participation on a prequalified list, manner of notification of, negotiation with, and awarding of contracts to, prequalified firms, and procedures for protesting the award of contracts under this article, or any other matter that is appropriate for implementation of this article.

Comment. Section 78610 continues former Section 25358.6.1(d) without substantive change.

See Sections 78050 ("department"), 78590 ("firm," "prequalified list").

§ 78615. Exemption for specified actions

78615. Any removal or remedial action taken or contracted by the department pursuant to Section 78870 or 78875 is exempt from this article.

Comment. Section 78615 continues former Section 25358.6.1(e) without substantive change.

See Sections 78050 ("department"), 78125 ("remedy"), 78135 ("remove").

§ 78620. Compliance with Government Code personal services contract rules

78620. This article does not exempt any contract from compliance with Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code.

Comment. Section 78620 continues former Section 25358.6.1(f) without substantive change.

CHAPTER 4. RELEASES OF HAZARDOUS SUBSTANCES

Article 1. General Powers of Director

§ 78650. Powers of director in event of release or threatened release of hazardous substances

78650. When the director determines that a release of a hazardous substance has occurred or is about to occur, the director may do any or all of the following:

(a) Undertake those investigations, monitoring, surveys, testing, and other information gathering necessary to identify the existence, source, nature, and extent of the hazardous substances involved and the extent of danger to the public health or environment.

(b) Undertake those planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations that are necessary or appropriate to plan and direct response actions, to recover the cost of those actions, and to enforce this part.

Comment. Section 78650 continues former Section 25358.3(b) without substantive change.

See Sections 78055 ("director"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response").

§ 78655. Authority to take or contract for response or other authorized actions

78655. (a) Whenever there is a release or threatened release of a hazardous substance into the environment, the director may take or contract for any necessary removal or remedial action and may take or contract for any actions authorized by Section 78650, in compliance with the provisions of this part, including, but not limited to, subdivision (a) of Section 79130.

(b) Any person bidding for a contract specified in subdivision (a) shall submit a disclosure statement, as specified by Section 25112.5, except for a federal, state, or local agency. The director may prohibit a person from bidding on such a contract if the director makes any of the following determinations:

(1) The director determines, in writing, that the bidder, or, if the bidder is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has engaged in activities resulting in any federal or state conviction that are significantly related to the fitness of the bidder to perform the bidder's duties or activities under the contract. For purposes of this paragraph, "conviction" means a plea or verdict of

guilty or a conviction following a plea of nolo contendere. Any action that the department may take pursuant to this subdivision relating to the department's refusal to permit a person to bid on the contract 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 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.

(2) The director determines, in writing, that the bidder, or, if the bidder is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has violated or failed to comply with this part, Chapter 6.5 (commencing with Section 25100) or Chapter 6.7 (commencing with Section 25280) of Division 20, the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the federal Hazardous Materials Transportation Authorization Act of 1994, as amended (49 U.S.C. Sec. 5101 et seq.), the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.), the federal 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 subdivision (a) of Section 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or failure to comply shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(3) The director determines, in writing, that the bidder has had a license, permit, or registration for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous substances revoked or suspended.

Comment. Section 78655 continues former Section 25358.3(c) and (d) without substantive change. Technical changes were made to correct federal law citation formats.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove").

§ 78660. Judicial proceedings

78660. (a) Whenever there is a release or threatened release of a hazardous substance, the director may request the Attorney General to secure relief as may be necessary from the responsible party to abate the release or threatened release. The

superior court of the county in which the release or threatened release occurs has jurisdiction to grant the relief that the public interest and equities of the case may require to protect the public health and safety and the environment. Upon a showing by the department that a release or threatened release of a hazardous substance has occurred or is occurring, and that there may be an imminent or substantial endangerment to the public health and safety or to the environment, the court may grant a temporary restraining order or a preliminary or permanent injunction.

(b) Upon the failure of any person to comply with any order issued by the department pursuant to this article, Section 78870, or Section 79055, the director may request the Attorney General to petition the superior court for the issuance of an injunction requiring that person to comply with the order. The superior court shall have jurisdiction to grant a temporary restraining order or a preliminary or permanent injunction.

(c) In any civil action brought pursuant to this part in which a temporary restraining order or a preliminary or permanent injunction is sought, the department shall prove that the defendant is a responsible party and that there is a release or threatened release of a hazardous substance. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order or the preliminary or permanent injunction not be issued, or that the remedy at law is inadequate. The temporary restraining order or the preliminary or permanent injunction shall issue without those allegations and without that proof.

Comment. Section 78660 restates former Section 25358.3(e)-(g), inclusive, without substantive change. The phrase "party or parties" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78145 ("responsible party").

§ 78665. Penalties for violations

78665. Any person who refuses or prevents, without sufficient cause, any activity authorized pursuant to this article or Section 78870 shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation, or for continuing violations, for each day during which that violation continues.

Comment. Section 78665 restates part of former Section 25367(a)(3) without substantive change.

See Section 78085 ("person").

Article 2. Reporting Requirement

§ 78675. Prohibition and reporting requirement for releases

78675. (a) A person shall not release, or allow or cause a release of, a reportable quantity of a hazardous substance into the environment that is not authorized or permitted pursuant to state law.

(b) Any release of a reportable quantity of hazardous substance shall be reported to the department in writing within 30 days of discovery, unless any of the following apply:

(1) The release is permitted or in the permit process.

(2) The release is authorized by state law.

(3) The release requires immediate reporting to the Office of Emergency Services pursuant to Section 11002 or 11004 of Title 42 of the United States Code, or pursuant to Section 25510.

(4) The release has previously been reported to the department or the Office of Emergency Services.

(5) The release occurred prior to January 1, 1994.

(c) For the purposes of this article, "reportable quantity" means either of the following:

(1) The quantity of a hazardous substance established in Part 302 (commencing with Section 302.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations, the release of which requires notification pursuant to that part.

(2) Any quantity of a hazardous substance that is not reportable pursuant to paragraph (1), but that may pose a significant threat to public health and safety or to the environment. The department may establish guidelines for determining which releases are reportable under this paragraph.

Comment. Section 78675 continues former Section 25359.4(a)-(c), inclusive, without substantive change. A cross-reference to Section 25507 has been corrected to refer to Section 25510.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release").

§ 78680. Liability for failure to report

78680. (a) The owner of property on which a reportable release has occurred and any person who releases, or causes a reportable release and who fails to make the written report required by subdivision (b) of Section 78675, shall be liable for a penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation and for each day that a violation continues. Each day on which the released hazardous substance remains is a separate violation unless the person has either filed the report or is in compliance with an order issued by a local, state, or federal agency with regard to the release.

(b) Liability under this article may be imposed in a civil action or may be administratively imposed by the department pursuant to Article 4 (commencing with Section 79590) of Chapter 7.

(c) If the violation of subdivision (b) of Section 78675 results in, or significantly contributes to, an emergency, including, but not limited to, a fire, to which a county, city, or district is required to respond, the responsible party may be assessed the full cost of the emergency response by the city, county, or district.

Comment. Section 78680 continues former Section 25359.4(d)-(f), inclusive, without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party").

Article 3. Disclosure Requirement

§ 78700. Disclosure requirement for property owner

78700. Any owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath that real property shall, prior to the sale, lease, or rental of the real property by that owner, give written notice of that condition to the buyer, lessee, or renter of the real property. Failure of the owner to provide written notice when required by this section to the buyer, lessee, or renter shall subject the owner to actual damages and any other remedies provided by law. In addition, where the owner has actual knowledge of the presence of any release of a material amount of a hazardous substance and knowingly and willfully fails to provide written notice to the buyer, lessee, or renter, as required by this section, the owner is liable for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation.

Comment. Section 78700 continues former Section 25359.7(a) without substantive change. See Sections 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy").

§ 78705. Disclosure requirement for lessee or renter

78705. Any lessee or renter of real property who knows or has reasonable cause to believe that any release of a hazardous substance has come or will come to be located on or beneath that real property shall, within a reasonable period of time, either prior to the release or following the discovery by the lessee or renter of the presence or believed presence of the hazardous substance release, give written notice of that condition to the owner of the real property or to the lessor under the lessee's or renter's lease or rental agreement.

(a) A lessee or renter who fails to provide written notice when required by this section to the owner or lessor is subject to actual damages and any other remedy provided by law.

(b) If the lessee or renter has knowledge of the presence of a release of a material amount of a hazardous substance, or of a hazardous substance release that is required to be reported to a state or local agency pursuant to law, on or under the real property leased or rented by the lessee or renter and knowingly and willfully fails to provide written notice when required by this section to the owner or lessor, both of the following shall apply:

(1) The failure is deemed to constitute a default, upon the owner's or lessor's written notice to the lessee or renter, under the lessee's or renter's lease or rental agreement, except that this paragraph does not apply to lessees and renters of property used exclusively for residential purposes.

(2) The lessee or renter is liable for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation.

(c) A lessee or renter may cure a default under the lessee's or renter's lease or rental agreement that resulted from a violation of this section, by promptly commencing and completing the removal of, or taking other appropriate remedial action with respect to, the hazardous substance release. The removal or remedial action shall be conducted in accordance with all applicable laws and regulations and in a manner that is reasonably acceptable to, and that is approved in writing by, the owner or lessor. This subdivision does not relieve the lessee or renter of any liability for actual damages or for any civil penalty for a violation of this section.

Comment. Section 78705 continues former Section 25359.7(b) without substantive change.

See Sections 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove").

Article 4. Securing Site of Release

§ 78720. Conditions when order to secure site is required

78720. After making a determination, based upon a preliminary site assessment that there has been a release of a hazardous substance on, under, or into the land on a site, the department or a county health officer shall order the property owner to secure the site if all of the following conditions apply to that site:

(a) The release does not comply with the terms of a current permit or interim status document or regulation of the department.

(b) The site poses a public health risk if human contact is made with the hazardous substance or the surrounding contaminated area.

(c) There is a likelihood of human or domestic animal contact.

Comment. Section 78720 continues former Section 25359.5(a) without substantive change. An erroneous reference to "hazardous waste" was corrected to refer to "hazardous substance."

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site").

§ 78725. Requirements of order to secure site

78725. (a) The order to secure the site shall require, within five days after receiving notification of the order, the posting of the site with signs. The order shall also require, within five days after receiving notification of the order, that the site be enclosed with a fence, unless it is physically and economically infeasible or unless the fencing is unnecessary because it will not alleviate the danger to the public health.

(b) If fencing is ordered, the fences shall be maintained at the site to prevent unauthorized persons from gaining access to the site. The signs shall be maintained and shall meet all of the following requirements:

(1) The signs shall be bilingual, appropriate to the local area, and may include international symbols, as required by the department.

(2) The signs shall have lettering that is legible from a distance of at least 25 feet.

(3) The signs shall read: "Caution: Hazardous Substance Area, Unauthorized Persons Keep Out" and shall have the name and phone number of the department or the county health officer that ordered the posting.

(4) The signs shall be visible from the surrounding contaminated area and posted at each route of entry into the site, including those routes that are likely to be used by unauthorized persons, at access roads leading to the site, and facing navigable waterways where appropriate.

(5) The signs shall be of a material able to withstand the elements.

Comment. Section 78725 continues former Section 25359.5(b) and (c) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78155 ("site").

§ 78730. Advising agencies on health risks and site requirements

78730. The department or the county health officer shall advise other agencies on the public health risks and the need for fencing and posting of sites when those agencies confirm the release of a hazardous substance pursuant to Section 78720.

Comment. Section 78730 continues former Section 25359.5(e) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site").

§ 78735. Penalty for failure to comply with order to secure site

78735. (a) A property owner who fails to comply with an order of the department or the county health officer is subject to a civil penalty of up to twenty-five thousand dollars ($25,000). In determining the amount of a civil penalty to be imposed, the court shall consider all relevant circumstances, including, but not limited to, the economic assets of the property owner and whether the property owner has acted in good faith.

(b) If the property owner fails to secure and post the site, the department or the county health officer shall secure and post the site pursuant to subdivision (a) of Section 78725 within 30 days of the expiration of the five-day period and shall seek recovery of the costs of that securing and posting from the property owner. If the site is an abandoned site, as defined in Section 78505, if the site cannot be traced to a specific owner, or if the owner is the subject of an order for relief in bankruptcy, the department or the county health officer shall secure and post the site, using any source of funds, pursuant to subdivision (a) of Section 78725.

Comment. Section 78735 continues former Section 25359.5(d) without substantive change.

See Sections 78050 ("department"), 78155 ("site").

§ 78740. Remedies and penalties not exclusive

78740. The remedies and penalties specified in this article and Section 78505 are in addition to, and do not affect, any other remedies, enforcement actions, requirements, or penalties otherwise authorized by law.

Comment. Section 78740 continues former Section 25359.5(f) without substantive change.

Article 5. Listing of Hazardous Substance Release Sites

§ 78760. List of selected hazardous substance release sites

78760. (a) The department shall publish and revise, at least annually, a listing of the hazardous substance release sites selected for, and subject to, a response action under this part.

(b) The department shall list the sites based upon the criteria adopted pursuant to Section 78765 and the extent to which deferral of a response action at a site will result, or is likely to result, in a rapid increase in response costs at the site or in a significant increase in risk to human health or safety or the environment.

(c) The department shall list sites alphabetically within each priority tier, as specified in Section 78770, and shall update the list of sites at least annually to reflect new information regarding previously listed sites or the addition of new sites requiring response actions.

(d) The list of sites established pursuant to this section shall be published by the department and made available to the public or any interested person upon request and without cost.

Comment. Section 78760 continues former Section 25356(b) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response"), 78155 ("site"), 78170 ("tier").

§ 78765. Criteria for selection of hazardous substance release sites

78765. (a) The department shall adopt, by regulation, criteria for the selection of hazardous substance release sites for a response action under this part. The criteria shall take into account pertinent factors relating to public health, safety and the environment. The pertinent factors shall include, but are not necessarily limited to, potential hazards to public health, safety or the environment, the risk of fire or explosion, and toxic hazards, and shall also include the criteria established pursuant to Section 105(a)(8) of the federal act (42 U.S.C. Sec. 9605(a)(8)).

(b) The criteria adopted pursuant to subdivision (a) may include a minimum hazard threshold, below which sites shall not be listed pursuant to this article, if the sites are subject to the authority of the department to order a response action, or similar action, pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20.

Comment. Section 78765 restates former Section 25356(a) without substantive change. An incomplete cross-reference to the federal act has been corrected.

See Sections 78050 ("department"), 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78155 ("site").

§ 78770. Priority tiers for listed hazardous substance release sites

78770. The department shall assign each site listed pursuant to Section 78760 to one of the following priority tiers for the purpose of informing the public of the relative hazard of listed sites:

(a) "Priority tier one" shall include any site that the department determines, using the criteria described in Section 78760, meets any of the following conditions:

(1) The site may pose a known or probable threat to public health or safety through direct human contact.

(2) The site may pose a substantial probability of explosion or a fire or a significant risk due to hazardous air emissions.

(3) The site has a high potential to contaminate or to continue to contaminate groundwater resources that are present or possible future sources of drinking water.

(4) There is a risk that the costs of a response action will increase rapidly or risks to human health or safety or the environment will increase significantly if response action is deferred.

(b) "Priority tier two" shall include any site that poses a substantial but less immediate threat to public health or safety or the environment and any site that will require a response action, but presents only a limited and defined threat to human health or safety or the environment. Priority tier two may contain sites previously listed in priority tier one if the department determines that direct threats to human health or safety have been removed and if physical deterioration of the site has been stabilized so that threats to the environment are not significantly increasing.

Comment. Section 78770 continues former Section 25356(c) without substantive change.

See Sections 78050 ("department"), 78135 ("remove"), 78140 ("response"), 78155 ("site"), 78170 ("tier").

§ 78775. Requirements for listed hazardous substance release sites

78775. Hazardous substance release sites listed by the department pursuant to Section 78760 are subject to this part and all actions carried out in response to hazardous substance releases or threatened releases at listed sites shall comply with the procedures, standards, and other requirements set forth in this part or established pursuant to the requirements of this part.

Comment. Section 78775 continues former Section 25356(d) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78155 ("site").

§ 78780. Conformance of expenditures with prioritization of sites

78780. (a) Except as provided in subdivision (b), the department shall expend all funds appropriated to the department for any response action pursuant to this part, and shall take all response action pursuant to this part, in conformance with the assignment of sites to priority tiers pursuant to Section 78770.

(b) The department may expend funds appropriated for a response action and take a response action, without conforming to the listing of sites by tier pursuant to Section 78770, or at a site that has not been listed pursuant to Section 78760, if any of the following apply:

(1) The department is monitoring a response action conducted by a responsible party at a site listed pursuant to Section 78760 or at a site that is not listed but is being voluntarily remediated by a responsible party or another person.

(2) The expenditure of funds is necessary to pay for the state share of a response action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

(3) The department is assessing, evaluating, and characterizing the nature and extent of a hazardous substance release at a site for which the department has not been able to identify a responsible party, the responsible party is defunct or insolvent, or the responsible party is not in compliance with an order issued, or an enforceable agreement entered into, pursuant to Section 79055.

(4) The department is carrying out activities pursuant to Section 79065 or subdivision (b) or (c) of Section 79060.

(c) The department may, at any one time, expend funds and take a response action at more than one site on the list established pursuant to Section 78760. In addition, the department may, at any one time, oversee the performance of any activities conducted by a responsible party on more than one site on the list established pursuant to Section 78760.

Comment. Section 78780 continues former Section 25356(f) without substantive change.

See Sections 78050 ("department"), 78065 ("federal act"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 78170 ("tier").

§ 78785. Commencement of response actions at sites

78785. This article does not require the department to characterize every site listed pursuant to Section 78760 before the department begins response actions at those sites.

Comment. Section 78785 continues former Section 25356(g) without substantive change.

See Sections 78050 ("department"), 78140 ("response"), 78155 ("site").

§ 78790. Responsibility for response action compliance

78790. The department, or, if appropriate, the regional board, is the state agency with sole responsibility for ensuring that required action in response to a hazardous substance release or threatened release at a listed site is carried out in compliance with the procedures, standards, and other requirements set forth in this part, and shall, as appropriate, coordinate the involvement of interested or affected agencies in the response action.

Comment. Section 78790 continues former Section 25356(h) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78140 ("response"), 78155 ("site").

§ 78795. Application of administrative rulemaking requirements

78795. (a) The adoption of the minimum hazard threshold pursuant to subdivision (b) of Section 78765, the department's development and publication of the list of sites pursuant to Section 78760, and the assignment of sites to a tier pursuant to Section 78770, including the classification of a site as within a minimum threshold pursuant to Section 78770, are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The adoption of the criteria used by the department pursuant to Section 78760 to determine the extent to which deferral of a response action at a site will result, or is likely to result, in a rapid increase in response costs at a site or in a significant increase in risk to human health or safety or the environment is subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 78795 continues former Section 25356(e) without substantive change. See Sections 78050 ("department"), 78140 ("response"), 78155 ("site"), 78170 ("tier").

CHAPTER 5. CLEANUP OF HAZARDOUS SUBSTANCE RELEASES

Article 1. General Provisions

§ 78850. Coordination of response actions by Governor

78850. The Governor is responsible for the coordination of all state response actions for sites identified in Article 5 (commencing with Section 78760) of Chapter 4 in order to assure the maximum use of available federal funds.

Comment. Section 78850 continues former Section 25355(a) without substantive change. See Sections 78140 ("response"), 78155 ("site").

§ 78855. Consistency requirements for response actions

78855. (a) For response actions taken pursuant to the federal act, only those costs for actions that are consistent with the priorities, guidelines, criteria, and regulations contained in the national contingency plan, as revised and republished pursuant to Section 105 of the federal act (42 U.S.C. Sec. 9605), shall qualify for appropriation by the Legislature and expenditure by the director pursuant to Sections 78240, 78875, and 79450.

(b) For response actions not taken pursuant to the federal act or for response actions taken that are not specifically addressed by the priorities, guidelines, criteria, and regulations contained in the national contingency plan, as revised and republished, the costs of the response actions shall also qualify for appropriation by the Legislature and expenditure by the department pursuant to Sections 78240, 78875, and 79450 provided they are, to the maximum extent possible, consistent with the priorities, guidelines, criteria, and regulations contained in the national contingency plan for similar releases, situations, or events.

Comment. Section 78855 restates the first two sentences of former Section 25350 without substantive change. The cross-references to Section 25351 were not continued, because that section has been repealed. See 1997 Cal. Stat. ch. 870, § 43.

See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78105 ("release"), 78140 ("response").

§ 78860. No duplication of federal response actions

78860. No response actions taken pursuant to this part by the department or regional or local agencies shall duplicate federal response actions.

Comment. Section 78860 continues the third sentence of former Section 25350 without substantive change.

See Sections 78050 ("department"), 78140 ("response").

Article 2. Rules for Specified Circumstances

§ 78870. Powers of director to address imminent or substantial endangerment

78870. Whenever the director determines that there may be an imminent or substantial endangerment to the public health or welfare or to the environment, because of a release or a threatened release of a hazardous substance, the director may do any or all of the following:

(a) Order any responsible party to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment. No order under this section shall be made to an owner of real property solely on the basis of that ownership as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)). The director shall give the responsible party an opportunity to assert all defenses to the order.

(b) Take or contract for any necessary removal or remedial action.

(c) Request the Attorney General to secure relief as may be necessary from the responsible party to abate the danger or threat. The superior court of the county in which the threat or danger occurs shall have jurisdiction to grant the relief the public interest and equities of the case may require to protect public health and welfare and the environment. Upon a showing by the department that a release or threatened release of a hazardous substance has occurred or is occurring, and that there may be an imminent or substantial endangerment to the public health and safety or to the environment, the court may grant a temporary restraining order or a preliminary or permanent injunction pursuant to subdivision (a) of Section 78660.

Comment. Section 78870 restates former Section 25358.3(a) without substantive change. The phrase "party or parties" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party").

§ 78875. Immediate corrective action

78875. (a) The department shall expend moneys available in the reserve account, established pursuant to subdivision (a) of Section 78240, only for the purpose of taking immediate corrective action necessary to remedy or prevent an emergency resulting from a fire or an explosion of, or human exposure to, hazardous substances caused by the release or threatened release of a hazardous substance.

(b)(1) Notwithstanding any other provision of law, the department may enter into written contracts for corrective action taken or to be taken pursuant to subdivision (a).

(2) Notwithstanding any other provision of law, the department may enter into oral contracts, not to exceed ten thousand dollars ($10,000) in obligation, when, in

the judgment of the department, immediate corrective action is necessary to remedy or prevent an emergency specified in subdivision (a).

(3) The contracts made pursuant to this subdivision, whether written or oral, may include provisions for the rental of tools or equipment, either with or without operators furnished, and for the furnishing of labor and materials necessary to accomplish the work.

(4) If the department finds that the corrective action includes the relocation of individuals, the department may contract with those individuals for out-of-pocket expenses incurred in moving for an amount of not more than one thousand dollars ($1,000).

Comment. Section 78875 restates the second sentence of former Section 25354(a) and all of former Section 25354(b) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy").

§ 78880. Exemptions for specified actions

78880. Any removal or remedial action taken or contracted by the department pursuant to Section 78870 or 78875 shall be exempt from all of the following provisions:

(a) State Contract Act (Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code).

(b) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(c) Section 10295 of the Public Contract Code.

(d) Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

Comment. Section 78880 restates former Section 25358.5 without substantive change. The cross-reference to Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code has been omitted because the heading of that article was repealed and the remaining provisions of that article are now located in Article 4 of the same chapter. See 2000 Cal. Stat. ch. 759, § 18.

See Sections 78050 ("department"), 78125 ("remedy"), 78135 ("remove").

§ 78885. Prequalification of bidders for specified actions

78885. (a) The department may prequalify bidders for remedial or removal actions taken pursuant to Section 78870 or 78875. The department may reject the bid of any prospective bidder that has not been prequalified.

(b) To prequalify bidders, the department shall adopt and apply a uniform system of rating bidders. In order to obtain information for that rating, the department may require from prospective bidders answers to questions, including, but not limited to, questions about the bidder's financial ability, the bidder's experience in removal and remedial action involving hazardous substances, the bidder's past safety record, and the bidder's past performance on federal, state, or local government projects. The department may also require prospective bidders to submit financial statements.

(c) The department shall utilize the business financial data and information submitted by a bidder pursuant to subdivision (b) only for the purposes of prequalifying bidders pursuant to this section and shall not otherwise disseminate this data or information.

(d) The system of rating bidders may be adopted by the department as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for purposes of that chapter, when these regulations are adopted as emergency regulations pursuant to Section 11349.6 of the Government Code, the regulations shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. It is the intent of the Legislature that emergency regulations adopted pursuant to this subdivision shall remain in effect until the regulations are adopted as final regulations, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 78885 continues former Section 25358.6 without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78125 ("remedy"), 78135 ("remove").

Article 3. Referral of Site to Department by State or Regional Board

§ 78900. Referral of sites to department for listing

78900. The State Water Resources Control Board or a regional board that has jurisdiction over a hazardous substance release site pursuant to Division 7 (commencing with Section 13000) of the Water Code may refer the site to the department as a candidate for listing pursuant to Article 5 (commencing with Section 78760) of Chapter 4. After determining that the site meets the criteria adopted pursuant to Section 78765, the department may place the site on the list of sites subject to this part and establish its priority ranking pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

Comment. Section 78900 continues former Section 25355.6(a) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78155 ("site").

§ 78905. Authority of department at listed, referred site

78905. If a hazardous substance release site is referred to the department and is listed pursuant to Section 78900, the department may expend money from the state account for removal or remedial action at the site, upon appropriation by the Legislature, without first issuing an order or entering into an agreement pursuant to paragraph (1) of subdivision (a) of Section 79055, if all of the following apply:

(a) The State Water Resources Control Board or a regional board has issued either a cease and desist order pursuant to Section 13301 of the Water Code or a cleanup

and abatement order pursuant to Section 13304 of the Water Code to the potentially responsible party for the site.

(b) The State Water Resources Control Board or the regional board has made a final finding that the potentially responsible party has not complied with the order issued pursuant to subdivision (a).

(c) The State Water Resources Control Board or the regional board has notified the potentially responsible party of the determination made pursuant to subdivision (b) and that the hazardous substance release site has been referred to the department pursuant to Section 78900.

Comment. Section 78905 continues former Section 25355.6(b) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 78910. Notice to state or regional board regarding referred site

78910. (a) If a hazardous substance release site is referred to the department pursuant to Section 78900, and the department makes either of the following determinations, the department shall notify the appropriate regional board and the State Water Resources Control Board:

(1) The department determines that the site does not meet the criteria established pursuant to Section 78765 and the site cannot be placed, pursuant to Article 5 (commencing with Section 78760) of Chapter 4, on the list of sites subject to this part.

(2) The department determines that a removal or remedial action at the site will not commence for a period of one year from the date of listing due to a lack of funds or the low priority of the site.

(b) If a regional board or the State Water Resources Control Board receives a notice pursuant to subdivision (a), the regional board or state board may take any further action concerning the hazardous substance release site that the regional board or state board determines to be necessary or feasible, and that is authorized by this part or Division 7 (commencing with Section 13000) of the Water Code.

Comment. Section 78910 continues former Section 25355.6(c) and (d) without substantive change. An erroneous cross-reference to "subdivision (a)" (as opposed to "subdivision (a) *of Section 25356*") was corrected to refer to Section 78765 (which continues former Section 25356(a)).

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site"), 78168 ("state board").

Article 4. Public Participation

§ 78925. Role of community service offices

78925. With regard to sites listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4 where the department or regional board is taking action to investigate or remediate the site, the community service offices shall facilitate

communication between the department or regional board, the responsible parties, and the affected community, including any community advisory group that may have been formed in the community where the hazardous substance release site is located.

Comment. Section 78925 restates the second sentence of former Section 25358.7.2(a) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78145 ("responsible party"), 78155 ("site").

§ 78930. Department or regional board facilitation of public participation in response actions

78930. (a) The department or the regional board, as appropriate, shall take the actions specified in this section to provide an opportunity for meaningful public participation in response actions undertaken for sites listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

(b) The department, or the regional board, as appropriate, shall inform the public, and in particular, persons living in close proximity to a hazardous substance release site listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4, of the existence of the site and the department's or regional board's intention to conduct a response action at the site.

(c)(1) The department shall conduct a baseline community survey to determine the level of public interest and desire for involvement in the department's or regional board's activities, and to solicit concerns and information regarding the site from the affected community.

(2) Based on the results of the baseline survey, the department or regional board shall develop a public participation plan that shall establish appropriate communication and outreach measures commensurate with the level of interest expressed by survey respondents. The public participation plan shall be updated as necessary to reflect any significant changes in the degree of public interest as the site investigation and cleanup process moves toward completion.

(d) The department or regional board shall provide any person affected by a response action undertaken for sites listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4 with the opportunity to participate in the department's or regional board's decisionmaking process regarding that action by taking all of the following actions:

(1) Provide access to information that the department or regional board is required to release pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), relating to the action, except for the following:

(A) Trade secrets, as defined in Section 78480.

(B) Business financial data and information, as specified in subdivision (c) of Section 78885.

(C) Information that the department or regional board is prohibited from releasing pursuant to any state or federal law.

(2) Provide factsheets, based on the expressed level of public interest, regarding plans to conduct the major elements of the site investigation and response actions. The factsheets shall present the relevant information in nontechnical language and shall be detailed enough to provide interested persons with a good understanding of the planned activities. The factsheets shall be made available in languages other than English if appropriate.

(3) Provide notification, upon request, of any public meetings held by the department or regional board concerning the action.

(4) Provide the opportunity to attend and to participate at those public meetings.

(5) Based on the results of the baseline community survey, provide opportunities for public involvement at key stages of the response action process, including the health risk assessment, the preliminary assessment, the site inspection, the remedial investigation, and the feasibility study stages of the process. If the department or regional board determines that public meetings or other opportunities for public comment are not appropriate at any of the stages listed in this section, the department or regional board shall provide notice of that decision to the affected community.

(e) The department or regional board shall develop and make available to the public a schedule of activities for each site for which remedial action is expected to be taken by the department or regional board pursuant to this part and shall make available to the public any plan provided to the department or regional board by any responsible party, unless the department is prohibited from releasing the information pursuant to any state or federal law.

(f) In making decisions regarding the methods to be used for removal or remedial actions taken pursuant to this part, the department or regional board shall incorporate or respond in writing to the advice of persons affected by the actions.

(g) This section does not apply to emergency actions taken pursuant to Section 78875.

Comment. Section 78930 restates former Section 25358.7 without substantive change.

See Sections 78050 (“department”), 78060 (“feasibility study”), 78075 (“hazardous substance”), 78085 (“person”), 78100 (“regional board”), 78105 (“release”), 78120 (“remedial investigation”), 78125 (“remedy”), 78135 (“remove”), 78140 (“response”), 78145 (“responsible party”), 78155 (“site”).

§ 78935. Notice and comment opportunity for local agencies

78935. The department or regional board shall advise local environmental regulatory agencies and other appropriate local agencies of planned response actions and provide opportunities for review and comment.

Comment. Section 78935 continues the third sentence of former Section 25358.7.1(a) without substantive change.

See Sections 78050 (“department”), 78100 (“regional board”), 78140 (“response”).

Article 5. Community Advisory Groups

§ 78950. Establishment of group

78950. (a) At each site, a community advisory group may be established by the affected community to review any response action and comment on the response action to be conducted in that community.

(b)(1) If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site, the department or regional board shall assist the petitioners to establish a community advisory group to review the response action at the site.

(2) If the department or regional board, whichever is overseeing a response action, receives a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the legislative body to establish a community advisory group to review the response action at the site.

Comment. Section 78950 continues the first sentence and restates the fourth sentence of former Section 25358.7.1(a) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78155 ("site").

§ 78955. Composition of group

78955. To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:

(a) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.

(b) Individuals from the local business community.

(c) Local political or government agency representatives.

(d) Local citizen, civic, environmental, or public interest group members residing in the community.

Comment. Section 78955 continues former Section 25358.7.1(b) without substantive change.

See Sections 78075 ("hazardous substance"), 78085 ("person"), 78100 ("regional board"), 78105 ("release"), 78140 ("response"), 78155 ("site").

§ 78960. Communication with group

78960. The department or regional board shall regularly communicate, and confer as appropriate, with the community advisory group.

Comment. Section 78960 continues the second sentence of former Section 25358.7.1(a) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board").

§ 78965. Participation in group meetings

78965. The following entities may participate in community advisory group meetings in order to provide information and technical expertise:

(a) The department or regional boards.

(b) Representatives of local environmental regulatory agencies.

(c) The potentially responsible parties or other persons who are conducting the response action.

Comment. Section 78965 continues former Section 25358.7.1(c) without substantive change. See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party").

§ 78970. Relationship with other public participation provisions

78970. (a) The existence of a community advisory group shall not diminish any other obligation of the department or regional board with respect to public participation requirements specified in Section 78930.

(b) Nothing in this article shall affect the status of any citizen advisory group formed before May 26, 1999, a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board.

Comment. Section 78970 continues former Section 25358.7.1(d) without substantive change. See Sections 78050 ("department"), 78100 ("regional board").

§ 78975. Technical assistance grants for group

78975. A community advisory group established pursuant to Section 78950 may request, in writing, and a potentially responsible party may fund, a technical assistance grant for a site, for the purpose of providing technical assistance to the community advisory group.

Comment. Section 78975 restates former Section 25358.8 without substantive change. The phrase "party or parties" has been singularized. This is a nonsubstantive change. See Section 13. See Sections 78145 ("responsible party"), 78155 ("site").

Article 6. Oversight and Review of Responsible Party Actions

§ 79000. Policies and procedures for oversight by department or state board

79000. The department and the State Water Resources Control Board concurrently shall establish policies and procedures consistent with this part that the department's representatives shall follow in overseeing and supervising the activities of responsible parties who are carrying out the investigation of, and taking removal or remedial actions at, hazardous substance release sites. The policies and procedures shall be consistent with the policies and procedures established pursuant to Section 13307 of the Water Code, and shall include, but are not limited to, all of the following:

(a) The procedures the department will follow in making decisions as to when a potentially responsible party may be required to undertake an investigation to determine if a hazardous substance release has occurred.

(b) Policies for carrying out a phased, step-by-step investigation to determine the nature and extent of possible soil and groundwater contamination at a site.

(c) Procedures for identifying and utilizing the most cost-effective methods for detecting contamination and carrying out removal or remedial actions.

(d) Policies for determining reasonable schedules for investigation and removal or remedial action at a site. The policies shall recognize the dangers to public health and the environment posed by a release and the need to mitigate those dangers, while taking into account, to the extent possible, the financial and technical resources available to a responsible party.

Comment. Section 79000 continues former Section 25355.7 without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

§ 79005. Voluntary enforceable agreements for actions at petroleum release sites

79005. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 78075, any person may voluntarily enter into an enforceable agreement with the department pursuant to this section that allows removal or remedial actions to be conducted under the oversight of the department at sites with petroleum releases from sources other than underground storage tanks, as defined in Section 25299.24.

(b) If the department determines that there may be an adverse impact to water quality as a result of a petroleum release, the department shall notify the appropriate regional board prior to entering into the enforceable agreement pursuant to this section. The department may enter into an enforceable agreement pursuant to this section unless, within 60 days of the notification provided by the department, the regional board provides the department with a written notice that the regional board will assume oversight responsibility for the removal or remedial action.

(c) Agreements entered into pursuant to this section shall provide that the party will reimburse the department for all costs incurred including, but not limited to, oversight costs pursuant to the enforceable agreement associated with the performance of the removal or remedial actions and Chapter 6.66 (commencing with Section 25269) of Division 20.

Comment. Section 79005 continues former Section 25355(c)(2) without substantive change. Technical changes have been made to standardize cross-references.

See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

Article 7. Orders to Potentially Responsible Parties

§ 79020. Issuance of orders

79020. In exercising its authority at a hazardous substance release site pursuant to Sections 78870 or 79055, the department shall issue orders to the largest manageable number of potentially responsible parties after considering all of the following:

(a) The adequacy of the evidence of each potentially responsible party's liability.

(b) The financial viability of each potentially responsible party.

(c) The relationship or contribution of each potentially responsible party to the release, or threat of release, of hazardous substances at the site.

(d) The resources available to the department.

Comment. Section 79020 continues former Section 25356.1.3(a) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78145 ("responsible party"), 78155 ("site").

§ 79025. Meeting with potentially responsible parties

79025. The department shall schedule a meeting pursuant to Section 25269.5 and notify all identified potentially responsible parties of the date, time, and location of the meeting.

Comment. Section 79025 continues former Section 25356.1.3(b) without substantive change. See Sections 78050 ("department"), 78145 ("responsible party").

§ 79030. Request for issuance of order to potentially responsible party

79030. (a) A person issued an order pursuant to Section 78870 or 79055 may identify additional potentially responsible parties for the site to which the order is applicable and may request the department to issue an order to those parties. The request shall include, with appropriate documentation, the factual and legal basis for identifying those parties as potentially responsible parties for the site.

(b) The department shall review the request and accompanying information and, within a reasonable period of time, determine if there is a factual and legal basis for identifying other persons as potentially responsible parties, and notify the person that made the request of the action the department will take in response to the request.

Comment. Section 79030 continues former Section 25356.1.3(c) without substantive change. See Sections 78050 ("department"), 78085 ("person"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 79035. Determination not subject to judicial review

79035. Any determination made by the department regarding the largest manageable number of potentially responsible parties or the identification of other persons as potentially responsible parties pursuant to this article is not subject to judicial review. This section does not affect the rights of any potentially responsible party or the department under any other provision of this part.

Comment. Section 79035 continues former Section 25356.1.3(d) without substantive change. See Sections 78050 ("department"), 78085 ("person"), 78145 ("responsible party").

Article 8. Expenditures

§ 79055. Required actions before expenditures by department at listed site

79055. (a) Except as provided in Sections 79060 and 79065, no money shall be expended from the state account for removal or remedial actions on any site selected

for inclusion on the list established pursuant to Article 5 (commencing with Section 78760) of Chapter 4, unless the department first takes both of the following actions:

(1) The department issues one of the following orders or enters into the following agreement:

(A) The department issues an order specifying a schedule for compliance or correction pursuant to Section 25187.

(B) The department issues an order establishing a schedule for removing or remedying the release of a hazardous substance at the site, or for correcting the conditions that threaten the release of a hazardous substance. The order shall include, but is not limited to, requiring specific dates by which necessary corrective actions shall be taken to remove the threat of a release, or dates by which the nature and extent of a release shall be determined and the site adequately characterized, a remedial action plan shall be prepared, the remedial action plan shall be submitted to the department for approval, and a removal or remedial action shall be completed.

(C) The department enters into an enforceable agreement with a potentially responsible party for the site that requires the party to take necessary corrective action to remove the threat of the release, or to determine the nature and extent of the release and adequately characterize the site, prepare a remedial action plan, and complete the necessary removal or remedial actions, as required in the approved remedial action plan.

(2) The department determines, in writing, that the potentially responsible party or parties for the hazardous substance release site have not complied with all of the terms of an order issued pursuant to subparagraph (A) or (B) of paragraph (1) or an agreement entered into pursuant to subparagraph (C) of paragraph (1). Before the department determines that a potentially responsible party is not in compliance with the order or agreement, the department shall give the potentially responsible party written notice of the proposed determination and an opportunity to correct the noncompliance or show why the order should be modified. After the department has made the final determination that a potentially responsible party is not in compliance with the order or agreement, the department may expend money from the state account for a removal or remedial action.

(b) Any enforceable agreement entered into pursuant to this section may provide for the execution and recording of a written instrument that imposes an easement, covenant, restriction, or servitude, or combination thereof, as appropriate, upon the present and future uses of the site. The instrument shall provide that the easement, covenant, restriction, or servitude, or combination thereof, as appropriate, is subject to the variance or removal procedures specified in Sections 25223 and 25224. Notwithstanding any other provision of law, an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, executed pursuant to this section and recorded so as to provide constructive notice runs with the land from the date of recordation, is binding upon all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, or lessees of the owners, heirs,

successors, and assignees, and is enforceable by the department pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20.

Comment. Section 79055 continues former Section 25355.5(a) without substantive change. An undesignated paragraph in former Section 25355.5(a)(1)(C) has been recodified as subdivision (b) of this section. A cross-reference to former Sections 25233 and 25234 has been updated to reflect the repeal of those provisions. See 2012 Cal. Stat. ch. 39, § 38; see also 2012 Cal. Stat. ch. 39, § 75 (replacing cross-reference to former Sections 25233 and 25234 with cross-reference to Sections 25223 and 25224).

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 79060. Conditions where required actions not applicable for expenditure

79060. Section 79055 does not apply, and money from the state account shall be available, upon appropriation by the Legislature, for removal or remedial actions, if any of the following conditions apply:

(a) The department, after a reasonable effort, is unable to identify a potentially responsible party for the hazardous substance release site.

(b) The department determines that immediate corrective action is necessary, as provided in Section 78875.

(c) The director determines that removal or remedial action at a site is necessary because there may be an imminent and substantial endangerment to the public health or welfare or to the environment, as provided in Section 78870.

Comment. Section 79060 restates former Section 25355.5(b) without substantive change. In subdivision (c), a cross-reference to Section 78870 was added.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 79065. Authorized expenditures

79065. (a) Notwithstanding Section 79055, the department may expend funds, upon appropriation by the Legislature, from the state account to conduct activities necessary to verify that an uncontrolled release of hazardous substances has occurred at a suspected hazardous substance release site, to issue an order or enter into an enforceable agreement pursuant to paragraph (1) of subdivision (a) of Section 79055, and to review, comment upon, and approve or disapprove remedial action plans submitted by potentially responsible parties subject to the orders or the enforceable agreement.

(b) Notwithstanding Section 79055, the department may expend funds, upon appropriation by the Legislature, from the state account, to provide for oversight of removal and remedial actions, or, if the site is also listed on the National Priorities List by the United States Environmental Protection Agency pursuant to the federal act, to provide the state's share of a response action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

Comment. Section 79065 continues former Section 25355.5(c) and restates former Section 25355.5(d) without substantive change. A reference to "a removal or remedial action" was replaced with "a response action."

See Sections 78050 ("department"), 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 79070. Limitations on expenditures for sites owned or operated by federal, state, or local governments or agencies

79070. (a) Except as provided in subdivision (b), the department may not expend funds from the state account for a removal or remedial action with respect to a hazardous substance release site owned or operated by the federal government or a state or local agency at the time of disposal to the extent that the federal government or the state or local agency would otherwise be liable for the costs of that action, except that the department may expend those funds, upon appropriation by the Legislature, to oversee the carrying out of a removal or remedial action at the site by another party.

(b) Except as provided in subdivision (d), the department may expend funds from the state account, upon appropriation by the Legislature, to take a removal or remedial action at a hazardous substance release site that was owned or operated by a local agency at the time of release, if all of the following requirements are met:

(1) The department has substantial evidence that a local agency is not the only responsible party for the site.

(2) The department has issued a cleanup order to, or entered into an enforceable agreement with, the local agency pursuant to Section 79055 and has made a final determination that the local agency is not in compliance with the order or enforceable agreement.

(c) If a local agency is identified as a potentially responsible party in a remedial action plan prepared pursuant to Article 12 (commencing with Section 79190), and the department expends funds pursuant to this part to pay for the local agency's share of the removal and remedial action, the expenditure of these funds shall be deemed to be a loan from the state to the local agency. If the department determines that the local agency is not making adequate progress toward repaying the loan made pursuant to this section, the State Board of Equalization shall, upon notice by the department, withhold the unpaid amount of the loan, in increments from the sales and use tax transmittals made pursuant to Section 7204 of the Revenue and Taxation Code, to the city or county in which the local agency is located. The State Board of Equalization shall structure the amounts to be withheld so that complete repayment of the loan, together with interest and administrative charges, occurs within five years after a local agency has been notified by the department of the amount that it owes. The State Board of Equalization shall deposit any funds withheld pursuant to this section into the state account.

(d) The department may not expend funds from the state account for a removal or remedial action at any waste management unit owned or operated by a local agency if it meets both of the following conditions:

(1) It is classified as a class III waste management unit pursuant to Article 3 (commencing with Section 20240) of Subchapter 2 of Chapter 3 of Subdivision 1 of Division 2 of Title 27 of the California Code of Regulations.

(2) It was in operation on or after January 1, 1988.

Comment. Section 79070 continues former Section 25353, with the exception of subdivisions (c) and (e), without substantive change. An obsolete cross-reference to the California Administrative Code in paragraph (d)(1) has been updated to refer to the relevant provisions of the California Code of Regulations.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 79075. Limitation on expenditure for natural resources damages prior to September 25, 1981

79075. The department may not expend funds from the state account for the purposes specified in Section 79450 where the injury, degradation, destruction, or loss to natural resources, or the release of a hazardous substance from which the damages to natural resources resulted, has occurred prior to September 25, 1981.

Comment. Section 79075 continues former Section 25353(e) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site"), 78165 ("state account").

Article 9. Preliminary Endangerment Assessment

§ 79100. Required action prior to preliminary endangerment assessment or no further action letter

79100. (a) The department shall not agree to oversee the preparation of, or to review, a preliminary endangerment assessment for property if action is, or may be, necessary to address a release or threatened release of a hazardous substance, and the department shall not issue a letter stating that no further action is necessary with regard to property, unless the person who made the request does either of the following:

(1) Provides the department with all of the following:

(A) Proof of the identity of all current record owners of fee title to the property and their mailing addresses.

(B) Written evidence that the owners of record have been sent a notice that describes the actions completed or proposed by the requesting person.

(C) An acknowledgment of the receipt of the notice required in subparagraph (B), from the property owners or proof that the requesting person has made reasonable efforts to deliver the notice to the property owner and was unable to do so.

(2) Provides the department with proof of the identity of all current record owners of fee title to the property and proof that the requesting person has made reasonable efforts to locate the property owners and was unable to do so.

(b) The department shall take all reasonable steps necessary to accommodate property owner participation in the site remediation process and shall consider all input and recommendations received from the owner of property that is the subject of the proposed action.

(c)(1) This section only applies to instances where a person requests the department to oversee the preparation of, or to review, a preliminary endangerment assessment, or requests the department to issue a letter stating that no further action is necessary with regard to property.

(2) Nothing in this section imposes a condition upon, limits, or impacts in any way, the department's authority to compel any potentially responsible party to take any action in response to a release or threatened release of a hazardous substance or to recover costs incurred from any potentially responsible party.

Comment. Section 79100 restates former Section 25355.8 without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78095 ("preliminary endangerment assessment"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 79105. Reimbursement of department oversight costs for preliminary endangerment assessment

79105. (a) Except as provided in subdivisions (b) and (c), any potentially responsible party at a site, or any person who has notified the department of that person's intent to undertake removal or remediation at a site, shall reimburse the department, pursuant to Chapter 6.66 (commencing with Section 25269) of Division 20, for the costs incurred by the department for its oversight of any preliminary endangerment assessment at that site.

(b) This section does not apply to any notice of intent submitted to the department prior to July 1, 1998. Any person who submitted a notice of intent prior to July 1, 1998 shall pay the fee, if not already paid, as required by Section 25343 as it read on December 31, 1997, unless the department and that person mutually agree to enter into a reimbursement agreement in lieu of any unpaid portion of the required fee.

(c) The changes made in Section 25343 by Chapter 870 of the Statutes of 1997 do not require amendment of, or otherwise affect, any agreement entered into prior to July 1, 1998, pursuant to which any person has agreed to reimburse the department for the costs incurred by the department for its oversight of a preliminary endangerment assessment.

Comment. Section 79105 continues former Section 25343 without substantive change.

See Sections 78050 ("department"), 78085 ("person"), 78095 ("preliminary endangerment assessment"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

Article 10. Initiation of Removal or Remedial Actions

§ 79130. Authority to initiate removal or remedial action

79130. (a) The director may initiate removal or remedial action pursuant to this part unless these actions have been taken, or are being taken properly and in a timely fashion, by any responsible party.

(b) A responsible party who fails, as determined by the department in writing, to comply with an order issued pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a) of Section 79055, or to comply with all of the terms of an enforceable agreement entered into pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 79055, shall be deemed, for purposes of subdivision (a), to have failed to take action properly and in a timely fashion with respect to a hazardous substance release or a threatened release.

Comment. Subdivision (a) of Section 79130 continues former Section 25355(b) without substantive change.

Subdivision (b) continues former Section 25355.5(e) without substantive change.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party").

§ 79135. Actions required prior to initiation of removal or remedial action

79135. (a) At least 30 days before initiating removal or remedial actions, the department shall make a reasonable effort to notify the persons identified by the department as potentially responsible parties and shall also publish a notification of this action in a newspaper of general circulation pursuant to the method specified in Section 6061 of the Government Code. This subdivision does not apply to actions taken pursuant to Section 78870 or immediate corrective actions taken pursuant to Section 78875. A responsible party may be held liable pursuant to this part whether or not the person was given the notice specified in this subdivision.

(b) The department shall notify the owner of the real property of the site of a hazardous substance release within 30 days after listing a site pursuant to Article 5 (commencing with Section 78760) of Chapter 4, and at least 30 days before initiating a removal or remedial action pursuant to this part, by sending the notification by certified mail to the person to whom the real property is assessed, as shown upon the last equalized assessment roll of the county, at the address shown on the assessment roll. The requirements of this subdivision do not apply to actions taken pursuant to Section 78870 or to immediate corrective actions taken pursuant to Section 78875.

Comment. Section 79135 continues former Section 25355(c)(1) and (d) without substantive change. An erroneous cross-reference to former Section 25358.3(b) was corrected to refer to Section 78870, which continues former Section 25358.3(a).

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

Article 11. Local Government Removal or Remedial Actions

§ 79160. Prerequisites to local government-initiated removal or remedial actions

79160. A city or county may initiate a removal or remedial action for a site listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4 in accordance with this article. Except as provided in Section 79175, the city or county shall, before commencing the removal or remedial action, take all of the following actions:

(a) The city or county shall notify the department of the planned removal or remedial action. Upon receiving this notification, the department shall make a reasonable effort to notify any person identified by the department as a potentially responsible party for the site. If a potentially responsible party is taking the removal or remedial action properly and in a timely fashion, or if a potentially responsible party will commence the action within 60 days of this notification, the city or county may not initiate a removal or remedial action pursuant to this article.

(b) If a potentially responsible party for the site has not taken the action specified in subdivision (a), the city or county shall submit the estimated cost of the removal or remedial action to the department, which shall, within 30 days after receiving the estimate, approve or disapprove the reasonableness of the cost estimate. If the department disagrees with the cost estimate, the city or county and the department shall, within 30 days, attempt to enter into an agreement concerning the cost estimate.

(c) The city or county shall demonstrate to the department that it has sufficient funds to carry out the approved removal or remedial action without taking into account any costs of the action that may be, or have been, paid by a potentially responsible party.

Comment. Section 79160 continues former Section 25351.2(a) without substantive change. See Sections 78050 ("department"), 78085 ("person"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

§ 79165. Local government deemed to be acting in place of department

79165. If the director approves the request of the city or county to initiate a removal or remedial action and a final remedial action plan has been issued pursuant to Article 12 (commencing with Section 79190) for the hazardous substance release site, the city or county shall be deemed to be acting in place of the department for purposes of implementing the remedial action plan pursuant to this part.

Comment. Section 79165 continues former Section 25351.2(b) without substantive change. See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

§ 79170. Department recovery of costs reimbursed to local government

79170. Upon reimbursing a city or county for the costs of a removal or remedial action, the department shall recover these costs pursuant to Section 79650.

Comment. Section 79170 continues former Section 25351.2(c) without substantive change. See Sections 78050 ("department"), 78125 ("remedy"), 78135 ("remove").

§ 79175. Reimbursement eligibility of local government removal or remedial action costs

79175. (a) In order for a city or county to be reimbursed for the costs of a removal or remedial action incurred by the city or county from the state account, the city or county shall obtain the approval of the director before commencing the removal or remedial action.

(b) The director shall grant an approval only when all actions required by law prior to implementation of a remedial action plan have been taken.

Comment. Section 79175 continues former Section 25351.2(d) without substantive change. See Sections 78055 ("director"), 78125 ("remedy"), 78135 ("remove"), 78165 ("state account").

Article 12. Planning

§ 79195. Preparation or approval of plans

79195. Except as provided in Sections 79225 and 79230, the department, or, if appropriate, the regional board shall prepare or approve remedial action plans for the sites listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

Comment. Section 79195 continues former Section 25356.1(b) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78125 ("remedy"), 78155 ("site").

§ 79200. Request by party for preparation or approval of plan

79200. (a) A potentially responsible party may request the department or the regional board, when appropriate, to prepare or approve a remedial action plan for a site not listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4, if the department or the regional board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the regional board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt.

(b) This section does not affect the authority of a regional board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist order pursuant to Section 13301 of the Water Code.

Comment. Section 79200 continues former Section 25356.1(c) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 79205. Standards for plan

79205. All remedial action plans prepared or approved pursuant to this article shall be based upon Sections 78855 and 78860 and Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended, and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(a) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional board shall consider scientific data and reports that may have a relationship to the site.

(b) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(c) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses. The department or the regional board shall consider the extent to which remedial action measures are available that use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions that do not use this treatment. The department or the regional board shall not select remedial action measures that use offsite transport and disposal of untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(d) Site-specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(e) Cost-effectiveness of alternative remedial action measures. In evaluating the cost-effectiveness of proposed alternative remedial action measures, the department or the regional board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(f) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

Comment. Section 79205 restates former Section 25356.1(d) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

§ 79210. Content of plan

79210. A remedial action plan prepared pursuant to this article shall include the basis for the remedial action selected and shall include an evaluation of each alternative considered and rejected by the department or the regional board for a particular site. The plan shall include an explanation for rejection of alternative remedial actions considered but rejected. The plan shall also include an evaluation of the consistency of the selected remedial action with the requirements of the federal regulations and the factors specified in Section 79205, if those factors are not otherwise adequately addressed through compliance with the federal regulations. The remedial action plan shall also include a nonbinding preliminary

allocation of responsibility among all identifiable potentially responsible parties at a particular site, including those parties that may have been released, or may otherwise be immune, from liability pursuant to this part or any other provision of law.

Comment. Section 79210 continues the first four sentences of former Section 25356.1(e) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78145 ("responsible party"), 78155 ("site").

§ 79215. Public review and comment on plan

79215. (a) Before adopting a final remedial action plan, the department or the regional board shall prepare or approve a draft remedial action plan and shall do all of the following:

(1) Circulate the draft plan for at least 30 days for public comment.

(2) Notify affected local and state agencies of the removal and remedial actions proposed in the remedial action plan and publish a notice in a newspaper of general circulation in the area affected by the draft remedial action plan. The department or the regional board shall also post notices in the location where the proposed removal or remedial action would be located and shall notify, by direct mailing, the owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the removal and remedial actions, the potentially responsible parties for the removal and remedial actions, and the interested public, to provide the public with the information that is necessary to address the issues that concern the public. The information to be provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the removal and remedial actions, and a description of the proposed removal and remedial actions.

(4) Comply with Section 78930.

(b) After complying with subdivision (a), the department or the regional board shall review and consider any public comments, and shall revise the draft plan, if appropriate. The department or the regional board shall then issue the final remedial action plan.

Comment. Section 79215 continues the fifth sentence of former Section 25356.1(e), including paragraphs (e)(1)-(e)(4), inclusive, without substantive change. Section 79215 also continues former Section 25356.1(f) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party").

§ 79220. Judicial review of plan

79220. (a)(1) A potentially responsible party named in the final remedial action plan issued by the department or the regional board may seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section

1085 of the Code of Civil Procedure within 30 days after the final remedial action plan is issued by the department or the regional board. No action may be brought by a potentially responsible party to review the final remedial action plan if the petition for writ of mandate is not filed within 30 days of the date that the final remedial action plan was issued.

(2) Any other person who has the right to seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure shall do so within one year after the final remedial action plan is issued. No action may be brought by any other person to review the final remedial action plan if the petition for writ of mandate is not filed within one year of the date that the final remedial action plan was issued.

(3) The filing of a petition for writ of mandate to review the final remedial action plan shall not stay any removal or remedial action specified in the final plan.

(b) For purposes of judicial review, the court shall uphold the final remedial action plan if the plan is based upon substantial evidence available to the department or the regional board, as the case may be.

(c) This section does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 78305.

Comment. Paragraph (a)(1) of Section 79220 continues the first and third sentences of former Section 25356.1(g)(1) without substantive change.

Paragraph (a)(2) continues the second and fourth sentences of former Section 25356.1(g)(1) without substantive change.

Paragraph (a)(3) continues the fifth sentence of former Section 25356.1(g)(1) without substantive change.

Subdivision (b) continues former Section 25356.1(g)(2) without substantive change.

Subdivision (c) continues former Section 25356.1(g)(3) without substantive change.

See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party").

§ 79225. Situations in which plan not required

79225. (a) This article does not require the department or a regional board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment or, if the department, a regional board, or a responsible party takes a removal action at a site and the estimated cost of the removal action is less than two million dollars ($2,000,000).

(b) The department or a regional board shall prepare or approve a removal action work plan for all sites where a nonemergency removal action is proposed and where a remedial action plan is not required. For sites where removal actions are planned and are projected to cost less than two million dollars ($2,000,000), the department or a regional board shall make the local community aware of the hazardous substance release site and shall prepare, or direct the parties responsible for the removal action to prepare, a community profile report to determine the level of public interest in the removal action. Based on the level of expressed interest, the

department or regional board shall take appropriate action to keep the community informed of project activity and to provide opportunities for public comment that may include conducting a public meeting on proposed removal actions.

(c)(1) A remedial action plan is not required pursuant to Section 79195 if the site is listed on the National Priorities List by the United States Environmental Protection Agency pursuant to the federal act, if the department or the regional board concurs with the remedy selected by the United States Environmental Protection Agency's record of decision. The department or the regional board may sign the record of decision issued by the United States Environmental Protection Agency if the department or the regional board concurs with the remedy selected.

(2) Paragraph (1) does not apply to a removal action paid from the state account.

Comment. Section 79225 continues former Section 25356.1(h)(1), (2), and (5) without substantive change.

See Sections 78050 ("department"), 78065 ("federal act"), 78075 ("hazardous substance"), 78100 ("regional board"), 78105 ("release"), 78125 ("remedy"), 78130 ("removal action work plan"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 79230. Waiver from required standards for plan

79230. The department may waive the requirement that a remedial action plan meet the requirements specified in Section 79205 if all of the following apply:

(a) The responsible party adequately characterizes the hazardous substance conditions at a site listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

(b) The responsible party submits to the department, in a form acceptable to the department, all of the following:

(1) A description of the techniques and methods to be employed in excavating, storing, handling, transporting, treating, and disposing of materials from the site.

(2) A listing of the alternative remedial measures that were considered by the responsible party in selecting the proposed removal action.

(3) A description of methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action.

(4) A description of prior removal actions with similar hazardous substances and with similar public safety and environmental considerations.

(c) The department determines that the remedial action plan provides protection of human health and safety and for the environment at least equivalent to that which would be provided by a remedial action plan prepared in accordance with Section 79205.

(d) The total cost of the removal action is less than two million dollars ($2,000,000).

Comment. Section 79230 continues former Section 25356.1(h)(3) without substantive change. An erroneous cross-reference to "subdivision (c)" was corrected to refer to Section 79205, which continues subdivision (d) of former Section 25356.1.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

§ 79235. Costs of removal action

79235. For purposes of this article, the cost of a removal action includes the cleanup or removal of released hazardous substances from the environment or the taking of other actions that are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release, as further defined by Section 101(23) of the federal act (42 U.S.C. Sec. 9601(23)).

Comment. Section 79235 restates former Section 25356.1(h)(4) without substantive change. See Sections 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78135 ("remove").

§ 79240. Application of Water Code provisions

79240. Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to an action or failure to act by a regional board pursuant to this article.

Comment. Section 79240 continues former Section 25356.1(i) without substantive change. See Section 78100 ("regional board").

Article 13. Standards

§ 79260. Standards for response actions

79260. Any response action taken or approved pursuant to this part shall be based upon, and no less stringent than, all of the following requirements:

(a) The requirements established under federal regulation pursuant to Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended.

(b) The regulations established pursuant to Division 7 (commencing with Section 13000) of the Water Code, 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 all applicable 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, to the extent that the department or the regional board determines that those regulations, plans, and policies do not require a less stringent level of remediation than the federal regulations specified in subdivision (a) and to the degree that those regulations, plans, and policies do not authorize decisionmaking procedures that may result in less stringent response action requirements than those required by the federal regulations specified in subdivision (a).

(c) Any applicable provisions of this part, to the extent those provisions are consistent with the federal regulations specified in subdivision (a) and do not require a less stringent level of remediation than, or decisionmaking procedures that are at variance with, the federal regulations set forth in subdivision (a).

Comment. Section 79260 continues former Section 25356.1.5(a) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response").

§ 79265. Standards for risk assessment for response action

79265. (a) Any health or ecological risk assessment prepared in conjunction with a response action taken or approved pursuant to this part shall be based upon Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), the policies, guidelines, and practices of the United States Environmental Protection Agency developed pursuant to the federal act, and the most current sound scientific methods, knowledge, and practices of public health and environmental professionals who are experienced practitioners in the fields of epidemiology, risk assessment, environmental contamination, ecological risk, fate and transport analysis, and toxicology.

(b) Risk assessment practices shall include the most current sound scientific methods for data evaluation, exposure assessment, toxicity assessment, and risk characterization, documentation of all assumptions, methods, models, and calculations used in the assessment.

(c) Any health risk assessment shall include all of the following:

(1) Evaluation of risks posed by acutely toxic hazardous substances based on levels at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety.

(2) Evaluation of risks posed by carcinogens or other hazardous substances that may cause chronic disease based on a level that does not pose any significant risk to health.

(3) Consideration of possible synergistic effects resulting from exposure to, or interaction with, two or more hazardous substances.

(4) Consideration of the effect of hazardous substances upon subgroups that comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations, that are identifiable as being at greater risk of adverse health effects due to exposure to hazardous substances than the general population.

(5) Consideration of exposure and body burden level that alter physiological function or structure in a manner that may significantly increase the risk of illness and of exposure to hazardous substances in all media, including, but not limited to, exposures in drinking water, food, ambient and indoor air, and soil.

Comment. Section 79265 continues former Section 25356.1.5(b) without substantive change. See Sections 78065 ("federal act"), 78075 ("hazardous substance"), 78140 ("response").

§ 79270. Level of hazardous substance that is protective of public health

79270. If currently available scientific data are insufficient to determine the level of a hazardous substance at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety, or the level that poses no significant risk to public health, the risk assessment prepared in conjunction with a response

action taken or approved pursuant to this part shall be based on the level that is protective of public health, with an adequate margin of safety. This level shall be based exclusively on public health considerations, shall, to the extent scientific data are available, take into account the factors set forth in paragraphs (1) to (5), inclusive, of subdivision (c) of Section 79265, and shall be based on the most current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, risk assessment, fate and transport analysis, and toxicology.

Comment. Section 79270 continues former Section 25356.1.5(c) without substantive change. See Sections 78075 ("hazardous substance"), 78140 ("response").

§ 79275. Content of exposure assessment

79275. (a) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this part shall include the development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land use conditions at the site.

(b) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this part shall include the development of reasonable maximum estimates of exposure to volatile organic compounds that may enter structures that are on the site or that are proposed to be constructed on the site and may cause exposure due to accumulation of those volatile organic compounds in the indoor air of those structures.

Comment. Section 79275 continues former Section 25356.1.5(d) and (e) without substantive change.
See Sections 78140 ("response"), 78155 ("site").

Article 14. On-site Hazardous Waste Facility for Response Action

§ 79290. Discretion to exclude from permitting requirements

79290. To the extent consistent with the federal Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department may exclude any portion of a response action conducted entirely onsite from the hazardous waste facility permit requirements of Section 25201 if both of the following apply:

(a) The removal or remedial action is carried out pursuant to a removal action work plan or a remedial action plan prepared pursuant to Article 12 (commencing with Section 79190).

(b) The removal action work plan or the remedial action plan requires that the response action complies with all laws, rules, regulations, standards, and requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the hazardous substance release site and with any

other condition imposed by the department as necessary to protect public health and safety and the environment.

Comment. Section 79290 continues former Section 25358.9(a) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78130 ("removal action work plan"), 78135 ("remove"), 78140 ("response"), 78155 ("site").

§ 79295. Enforcement

79295. (a) The department may enforce in the court for the county in which a response action exempted pursuant to Section 79290 is located any federal or state law, rule, regulation, standard, requirements, criteria, or limitation with which the remedial or removal action is required to comply.

(b)(1) Any consent decree entered into pursuant to an enforcement action authorized by this section shall require the parties to attempt expeditiously to informally resolve any disagreements concerning the implementation of the response action with the appropriate federal and state agencies and shall provide for administrative enforcement.

(2) The consent decree shall stipulate that the penalty for violation of the consent decree shall be an amount not more than twenty-five thousand dollars ($25,000) per day, which may be enforced by the state. These penalties do not impair or affect the authority of the court to order compliance with the specific terms of the consent decree.

Comment. Section 79295 continues former Section 25358.9(b) without substantive change. See Sections 78050 ("department"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response").

Article 15. Operation and Maintenance

§ 79310. "Small business"

79310. For purposes of this article, "small business" is a business that meets the requirements set forth in subdivision (d) of Section 14837 of the Government Code.

Comment. Section 79310 continues former Section 25355.2(f) without substantive change.

§ 79315. Financial assurance for operation and maintenance

79315. Except as provided in subdivision (a) of Section 79325, the department or the regional board shall require any responsible party who is required to comply with operation and maintenance requirements as part of a response action, to demonstrate and to maintain financial assurance in accordance with this article. The responsible party shall demonstrate financial assurance prior to the time that operation and maintenance activities are initiated and shall maintain it throughout the period of time necessary to complete all required operation and maintenance activities.

Comment. Section 79315 continues former Section 25355.2(a) without substantive change. See Sections 78050 ("department"), 78080 ("operation and maintenance"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 79320. Valid financial assurance mechanisms

79320. (a) For purposes of Section 79315, the responsible party shall demonstrate and maintain one or more of the financial assurance mechanisms set forth in subsections (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations.

(b) As an alternative to the requirement of subdivision (a), a responsible party may demonstrate and maintain financial assurance by means of a financial assurance mechanism other than those specified in subdivision (a), if the alternative financial assurance mechanism has been submitted to, and approved by, the department or the regional board as being at least equivalent to the financial assurance mechanisms specified in subdivision (a). The department or the regional board shall evaluate the equivalency of the proposed alternative financial assurance mechanism principally in terms of the certainty of the availability of funds for required operation and maintenance activities and the amount of funds that will be made available. The department or the regional board shall require the responsible party to submit any information necessary to make a determination as to the equivalency of the proposed alternative financial assurance mechanism.

Comment. Section 79320 restates former Section 25355.2(b) without substantive change. A cross-reference to the California Code of Regulations was corrected to refer to "subsections" as opposed to "subdivisions."

See Sections 78050 ("department"), 78080 ("operation and maintenance"), 78100 ("regional board"), 78145 ("responsible party").

§ 79325. Conditions for waiver of financial assurance requirement

79325. (a) The department or the regional board shall waive the financial assurance required by Section 79315 if the department or the regional board makes one of the following determinations:

(1) The responsible party is a small business and has demonstrated all of the following:

(A) The responsible party cannot qualify for any of the financial assurance mechanisms set forth in subsections (b), (c), and (d) of Section 66265.143 of Title 22 of the California Code of Regulations.

(B) The responsible party financially cannot meet the requirements of subsection (a) of Section 66265.143 of Title 22 of the California Code of Regulations.

(C) The responsible party is not capable of meeting the eligibility requirements set forth in subsection (e) of Section 66265.143 of Title 22 of the California Code of Regulations.

(2) The responsible party is a small business and has demonstrated that the responsible party financially is not capable of establishing one of the financial assurance mechanisms set forth in subsections (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations while at the same time financing the operation and maintenance requirements applicable to the site.

(3) The responsible party is not separately required to demonstrate and maintain a financial assurance mechanism for operation and maintenance activities at a site because of all of the following conditions:

(A) The site is a multiple responsible party site.

(B) Financial assurance that operation and maintenance activities at the site will be carried out is demonstrated and maintained by a financial assurance mechanism established jointly by all, or some, of the responsible parties.

(C) The financial assurance mechanism specified in subparagraph (B) meets the requirements of Sections 79315 and 79320.

(4) The responsible party is a federal, state, or local government entity.

(b) The department or the regional board shall withdraw a waiver granted pursuant to paragraph (1) or (2) of subdivision (a) if the department or the regional board determines that the responsible party that obtained the waiver no longer meets the eligibility requirements for the waiver.

Comment. Section 79325 continues former Section 25355.2(c) and (d) without substantive change. The cross-references to the California Code of Regulations were corrected to refer to "subsections" as opposed to "subdivisions."

See Sections 78050 ("department"), 78080 ("operation and maintenance"), 78100 ("regional board"), 78145 ("responsible party"), 78155 ("site"), 79310 ("small business").

§ 79330. Reporting on financial assurance

79330. On or before January 15, 2001, the department shall report to the Legislature all of the following:

(a) The number of requests the department and the regional boards have received for waivers from the financial assurance requirements of this article during the period between May 26, 1999, and January 1, 2001.

(b) The disposition of the requests that were received and the reasons for granting the waivers that were allowed and rejecting the waivers that were disallowed.

(c) The total number of businesses or other entities that were required by this article to demonstrate and maintain financial assurance, the number of businesses or other entities that were able to comply with the requirement, the number that were unable to comply and the reasons why they could not or did not comply, and the history of compliance with this part and Chapter 6.5 (commencing with Section 25100) of Division 20 by responsible parties that requested waivers.

(d) Financial assurance mechanisms other than the financial assurance mechanisms referenced in subdivision (a) of Section 79320 that may be available to responsible parties.

Comment. Section 79330 continues former Section 25355.2(e) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78145 ("responsible party").

Article 16. Illegal Drug Lab Cleanup

§ 79350. Expenditures and contracting

79350. (a) The department may expend funds appropriated from the Illegal Drug Lab Cleanup Account created pursuant to Section 78370 to pay the costs of removal actions required by this article.

(b) The department may enter into oral contracts, not to exceed ten thousand dollars ($10,000) in obligation, when, in the judgment of the department, immediate corrective action to a hazardous substance subject to this article is necessary to remedy or prevent an emergency.

Comment. Section 79350 continues the second and third sentences of former Section 25354.5(b)(1) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78125 ("remedy"), 78135 ("remove").

§ 79355. Notice to department by law enforcement

79355. A state or local law enforcement officer or investigator or other law enforcement agency employee who, in the course of an official investigation or enforcement action regarding the manufacture of an illegal controlled substance, comes in contact with, or is aware of, the presence of a substance that the person suspects is a hazardous substance at a site where an illegal controlled substance is or was manufactured, shall notify the department for the purpose of taking removal action, as necessary, to prevent, minimize, or mitigate damage that might otherwise result from the release or threatened release of the hazardous substance, except for samples required under Section 11479.5 to be kept for evidentiary purposes.

Comment. Section 79355 continues former Section 25354.5(a) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78135 ("remove"), 78155 ("site").

§ 79360. Department obligation upon receipt of notice

79360. Notwithstanding any other provision of law, upon receipt of a notification pursuant to Section 79355, the department shall take removal action, as necessary, with respect to a hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, a material intended to be used in the unlawful manufacture of a controlled substance, and a container for the material, a waste material from the unlawful manufacture of a controlled substance, or any other item contaminated with a hazardous substance used or intended to be used in the manufacture of a controlled substance.

Comment. Section 79360 continues the first sentence of former Section 25354.5(b)(1) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78125 ("remedy"), 78135 ("remove").

§ 79365. Notification of local environmental health officer

79365. The department shall, as soon as the information is available, report the location of a removal action that will be carried out pursuant to Section 79360, and the time that the removal action will be carried out, to the local environmental health officer within whose jurisdiction the removal action will take place, if the local environmental officer does both of the following:

(a) Requests, in writing, that the department report this information to the local environmental health officer.

(b) Provides the department with a single 24-hour telephone number to which the information can be reported.

Comment. Section 79365 continues former Section 25354.5(b)(2) without substantive change. See Sections 78050 ("department"), 78135 ("remove").

§ 79370. Generator of hazardous waste and substances at site

79370. (a) For purposes of Chapter 6.5 (commencing with Section 25100) of Division 20, Chapter 6.9.1 (commencing with Section 25400.10) of Division 20, or this part, a person who is found to have operated a site for the purpose of manufacturing an illegal controlled substance or a precursor of an illegal controlled substance is the generator of a hazardous substance at, or released from, the site that is subject to removal action pursuant to this article.

(b) During the removal action, for purposes of complying with the manifest requirements in Section 25160, the department, the county health department, the local environmental health officer, or their designee may sign the hazardous waste manifest as the generator of the hazardous waste. In carrying out that action, the department, the county health department, the local environmental health officer, or their designee shall be considered to have acted in furtherance of their statutory responsibilities to protect the public health and safety and the environment from the release, or threatened release, of hazardous substances, and the department, the county health department, the local environmental health officer, or their designee is not a responsible party for the release, or threatened release, of the hazardous substances.

(c) The officer, investigator, or agency employee specified in Section 79355 is not a responsible party for the release, or threatened release, of hazardous substances at, or released from, the site.

Comment. Section 79370 continues former Section 25354.5(c) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site").

§ 79375. Regulations

79375. The department may adopt regulations to implement this article in consultation with appropriate law enforcement and local environmental agencies.

Comment. Section 79375 continues former Section 25354.5(d) without substantive change. See Section 78050 ("department").

§ 79380. Methods, standards, and procedures

79380. (a) The department shall develop sampling and analytical methods for the collection of methamphetamine residue.

(b) The department shall, to the extent funding is available, develop health-based target remediation standards for iodine, methyl iodide, and phosphine.

(c) To the extent that funding is available, the department, using guidance developed by the Office of Environmental Health Hazard Assessment, may develop additional health-based target remediation standards for additional precursors and byproducts of methamphetamine.

(d) The department shall adopt investigation and cleanup procedures for use in the remediation of sites contaminated by the illegal manufacturing of methamphetamine. The procedures shall ensure that contamination by the illegal manufacturing of methamphetamine can be remediated to meet the standards adopted pursuant to subdivisions (b) and (c), to protect the health and safety of all future occupants of the site.

(e) The department shall implement this section in accordance with Section 79375.

Comment. Section 79380 continues former Section 25354.5(e) without substantive change. See Sections 78050 ("department"), 78155 ("site").

§ 79385. Applicability of article contingent on funding

79385. The responsibilities assigned to the department by this article apply only to the extent that sufficient funding is made available for that purpose.

Comment. Section 79385 continues former Section 25354.5(g) without substantive change. See Section 78050 ("department").

Article 17. Judicial Review of Response Actions

§ 79400. Judicial review of response action adequacy

79400. (a) In any judicial action under this part, judicial review of any issues concerning the adequacy of any response action taken or ordered by the department shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(b) If the court finds that the selection of the response action was not in accordance with law, the court shall award only the response costs or damages that are not inconsistent with the National Contingency Plan, as specified in Part 300 (commencing with Section 300.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations, and any other relief that is consistent with the National Contingency Plan.

(c) In reviewing an action brought by the department under this part, in which alleged procedural errors by the department are raised as a defense, the court may impose costs or damages only if the errors were serious and related to matters of

central relevance to the action, so that the action would have been significantly changed had the errors not been made.

Comment. Section 79400 continues former Section 25357.5 without substantive change. See Sections 78050 ("department"), 78140 ("response").

CHAPTER 6. SITE-SPECIFIC RULES RELATED TO CLEANUP

Article 1. Financial Provisions

§ 79450. Site-specific appropriations for state account monies

79450. (a) Money deposited in the state account may also be appropriated by the Legislature to the department on a specific site basis for the following purposes:

(1) For all costs incurred in restoring, rehabilitating, replacing, or acquiring the equivalent of, any natural resource injured, degraded, destroyed, or lost as a result of any release of a hazardous substance, to the extent the costs are not reimbursed pursuant to the federal act and taking into account processes of natural rehabilitation, restoration, and replacement.

(2) For all costs incurred in assessing short-term and long-term injury to, degradation or destruction of, or any loss of any natural resource resulting from a release of a hazardous substance, to the extent that the costs are not reimbursed pursuant to the federal act.

(b) No costs may be incurred for any release of a hazardous substance from any facility or project pursuant to subdivision (a) for injury, degradation, destruction, or loss of any natural resource where the injury, degradation, destruction, or loss was specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement prepared under the authority of the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), or was identified as a significant environmental effect to the natural resources that cannot be avoided in an environmental impact report prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and a decision to grant a permit, license, or similar authorization for any facility or project is based upon a consideration of the significant environmental effects to the natural resources, and the facility or project was otherwise operating within the terms of its permit, license, or similar authorization at the time of release.

Comment. Section 79450 continues former Section 25352(a) and (b) without substantive change.

See Sections 78050 ("department"), 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site"), 78165 ("state account").

Article 2. Santa Susana Field Laboratory

§ 79465. Santa Susana Field Laboratory

79465. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 25187 of the Health and Safety Code, the department may use any legal remedies available pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20 to compel a responsible party or parties to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment at the Santa Susana Field Laboratory site in Ventura County.

(b) A response action taken or approved at the Santa Susana Field Laboratory site shall be conducted in accordance with the provisions of this chapter.

(c) A response action taken or approved pursuant to this chapter for the Santa Susana Field Laboratory site shall be based upon, and be no less stringent than, the provisions of Section 25356.1.5. In calculating the risk, the cumulative risk from radiological and chemical contaminants at the site shall be summed, and the land use assumption shall be either suburban residential or rural residential (agricultural), whichever produces the lower permissible residual concentration for each contaminant. In the case of radioactive contamination, the department shall use as its risk range point of departure the concentrations in the Preliminary Remediation Goals issued by the Superfund Office of the United States Environmental Protection Agency in effect as of January 1, 2007.

(d) Notwithstanding any other provision of law regarding transfers of land, no person or entity shall sell, lease, sublease, or otherwise transfer land presently, or formerly occupied by the Santa Susana Field Laboratory, except as provided in subdivision (e).

(e) As a condition for a sale, lease, sublease, or transfer of land presently or formerly occupied by the Santa Susana Field Laboratory, the Director of the Department of Toxic Substances Control or his or her designee shall certify that the land has undergone complete remediation pursuant to the most protective standards in subdivisions (a) to (c), inclusive.

Comment. Section 79465 continues former Section 25359.20 without substantive change.

See Sections 78050 (“department”), 78085 (“person”), 78125 (“remedy”), 78135 (“remove”), 78140 (“response”), 78145 (“responsible party”), 78155 (“site”).

Article 3. Stringfellow Quarry Class I Hazardous Waste Disposal Site

§ 79490. Use of onsite treatment, storage, transfer, or disposal facility

79490. Any treatment, storage, transfer, or disposal facility built on the Stringfellow Quarry Class I Hazardous Waste Disposal Site, that was built for the purpose of a remedial or removal action at that site, shall only be used to treat, store, transfer, or dispose of hazardous substances removed from that site.

Comment. Section 79490 continues former Section 25351.7 without substantive change.

See Section 78075 ("hazardous substance"), 78125 ("remedy"), 78135 ("remove"), 78155 ("site").

§ 79495. Priority of removal and remedial actions

79495. Notwithstanding any other provision of law, including, but not limited to, Article 5 (commencing with Section 78760) of Chapter 4, the department shall place the highest priority on taking removal and remedial actions at the Stringfellow Quarry Class I Hazardous Waste Disposal Site and shall devote sufficient resources to accomplish the tasks required by this section.

Comment. Section 79495 continues former Section 25351.8 without substantive change. The cross-reference to Section 25334.5 was not continued. That cross-reference is obsolete, because Section 25334.5 has been repealed. See 1999 Cal. Stat. ch. 23, § 1.

See Section 78050 ("department"), 78125 ("remedy"), 78135 ("remove").

CHAPTER 7. ENFORCEMENT

Article 1. Noncompliance with Order

§ 79550. Penalty for noncompliance with order

79550. Any person subject to a removal or remedial action order or other order issued pursuant to Section 78660, 78870, or 79055 who does not comply with that order without sufficient cause shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day of noncompliance. Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to Section 79590.

Comment. Section 79550 continues former Section 25359.2 without substantive change.

See Sections 78085 ("person"), 78125 ("remedy"), 78135 ("remove").

§ 79555. Treble damages from noncompliant contribution defendant

79555. (a)(1) A responsible party who has entered into an agreement with the department and is in compliance with the terms of that agreement, or who is in compliance with an order issued by the department, may seek, in addition to contribution, treble damages from any contribution defendant who has failed or refused to comply with any order or agreement, was named in the order or agreement, and is subject to contribution.

(2) A contribution defendant from whom treble damages are sought in a contribution action shall not be assessed treble damages by any court where the contribution defendant, for sufficient cause, as determined by the court, failed to comply with an agreement or with an order issued by the department, or where the contribution defendant is an owner of real property who did not generate, treat, transport, store, or dispose of the hazardous substance on, in, or at the facility located on that real property, as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)), or where the principles of fundamental fairness would be violated, as determined by the court.

(3) A party seeking treble damages pursuant to this section shall show that the party, the department, or another entity provided notice, by means of personal service or certified mail, of the order or agreement to the contribution defendant from whom the party seeks treble damages.

(b)(1) One-half of any treble damages awarded pursuant to this section shall be paid to the department, for deposit in the state account.

(2) Nothing in this subdivision affects the rights of any party to seek contribution pursuant to any other statute or under common law.

(c) A contribution defendant from whom treble damages are sought pursuant to this section shall be deemed to have acted willfully with respect to the conduct that gave rise to this liability for purposes of Section 533 of the Insurance Code.

Comment. Section 79555 continues former Section 25359.4.5 without substantive change.

See Sections 78050 ("department"), 78065 ("federal act"), 78075 ("hazardous substance"), 78145 ("responsible party"), 78165 ("state account").

Article 2. Response Actions

§ 79570. Treble damages for failure to provide response action

79570. (a) Any person who is liable for a release, or threat of a release, of hazardous substances and who fails, without sufficient cause, as determined by the court, to properly provide a removal or remedial action upon either an order of the director, pursuant to Section 78870, or an order of the court, pursuant to Section 78660, is liable to the department for damages equal to three times the amount of any costs incurred by the state account pursuant to this part as a result of the failure to take proper action.

(b) No treble damages shall be imposed under this section against an owner of real property who did not generate, treat, transport, store, or dispose of any hazardous substance on, in, or at the facility located on that real property, as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

Comment. Section 79570 restates former Section 25359 without substantive change.

See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78165 ("state account").

Article 3. Natural Resources Damages

§ 79580. Prohibition on recovery of damages for certain losses occurring before September 25, 1981

79580. There shall be no recovery of punitive damages under Section 79570 for an injury to or loss of natural resources that occurred wholly before September 25, 1981. This section shall not be construed as precluding the recovery of punitive damages for injury to or loss of natural resources in an action brought pursuant to any other provision of law.

Comment. Section 79580 continues former Section 25359.1 without substantive change.

Article 4. Administrative Process for Penalty Collection

§ 79590. Complaint for penalties

79590. (a)(1) The department may issue a complaint to any person subject to a penalty pursuant to Sections 78680 and 79550.

(2) The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed penalty.

(3) The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing.

(b)(1) Any person served with a complaint pursuant to this section may, within 45 days after service of the complaint, request a hearing by filing a notice of defense with the department. A notice of defense is deemed to be filed within a 45-day period if it is postmarked within the 45-day period.

(2) If no notice of defense is filed within 45 days after service of the complaint, the department shall issue an order setting liability in the amount proposed in the complaint, unless the department and the party have entered into a settlement agreement, in which case the department shall issue an order setting liability in the amount specified in the settlement agreement.

(3) Where the party has not filed a notice of defense or where the department and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

Comment. Section 79590 continues former Section 25359.3(a) without substantive change. See Sections 78050 ("department"), 78085 ("person").

§ 79595. Hearing for penalties

79595. (a) Any hearing required under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all powers granted by those provisions.

(b) In making a determination, the administrative law judge shall consider 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 and safety or the environment, the violator's ability to pay the proposed penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole.

Comment. Section 79595 continues former Section 25359.3(b) without substantive change. See Section 78050 ("department").

§ 79600. Deposit and expenditure of penalties

79600. All penalties collected under this article and Section 79550 shall be deposited in the state account and shall be available for expenditure by the department upon appropriation by the Legislature.

Comment. Section 79600 continues former Section 25359.3(c) without substantive change. See Sections 78050 ("department"), 78165 ("state account").

CHAPTER 8. COST RECOVERY

Article 1. General Provisions

§ 79650. Recovery of costs generally

79650. (a) A cost incurred by the department or regional board in carrying out or overseeing a response or a corrective action under this part or Chapter 6.5 (commencing with Section 25100) of Division 20 shall be recoverable pursuant to state or federal law by the Attorney General, upon the request of the department or regional board, from the liable person.

(b) The amount of response or corrective action costs incurred by the department or regional board shall be recoverable at the discretion of the department or regional board, either in a separate action or by way of intervention as of right in an action for contribution or indemnity.

(c) The amount of any response or corrective action costs that may be recovered pursuant to this section shall include interest on any amount paid.

(d) A person who is liable for response or corrective action costs incurred at a site shall have the liability reduced by any reimbursements that were paid by that person for that site pursuant to Section 79105.

(e) Nothing in this section deprives a party of any defense that the party may have.

(f) Moneys recovered by the Attorney General pursuant to this section shall be deposited in the state account.

Comment. Section 79650 restates former Section 25360 without substantive change. The phrase "liable person or persons" has been singularized. This is a nonsubstantive change. See Section 13. See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account").

§ 79655. Interest on liability to department

79655. (a)(1) Until June 30, 2021, except as provided in subdivision (b), a monetary obligation to the department pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20 shall be subject to interest from the date of the demand at an interest rate of 7 percent per annum.

(2) Commencing July 1, 2021, except as provided in subdivision (b), a monetary obligation to the department pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20 shall be subject to interest from the date of the

demand at an interest rate of 10 percent per annum, except that, for obligations of local governments, the interest rate shall be 7 percent per annum.

(b)(1) The department shall waive the interest described in subdivision (a) if the obligation is satisfied within 60 days from the date of invoice.

(2) If, within 45 days of receiving an invoice, the liable person provides written notice to the department in accordance with its invoice dispute resolution procedures disputing in good faith the monetary obligation specified in the invoice, or a portion thereof, the department shall waive the interest until the dispute is resolved.

Comment. Section 79655 restates former Section 25360.1 without substantive change. The phrase "liable person or persons" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78050 ("department"), 78145 ("responsible party").

§ 79660. Judgment not bar to future action

79660. The entry of judgment against any party to the action shall not be deemed to bar any future action by the state account against any person who is later discovered to be potentially liable for costs and expenditures paid by the state account.

Comment. Section 79660 continues former Section 25365 without substantive change.

See Section 78085 ("person"), 78165 ("state account").

§ 79665. Strict liability

79665. The standard of liability for costs recoverable pursuant to this part is strict liability.

Comment. Section 79665 continues former Section 25363(c) without substantive change.

§ 79670. Contribution and indemnity

79670. (a) A person who has incurred response or corrective action costs in accordance with this part, Chapter 6.5 (commencing with Section 25100) of Division 20, or the federal act may seek contribution or indemnity from any person who is liable pursuant to this part.

(b) An action to enforce a claim may be brought as a cross-complaint by any defendant in an action brought pursuant to Section 79650 or this section, or in a separate action after the person seeking contribution or indemnity has paid response or corrective action costs in accordance with this part, Chapter 6.5 (commencing with Section 25100) of Division 20, or the federal act.

(c) A plaintiff or cross-complainant seeking contribution or indemnity shall give written notice to the director upon filing an action or cross-complaint under this section.

(d) In resolving claims for contribution or indemnity, the court may allocate costs among liable parties using appropriate equitable factors.

Comment. Section 79670 continues former Section 25363(d) without substantive change.

See Sections 78055 ("director"), 78065 ("federal act"), 78085 ("person"), 78140 ("response").

Article 2. Recovery of Specific Costs or Funds

§ 79680. Recovery of costs incurred and payable prior to July 1, 2006

79680. Notwithstanding any provision of Section 78165, any costs incurred and payable from the Hazardous Substance Account, the Hazardous Waste Control Account, or the Site Remediation Account prior to July 1, 2006, to implement this part, shall be recoverable from the liable person pursuant to Section 79650 as if the costs were incurred and payable from the state account.

Comment. Section 79680 restates former Section 25324(b) without substantive change. The phrase "liable person or persons" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78145 ("responsible party"), 78165 ("state account").

§ 79685. Recovery for natural resource damages

79685. Notwithstanding Section 78850, the Governor, or the authorized representative of the state, shall act on behalf of the public as trustee of the natural resources to recover costs expended pursuant to Section 79450.

Comment. Section 79685 continues former Section 25352(c) without substantive change.

§ 79690. Recovery of funds expended at sites owned or operated by federal, state, or local governments or agencies

79690. The department shall recover any funds expended pursuant to subdivision (a) or (b) of Section 79070 to the maximum possible extent pursuant to Section 79650.

Comment. Section 79690 continues former Section 25353(c) without substantive change.

See Section 78050 ("department").

Article 3. Parties

§ 79700. State account

79700. The state account shall be a party in any action for recovery of costs or expenditures under this part incurred from the state account.

Comment. Section 79700 continues former Section 25361(a) without substantive change.

See Sections 78165 ("state account").

§ 79705. State account as party to recover costs in an action for penalties

79705. (a) In the event a district attorney or a city attorney has brought an action for civil or criminal penalties pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 against any person for the violation of any provision of that chapter, or any rule, regulation, permit, covenant, standard, requirement, or order issued, adopted, or executed thereunder, and the department has expended moneys from the state account pursuant to Section 78875 for immediate corrective action in response to a release, or threatened release, of a hazardous substance that has resulted, in whole or in part, from the person's acts or omissions, the state account

may be made a party to that action for the purpose of recovering the costs against that person.

(b)(1) If the state account is made a party to the action, the Attorney General shall represent the state account for the purpose of recovering the moneys expended from the account.

(2) Notwithstanding any other provision of law, and under terms that the Attorney General and the department deem appropriate, the Attorney General may delegate the authority to recover the costs to the district attorney or city attorney who has brought the action pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20.

(c) The failure to seek the recovery of moneys expended from the state account as part of the action brought pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 does not foreclose the Attorney General from recovering the moneys in a separate action.

Comment. Section 79705 continues former Section 25361(b) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78140 ("response"), 78165 ("state account").

§ 79710. Joinder of potentially liable person

79710. Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures of the type recoverable under this part.

Comment. Section 79710 continues former Section 25362 without substantive change.

See Section 78085 ("person").

Article 4. Timing

§ 79725. Commencement prior to expiration of limitations period

79725. An action may be commenced under Section 79650 or 79685 at any time prior to expiration of the applicable limitations period provided for by this article.

Comment. Section 79725 continues former Section 25360.4(d) without substantive change.

§ 79730. Cost recovery actions

79730. (a)(1) Except as provided in paragraph (2) and subdivision (b), an action under Section 79650 for the recovery of costs incurred by the department or a regional board in carrying out or overseeing a response or corrective action pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20, or as otherwise authorized by law, shall be commenced within three years after completion of all response or corrective actions has been certified by the department or a regional board.

(2) If operation and maintenance is required as part of the response or corrective action, the action for recovery of costs incurred by the department or a regional

board shall be commenced within three years after completion of operation and maintenance has been certified by the department or a regional board.

(b) No action described in subdivision (a) may be brought that, as of December 31, 2015, had not been commenced by the department within three years after the certification of the completion of the removal or remedial action.

Comment. Section 79730 continues former Section 25360.4(a) without substantive change. See Sections 78050 ("department"), 78080 ("operation and maintenance"), 78100 ("regional board"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response").

§ 79735. Recovery actions for natural resources damages

79735. An action under Section 79685 for costs incurred by the department for the purposes specified in Section 79450 shall be commenced within three years after certification by the department of the completion of the activities authorized under Section 79450.

Comment. Section 79735 continues former Section 25360.4(b) without substantive change. See Section 78050 ("department").

§ 79740. Reserved and continuing jurisdiction

79740. (a)(1) In an action described in Section 79730 or 79735 for recovery of response or corrective action costs, oversight costs, or damages, where the court has entered a judgment for past costs or damages, the court shall also enter an order reserving jurisdiction over the case and the court shall have continuing jurisdiction to determine any future liability and the amount of the future liability.

(2) The department or regional board may immediately enforce the judgment for past costs and damages.

(b) The department or the regional board may apply for a court judgment for further costs and damages that have been incurred during the response or corrective action, operation and maintenance, or during the performance of the activities authorized by Section 79450, but the application shall be made not later than three years after the certification of completion of the response or corrective action, operation and maintenance, or activities authorized pursuant to Section 79450.

Comment. Section 79740 continues former Section 25360.4(c) without substantive change. See Sections 78050 ("department"), 78080 ("operation and maintenance"), 78100 ("regional board"), 78140 ("response").

§ 79745. Article inapplicable to cost recovery under Water Code

79745. This article does not apply to a cost recovery action brought by a regional board under the Water Code.

Comment. Section 79745 continues former Section 25360.4(e) without substantive change. See Section 78100 ("regional board").

Article 5. Scope of Liability

§ 79760. Determination of party's liability

79760. (a) Except as provided in Section 79765, a party found liable for costs recoverable under this part who establishes by a preponderance of the evidence that only a portion of those costs are attributable to that party's actions shall be required to pay only for that portion.

(b) Except as provided in Section 79765, if the trier of fact finds the evidence insufficient to establish each party's portion of costs under subdivision (a), the court shall apportion those costs, to the extent practicable, according to equitable principles, among the defendants.

Comment. Section 79760 continues former Section 25363(a) and (b) without substantive change.

§ 79765. Contractor liability

79765. Notwithstanding this part, a response action contractor who is found liable for any costs recoverable under this part and who establishes by a preponderance of the evidence that only a portion of those costs are attributable to the response action contractor's actions shall be required to pay only that portion of the costs attributable to the response action contractor's actions.

Comment. Section 79765 continues former Section 25363(e) without substantive change. See Section 78140 ("response").

Article 6. Liability of Residential Property Owner

§ 79780. Definitions

79780. For purposes of this article, the following definitions apply:

(a) "Owner" means either (1) the owner of property who occupies a single-family residence or one-half of a duplex constructed on the property, or (2) the owner of common areas within a residential common interest development who owns those common areas for the benefit of the residential homeowners. This subdivision does not include the developer of the common interest development.

(b) "Property" means either (1) real property of five acres or less that is zoned for, and on which has been constructed, a single-family residence, or (2) common areas within a residential common interest development.

Comment. Section 79780 continues former Section 25360.2(a) without substantive change.

§ 79785. Relation to other law

79785. Notwithstanding any other provision of this part, this article governs liability pursuant to this part for an owner of property.

Comment. Section 79785 continues former Section 25360.2(e) without substantive change. Redundant language citing to the applicable definitions was not continued. See Section 79780 ("owner," "property").

§ 79790. Presumption

79790. (a) Notwithstanding any other provision of this part, an owner of property that is the site of a hazardous substance release is presumed to have no liability pursuant to this part for either of the following:

(1) A hazardous substance release that has occurred on the property.

(2) A release of a hazardous substance to groundwater underlying the property if the release occurred at a site other than the property.

(b) The presumption may be rebutted as provided in Section 79800.

Comment. Section 79790 continues former Section 25360.2(b) without substantive change. See Sections 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site"), 79780 ("owner," "property").

§ 79795. Certification required to bring action

79795. An action for recovery of costs or expenditures incurred from the state account pursuant to this part in response to a hazardous substance release may not be brought against an owner of property unless the department first certifies that, in the opinion of the department, one of the following applies:

(a) The hazardous substance release that occurred on the property occurred after the owner acquired the property.

(b) The hazardous substance release that occurred on the property occurred before the owner acquired the property and at the time of acquisition the owner knew or had reason to know of the hazardous substance release.

(c) The owner of property where there has been a release of a hazardous substance to groundwater underlying the property took, or is taking, one or more of the following actions:

(1) Caused or contributed to a release of a hazardous substance to the groundwater.

(2) Fails to provide the department, or its authorized representative, with access to the property.

(3) Interferes with response action activities.

Comment. Section 79795 continues former Section 25360.2(c) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78165 ("state account"), 79780 ("owner," "property").

§ 79800. Rebuttal of presumption

79800. In an action brought against an owner of property to recover costs or expenditures incurred from the state account pursuant to this part in response to a hazardous substance release, the presumption established in Section 79790 may be rebutted if it is established by a preponderance of the evidence that the facts upon which the department made the certification pursuant to subdivision (a), (b), or (c) of Section 79795 are true.

Comment. Section 79800 continues former Section 25360.2(d) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78165 ("state account"), 79780 ("owner," "property").

Article 7. Liability of Easement Holder or Special District

§ 79810. Definitions

79810. For the purposes of this article, the following terms have the following meaning:

(a) "Easement" means a conservation easement, as defined in Section 815.1 of the Civil Code.

(b) "Environmental assessment" means an investigation of real property, conducted by an independent qualified environmental consultant, to discover the presence or likely presence of a release or a threat of a release of a hazardous substance at, on, to, or from the real property. An environmental assessment shall include, but is not limited to, an investigation of the historical use of the real property, any prior releases, records, consultant reports and regulatory agency correspondence, a visual survey of the real property, and, if warranted, sampling and analytical testing.

(c) "Owner" means either of the following:

(1) An independent special district, as defined in Section 56044 of the Government Code.

(2) An entity or organization that holds an easement.

(d) "Property" means either of the following:

(1) Real property acquired by a special district by means of a gift or donation for which an environmental assessment was completed prior to the transfer or conveyance of the real property to the special district.

(2) An easement for which an environmental assessment was completed prior to the transfer or conveyance of the easement to an entity or organization authorized to accept the easement pursuant to Section 815.3 of the Civil Code.

Comment. Section 79810 continues former Section 25360.3(a) without substantive change. See Sections 78075 ("hazardous substance"), 78105 ("release").

§ 79815. Application

79815. (a) Notwithstanding any other provision of this part, this article governs liability pursuant to this part for an owner of property.

(b) This article is applicable only to property that is acquired by the owner on or after January 1, 1995.

Comment. Section 79815 continues former Section 25360.3(d) and (e) without substantive change. Redundant language citing to the applicable definitions was not continued. See Section 79810 ("owner," "property").

§ 79820. Presumption

79820. (a) Notwithstanding any other provision of this part, if an environmental assessment of property discovers no evidence of the presence or likely presence of a release or a threat of a release of a hazardous substance, and a hazardous substance release is subsequently discovered on, to, or from that property, the owner of that

property is entitled to a rebuttable presumption, affecting the burden of producing evidence, that the owner is not a liable person or responsible party for purposes of this part. An owner is entitled to this presumption whether the action is brought by the state or by a private party seeking contribution or indemnification.

(b) In an action brought against an owner of property to recover costs or expenditures incurred from the state account pursuant to this part in response to a hazardous substance release, the presumption may be rebutted if it is established by a preponderance of the evidence that the facts upon which the department made the certification pursuant to subdivision (a), (b), (c), or (d) of Section 79825 are true.

Comment. Section 79820 continues former Section 25360.3(b) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party"), 78165 ("state account"), 79810 ("environmental assessment," "owner," "property").

§ 79825. Certification required to bring action

79825. An action for recovery of costs or expenditures incurred from the state account pursuant to this part in response to a hazardous substance release shall not be brought against an owner of property unless the department first certifies that, as found by the department, one of the following situations applies:

(a) The hazardous substance release occurred on or after the date that the owner acquired the property.

(b) The hazardous substance release occurred before the date that the owner acquired the property and, at the time of the acquisition, the owner knew, or had reason to know, of the hazardous substance release.

(c) The environmental assessment applicable to the property was not properly carried out, was fraudulently completed, or involves the negligent or intentional nondisclosure of information.

(d) The hazardous substance release was discovered on or after the date of acquisition and the owner failed to exercise due care with respect to the release, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances.

Comment. Section 79825 continues former Section 25360.3(c) without substantive change. See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78165 ("state account"), 79810 ("environmental assessment," "owner," "property").

Article 8. Liability of Operator for Household Hazardous Waste or Used Oil Collection Program

§ 79840. "Household hazardous waste collection program"

79840. For purposes of this article, "household hazardous waste collection program" means a program or facility, specified in Section 25218.1, in which hazardous wastes from households and conditionally exempt small quantity generators are collected and ultimately transferred to an authorized hazardous waste treatment, storage, or disposal facility.

Comment. Section 79840 continues former Section 25366.5(b) without substantive change.

§ 79845. Limitation on liability of HHW or used oil collection programs

79845. A public agency operating a household hazardous waste collection program or a person operating a household hazardous waste collection program under a written agreement with a public agency, or, for material received from the public as used oil, a person operating a certified used oil collection center as provided in Section 48660 of the Public Resources Code, shall not be held liable in a cost recovery action brought pursuant to Section 79650, including, but not limited to, an action to recover the fees imposed by Section 79105 or an action brought pursuant to Section 79670, for waste that has been properly handled and transported to an authorized hazardous waste treatment, storage, or disposal facility at a location other than that of the collection program.

Comment. Section 79845 continues former Section 25366.5(a) without substantive change. See Section 78085 ("person"), 79840 ("household hazardous waste collection program").

§ 79850. Effect on state or federal law obligations or liabilities

79850. Except as provided in Section 79845, this article does not affect or modify the obligations or liabilities of a person imposed pursuant to state or federal law.

Comment. Section 79850 continues former Section 25366.5(c) without substantive change. See Section 78085 ("person").

Article 9. Liability Agreements

§ 79860. Agreement not effective to transfer liability for recoverable costs or expenditures

79860. Except as provided in Article 10, no indemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer any liability for cost or expenditures recoverable under this part. This section shall not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this part.

Comment. Section 79860 continues former Section 25364 without substantive change.

§ 79865. Effect of repeal of Section 25364.6

79865. The repeal of Section 25364.6, pursuant to Chapter 1226 of the Statutes of 1998, shall not affect any indemnity provided pursuant to that section for any cause of action brought because of any act or omission that occurred before the repeal of that section.

Comment. Section 79865 restates former Section 25364.7 without substantive change. The cross-reference to the "repeal of Section 25364.6" has been updated to refer to the legislation that repealed the provision. See 1998 Cal. Stat. ch. 1226, § 1. The verb "occur" was made past tense, as all of the relevant acts or omissions would have happened prior to the repeal of former Section 25364.6.

Article 10. Former Kaiser Steel Corporation Steel Mill Site

§ 79875. Definitions

79875. For purposes of this article, the following definitions shall apply:

(a) "Affiliate" means any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the responsible party owner. For purposes of this subdivision, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, or ownership of shares or interests in the entity possessing more than 50 percent of the voting power.

(b) "Qualified independent consultant" means either a geologist who is registered pursuant to Section 7850 of the Business and Professions Code or a professional engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(c) "Responsible party owner" means the owner of all or part of the site on January 1, 1993, or if all or a part of the site is transferred to a joint venture formed for purposes of development of the site, the owner of the site immediately prior to that transfer.

(d) "Site" means the site of the former Kaiser Steel Corporation steel mill located near the City of Fontana.

Comment. Section 79875 continues former Section 25364.1(a) without substantive change. See Section 78155 ("site").

§ 79880. Authority of director to release specified persons from liability

79880. Notwithstanding any other provision of law, except as provided in Sections 79885 and 79890, the director may release from liability under this part or Chapter 6.5 (commencing with Section 25100) of Division 20, and from liability for any claims of the state for recovery of response costs under the federal act, any of the following persons, with regard to a removal or remedial action at the site:

(a) Any person who provides financing for all, or a substantial part of, the costs of performing a removal or remedial action at the site pursuant to a remedial action plan prepared by a qualified independent consultant and issued by the department pursuant to Section 79210 and subdivision (a) of Section 79215, except that the release from liability shall not release the person providing this financing from liability for any hazardous substance release or threatened release resulting from that person's exercise of decisionmaking control over the performance of the removal or remedial action while the responsible party owner remains in possession of the site.

(b) Any person who enters into an agreement with the responsible party owner to provide development services for the development of all, or a part of, the site, including a developer, who becomes a partner in a joint venture partnership with the responsible party owner, if the joint venture is formed for purposes of the development of the site and legal title to the site is transferred by the responsible

party owner to the joint venture. If a release from liability is granted to a developer pursuant to this subdivision and the legal title to the site is transferred by the responsible party owner to a joint venture between the developer and the responsible party owner of the site, the responsible party owner shall not be relieved of liability under this part.

(c) Any person who acquires an ownership or leasehold interest in all or a part of the site after performance of the removal or remedial action specified in the remedial action plan for the site, or part of the site, has been completed to the satisfaction of the department.

Comment. Section 79880 continues former Section 25364.1(b) without substantive change.

See Sections 78050 ("department"), 78055 ("director"), 78065 ("federal act"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response"), 78155 ("site"), 79875 ("qualified independent consultant," "responsible party owner," "site").

§ 79885. Conditions required for release to be granted

79885. A release from liability shall not be granted pursuant to Section 79880 unless all of the following conditions are met:

(a) A responsible party owner has entered into a stipulated settlement of an order issued by the department pursuant to Section 25187, 78870, or 79055 to perform the removal or remedial action at the site in accordance with the remedial action plan and has arranged financing, contingent only upon obtaining releases from potential liability pursuant to Section 79880, for the costs of performing the removal or remedial action.

(b) A responsible party owner agrees to pay all applicable oversight fees required by Section 79105 and to pay any additional costs that are recoverable pursuant to Section 79650.

(c) No person to be released from liability pursuant to Section 79880 is a responsible party or an affiliate of a responsible party, with respect to any hazardous substance release existing at the site at the time the release from liability is granted.

(d) The stipulated settlement requires the responsible party owner to provide irrevocable financial assurances for full performance of the remedial action plan. The financial assurances may consist of one or more of the financial assurance instruments described in Section 66264.143 of Title 22 of the California Code of Regulations. Upon the approval of the department, the forms of these instruments may be revised as appropriate to apply to the costs of performing the removal or remedial action specified in the remedial action plan.

(e) The director finds that the release from liability to be granted will promote the purposes and goals of this part and encourage private investment in property that is in need of remediation.

Comment. Section 79885 continues former Section 25364.1(c) without substantive change.

See Sections 78050 ("department"), 78055 ("director"), 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 79875 ("affiliate," "responsible party owner," "site").

§ 79890. Limitations on release from liability

79890. Notwithstanding any other provision of this article, a release from liability granted pursuant to Section 79880 shall not extend to any of the following:

(a)(1) Any person who was a responsible party for a hazardous substance release existing at the site before the release from liability was granted

(2) Any entity that is an affiliate of a responsible party described in paragraph (1).

(b) Any contractor who prepares the remedial action plan or performs the removal or remedial action provided for in the remedial action plan.

(c) Any person who obtains a release pursuant to Section 79880 by fraud or negligent or intentional nondisclosure or misrepresentation.

(d) Any liability for a release or threatened release of a hazardous substance first deposited at the site by a person released from liability pursuant to Section 79880 after the release from liability is granted.

Comment. Section 79890 restates former Section 25364.1(e) without substantive change.

See Sections 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 79875 ("affiliate," "site").

§ 79895. Required content of release from liability

79895. Any release from liability granted by the director pursuant to this article shall contain the following provision: "If, for any reason, the responsible party does not complete the removal or remedial action, this release does not extend to any subsequent actions or activities performed by the released party that exacerbate the conditions at the site."

Comment. Section 79895 continues former Section 25364.1(f) without substantive change.

See Sections 78055 ("director"), 78105 ("release"), 78125 ("remedy"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 79875 ("site").

§ 79900. Subdivision of site to facilitate or secure financing for removal or remedial action

79900. The site may be subdivided to create subdivided parcels of land, pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), in order to facilitate removal or remedial action at the site, secure financing for removal or remedial action, or secure financing for development that would generate funds for removal or remedial action at the site.

Comment. Section 79900 continues former Section 25364.1(d) without substantive change.

See Sections 78125 ("remedy"), 78135 ("remove"), 78155 ("site"), 79875 ("site").

Article 11. Costs Incurred at BKK Landfill Site

§ 79910. Contribution towards liability

79910. (a) Notwithstanding any other provision of this chapter, the costs incurred by a state agency to take a hazardous substance response action at the BKK Landfills Site in West Covina shall be deemed to be a contribution towards any potential liability for response costs or damages imposed pursuant to state law upon a state

agency that arranged for the disposal or treatment of a hazardous substance at that site.

(b) The Legislature declares its intent that the costs incurred by a state agency to take action in response to a hazardous substance release at the BKK Landfills Site in West Covina shall be deemed to be a contribution towards any potential liability for response costs or damages imposed pursuant to the federal act upon a state agency that arranged for the disposal or treatment of a hazardous substance at that site.

Comment. Section 79910 continues former Section 25363.5 without substantive change.

See Sections 78065 ("federal act"), 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78155 ("site").

Article 12. Settlement

§ 79920. Settlement involving minor portion of response costs

79920. (a) The department shall, if it determines that it is practicable and in the public interest, propose a final administrative or judicial expedited settlement with potentially responsible parties if the settlement involves only a minor portion of the response costs at a site and, if in the judgment of the department, either of the following conditions are met:

(1) The amount of hazardous substances and the toxic or other hazardous effects of the hazardous substances contributed by the potentially responsible party to the site are minimal in comparison to the amount and effects of other hazardous substances at the site.

(2) The potentially responsible party is the owner of the real property on or in which the site is located, did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the site, and did not contribute to the release or threat of release of a hazardous substance at the site through any act or omission. This paragraph does not apply if the potentially responsible party, at the time of the purchase of the real property, knew or should have known that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(b) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. A settlement under this section does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(c) Any person who enters into a settlement under this section shall provide any information relevant to the administration of this part that is requested by the department. In order to obtain the contribution protection provided by subdivision (b), a potentially responsible party participating in a de minimis settlement shall certify that it has responded fully and accurately to all of the department's requests

for information, and that it has provided all of the relevant documents pertaining to the site to the department.

(d) Nothing in this section shall be construed to affect the authority of the department or regional board to reach settlements with other potentially responsible parties under this part.

Comment. Section 79920 restates former Section 25360.6 without substantive change. For consistency, the term "site" was substituted for the term "facility." See Section 78155 ("site" has the same meaning as "facility" in federal act); see also Section 78035 (definitions in federal act apply to terms used in this part).

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78085 ("person"), 78100 ("regional board"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party").

Article 13. Liens

§ 79935. Lien on real property

79935. (a)(1) Any costs or damages incurred by the department or regional board pursuant to this part constitute a claim and lien upon the real property owned by the responsible party that is subject to, or affected by, the removal and remedial action.

(2) The lien provided by this article shall continue until the liability for these costs or damages, or a judgment against the responsible party, is satisfied. However, if it is determined by the court that the judgment against the responsible party will not be satisfied, the department may exercise its rights under the lien.

(b) This lien shall attach regardless of whether the responsible party is insolvent.

(c) A lien established by this article shall be subject to the notice and hearing procedures required by due process of the law and shall arise at the time costs are first incurred by the department or regional board with respect to a response action at the site.

Comment. Section 79935 continues former Section 25365.6(a) and (c) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78125 ("remedy"), 78135 ("remove"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 79940. Force and effect of lien

79940. The lien imposed by this article shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located.

Comment. Section 79940 continues the first sentence of former Section 25365.6(d) without substantive change.

See Sections 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site").

§ 79945. Contents of lien

79945. (a) The lien shall contain the legal description of the real property, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll.

(b) The lien shall also contain a legal description of the property that is the site of the hazardous substance release, the assessor's parcel number for that property, and the name of the owner of record, as shown on the latest equalized assessment roll, of that property.

Comment. Section 79945 continues the second and third sentences of former Section 25365.6(d) without substantive change.

See Sections 78075 ("hazardous substance"), 78105 ("release"), 78155 ("site").

§ 79950. Department not responsible party due to lien

79950. The department shall not be considered a responsible party for a hazardous substance release site because a claim and lien is imposed pursuant to this article.

Comment. Section 79950 continues former Section 25365.6(b) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78145 ("responsible party"), 78155 ("site").

§ 79955. Deposit of funds recovered

79955. All funds recovered pursuant to this article shall be deposited in the state account.

Comment. Section 79955 continues former Section 25365.6(e) without substantive change.

See Section 78165 ("state account").

CHAPTER 9. ORPHAN SHARE REIMBURSEMENT

Article 1. General Provisions

§ 80000. Definitions

80000. For purposes of this chapter, the following definitions shall apply:

(a) "Fund" means the Orphan Share Reimbursement Trust Fund established pursuant to Section 80020.

(b) "Orphan share" means the share of liability for the costs of response action that is attributable to the activities of persons who are defunct or insolvent, as determined pursuant to Section 80070.

Comment. Section 80000 continues former Section 25390 without substantive change.

See Sections 78085 ("person"), 78140 ("response").

§ 80005. Legislative findings and declarations

80005. The Legislature finds and declares all of the following:

(a) This chapter, which establishes an Orphan Share Reimbursement Trust Fund, operates in conjunction with the federal liability scheme under the federal act as in effect on July 1, 1998, for the recovery of response costs expended by government agencies.

(b) Under federal liability, at sites where there are insolvent or defunct parties that cannot contribute to the cost of cleanup, viable responsible parties pay the share of liability for that cleanup that may be attributable to insolvent and defunct parties.

(c) The Orphan Share Reimbursement Trust Fund is created to mitigate the payment of an insolvent or defunct party's liability share by viable responsible parties, to the extent money in the fund is available, and to encourage responsible parties to quickly and efficiently remediate contamination.

Comment. Section 80005 continues former Section 25390.1 without substantive change. See Sections 78065 ("federal act"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80000 ("fund").

§ 80010. Effect of chapter

80010. (a) This chapter does not prohibit, and is not intended to prohibit, the department, the regional board, or the Attorney General from pursuing any existing legal, equitable, or administrative remedies, pursuant to federal or state law, against any potentially responsible party.

(b) No liability or obligation is imposed upon the state pursuant to this chapter, and the state shall not incur a liability or obligation beyond the payment of claims pursuant to this chapter, to the extent that money is available and has been allocated by the administrator under subdivision (a) of Section 80050. No legal action may be brought against the Orphan Share Reimbursement Trust Fund in its own name.

Comment. Section 80010 continues former Section 25390.2 without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78125 ("remedy"), 78145 ("responsible party").

Article 2. Orphan Share Reimbursement Trust Fund

§ 80020. Creation, administration, and funding of Orphan Share Reimbursement Trust Fund

80020. (a) The Orphan Share Reimbursement Trust Fund is hereby created in the State Treasury.

(b) The administrator of the fund may expend the money deposited in the fund as provided in this chapter, upon appropriation by the Legislature. The administrator of the fund shall act in a fiduciary capacity, shall prudently administer the fund, and shall protect the fund from any unreasonable or unjustified claims, including any unreasonable or unjustified determinations of the orphan share percentage.

(c) If an appropriation from the General Fund is made to the fund in any fiscal year and an amount greater than five million dollars ($5,000,000) in unexpended funds, beyond any amount approved by the administrator of the fund to pay claims pursuant to this chapter from that General Fund appropriation, remain in the fund at the end of that fiscal year, and if the department determines that additional funding for orphan sites beyond that appropriated from the state account is required for the next fiscal year, the administrator may expend the amount in excess of five million dollars ($5,000,000) from the General Fund appropriation to pay for response costs incurred by the department or the regional boards under this part at sites listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4 where no viable responsible parties exist.

Comment. Section 80020 continues former Section 25390.3(a), (b), and (d) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 78165 ("state account"), 80000 ("fund," "orphan share").

§ 80025. Permissible expenditures

80025. Except as provided in subdivision (b) of Section 78420 and subdivision (c) of Section 80020, the administrator of the fund may expend the money in the fund for all of the following purposes:

(a) To pay claims for reimbursement of all, or any part of, the orphan share at a site paid by the responsible party filed pursuant to Sections 80040, 80045, and 80050.

(b) For the costs of implementing this chapter.

(c) To pay the reasonable costs of the department and the regional board for performance of its duties under this chapter, including, but not limited to, its participation in the orphan share determination process set forth in Section 80070, unless those costs are paid by a potentially responsible party under an agreement specified in subdivision (c) of Section 80040. The expenditures from the fund for purposes of this subdivision shall not exceed 5 percent of the total amount appropriated from the fund in the annual Budget Act for purposes of this section for that fiscal year.

(d) To pay the portion of costs attributable to the orphan share incurred by the department and the regional boards to oversee actions of potentially responsible parties, unless those costs are paid by a potentially responsible party under an agreement specified in subdivision (c) of Section 80040.

Comment. Section 80025 continues former Section 25390.3(c) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80000 ("fund," "orphan share").

Article 3. Claims for Orphan Share Reimbursement

§ 80040. Persons who may file claim

80040. A potentially responsible party may file a claim pursuant to subdivision (a) of Section 80025 only if all of the following apply:

(a) The site is listed pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

(b) The department or the regional board has approved a final remedy for the site under Article 12 (commencing with Section 79190) of Chapter 5.

(c) The department and the potentially responsible party have entered into a written, enforceable cleanup agreement or order embodied in a consent order issued pursuant to Section 78870 or 79055, or the regional board and the potentially responsible party have entered into a written, enforceable cleanup agreement or order that provides for the completion of all response actions necessary at the site, conducted pursuant to this part and under the oversight and at the direction of the

department or the regional board. The agreement shall provide for the payment by the potentially responsible party of the department's or the regional board's response costs.

(d) The potentially responsible party demonstrates, and the department or the regional board finds, that the potentially responsible party has and will have sufficient financial resources to complete all required response actions.

(e) The potentially responsible party is in compliance with the agreement provided in subdivision (c), and with any other applicable order or agreement pertaining to the potentially responsible party's obligations with respect to the site.

(f) The potentially responsible party has prepared and provided the information required under subdivision (b) of Section 80070.

(g) The claim for reimbursement is for the costs incurred for response actions that were subject to the oversight and approval of the department or the regional board.

Comment. Section 80040 continues former Section 25390.4(a) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78125 ("remedy"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 80045. Forms and procedures for claims

80045. The administrator of the fund shall prescribe appropriate application forms and procedures for claims filed pursuant to subdivision (a) of Section 80025 that shall include all of the following:

(a) Requirements that the claimant provide, at a minimum, all of the following documentation:

(1) A sworn verification of the claim to the best of the information known to the claimant or within the claimant's possession or control.

(2) All records and information pertaining to the site and relevant to the ownership, operation, or control of the site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the site, within the possession or control of the claimant, including, but not limited to, the information specified in subdivision (a) of Section 78440.

(3) Certification of all response costs that have been, or will be, incurred at the site by the potentially responsible party, and an estimate of the total cost of completion of the approved final remedy at the site.

(b) Procedures specifying that claims shall be filed only at the two following specific time periods during the performance of a response action:

(1) After the final remedy is selected under Article 12 (commencing with Section 79190) of Chapter 5.

(2) After the department or the regional board determines that the response action is complete. The department or the regional board shall not include operation and maintenance activities in determining whether the response action is complete under this paragraph.

Comment. Section 80045 continues former Section 25390.4(b) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78100 ("regional board"), 78125 ("remedy"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80000 ("fund").

§ 80050. Payment of claims

80050. (a) The administrator of the fund shall annually, on a fiscal year basis, pay claims for reimbursement from the fund filed by potentially responsible parties under subdivision (a) of Section 80025, in accordance with the following procedures:

(1) Claims for funds available during each fiscal year shall be filed with the administrator by July 30 of that fiscal year.

(2) For sites with multiple responsible parties, all potentially responsible parties that have entered into the cleanup agreement specified in subdivision (c) of Section 80040 shall file a single claim.

(3)(A) The administrator shall allocate the money available in the fund for the fiscal year among the claims filed by the July 30 deadline. The allocation shall be based on the determination of the orphan share percentage at the facility under the process set forth in Section 80070, the long-term financial stability and short-term resources available in the fund, and the administrator's fiduciary duty with respect to the fund. Except as provided in subparagraph (B), the administrator shall pay claims for funds in the order in which they are received.

(B) Notwithstanding subparagraph (A), if an appropriation from the General Fund is made to the fund in any fiscal year, the administrator may alter the order of payment of claims required by subparagraph (A) by using funds appropriated from the General Fund to pay claims based on the threat to public health or the environment posed by a site or the need to improve economic and environmental conditions in redeveloping communities.

(4) The total amount allocated to any one site shall not exceed 10 percent of the total amount available each fiscal year in the fund. If, due to this limit or to the unavailability of funds, a claimant receives only partial or no reimbursement of the orphan share paid by that claimant, the claim shall be paid in the following fiscal year and shall be given priority over all claims filed after the claim was initially received, subject to the discretion of the administrator set forth in paragraph (3).

(5) The administrator's proposed allocation shall be subject to public review and comment for 30 days.

(b) The state and the fund have no obligation to provide full reimbursement to a claimant. The fund shall be allocated at the discretion of the administrator, subject to the requirements of this chapter. In enacting this chapter, the Legislature intends that claimants be reimbursed only to the extent that money is available in the fund and is allocated to the claimant by the administrator.

Comment. Section 80050 continues former Section 25390.4(c) and (d) without substantive change.

See Sections 78145 ("responsible party"), 78155 ("site"), 80000 ("fund," "orphan share").

§ 80055. Sites for which claims not permitted

80055. A claim for reimbursement under subdivision (a) of Section 80025 shall not be filed for any of the following:

(a) Sites listed on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605(a)(8)(B)).

(b) Sites remediated pursuant to former Chapter 6.85 (commencing with Section 25396) of Division 20.

(c) Sites, or portions of sites, for which the potentially responsible party has agreed to take all response action required by the department or the regional board at the site, and that agreement is embodied in a written, enforceable settlement agreement, including, but not limited to, a judicial consent decree, entered into prior to January 1, 1999.

(d) Sites, or portions of sites, that have been fully remediated for which the department or the regional board has determined that the response action is complete prior to January 1, 1999. The department or the regional board shall not include operation and maintenance activities in determining whether the response action is complete under this section.

Comment. Section 80055 continues former Section 25390.7 without substantive change.

See Sections 78050 ("department"), 78065 ("federal act"), 78080 ("operation and maintenance"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

Article 4. Determination of Orphan Share

§ 80070. Manner of determination

80070. For the purposes of this chapter, the orphan share shall be determined in the following manner:

(a) The orphan share shall be expressed as a percentage in multiples of five, up to, and, including, but not greater than, 75 percent.

(b) The potentially responsible party filing a claim for reimbursement of the orphan share shall provide the administrator of the fund with a written potentially responsible party search report that shall include a list of all potentially responsible parties identified for the site, the factual and legal basis for identifying those parties, and a proposed orphan share percentage. The potentially responsible party shall also provide the administrator with the factual documentation necessary to support the proposed orphan share percentage.

(c) Upon receipt of the information required by subdivision (b), the administrator of the fund shall invite all identified potentially responsible parties and the department and the regional board to submit any additional information relating to the proposed orphan share percentage or to the list of identified potentially responsible parties.

(d) The administrator of the fund, in consultation with the department or the regional board, shall determine a final orphan share percentage based on the volume,

toxicity, and difficulty of removal of the contaminants contributed to the site by the party responsible for the orphan share. The administrator shall determine the orphan share timely and efficiently and is not required to precisely determine all relevant factors, as long as the determination is generally equitable. In addition, the administrator may consider the results of any apportionment or allocation conducted by voluntary arbitration or mediation or by a civil action filed by a potentially responsible party, or any other apportionment or allocation decision that is helpful when determining the orphan share percentage.

(e) A potentially responsible party shall not assert, and the administrator of the fund shall not determine, that the orphan share percentage includes the share of liability attributable to a potentially responsible party's acts that occurred before January 1, 1982, unless that share of responsibility is attributable to a person who is defunct or insolvent.

(f) In determining the orphan share percentage under this section, the administrator of the fund may perform any of the activities authorized in subdivisions (a) and (c) of Section 78440.

(g) The administrator of the fund shall issue all orphan share percentage determinations in writing, with notification to all appropriate parties. The decision of the administrator with respect to either apportionment or payment of claims is a final agency action for the purposes of judicial review of the decision by any party to the proceedings resulting in the decision; however, judicial review of the administrator's decision is limited to a showing of fraud by a party submitting information under this section. The administrator shall be represented by the Attorney General in any action brought under this chapter.

Comment. Section 80070 restates former Section 25390.5 without substantive change. The phrase "party or parties" has been singularized. This is a nonsubstantive change. See Section 13. An erroneous reference to "subdivision (a)" in subdivision (c) was corrected to refer to "subdivision (b)." An erroneous reference to "this subdivision" in subdivision (g) was corrected to refer to "this section."

See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78135 ("remove"), 78145 ("responsible party"), 78155 ("site"), 80000 ("fund," "orphan share").

Article 5. Enforcement and Cost Recovery

§ 80080. Recovery of costs paid from fund

80080. Any costs paid from the fund pursuant to subdivisions (a) and (d) of Section 80025 shall be recoverable by the Attorney General, at the request of the administrator of the fund, from any liable person who has not entered into, or is not in compliance with, a written cleanup agreement entered into pursuant to subdivision (c) of Section 80040 that provides for the completion of all response actions necessary at the site under the oversight and at the direction of the department or the regional board.

Comment. Section 80080 restates former Section 25390.6(a) without substantive change. The phrase "person or persons" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80000 ("fund").

§ 80085. Penalty for withholding information or submitting false information

80085. Any potentially responsible party who withholds information required to be submitted under this section or Section 80080, or who submits false information, is subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each piece of information withheld or for each piece of false information submitted.

Comment. Section 80085 continues former Section 25390.6(b) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site").

§ 80090. Lien for incurred costs

80090. (a) Any costs incurred and payable from the fund by the administrator pursuant to this chapter shall constitute a claim and lien upon the real property owned by a responsible party that is subject to, or affected by, a response action. A lien established by this subdivision shall have all of the following properties:

(1) The lien shall not exceed the increase in fair market value of the site attributable to the response action at the time of a subsequent sale or other disposition of the site.

(2) The lien shall attach regardless of whether the responsible party property owner is solvent.

(3) The lien shall arise at the time costs to the fund are first incurred by the administrator.

(4) The lien shall be subject to the notice and hearing procedures that due process of the law requires.

(b) Neither the administrator of the fund nor the fund shall be considered a responsible party for a hazardous substance release site because a claim and lien is imposed pursuant to this section.

(c)(1) The lien imposed by this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located.

(2) The lien shall contain the legal description of the property, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll. The lien shall also contain a legal description of the property that is the site of the hazardous substance release, the assessor's parcel number for that property, and the name of the owner of record, as shown on the latest equalized assessment roll, of that property.

(d) All funds recovered pursuant to this section shall be deposited in the fund.

Comment. Section 80090 continues former Section 25390.8 without substantive change. A cross-reference to "this subdivision" in subdivision (d) has been corrected to refer to "this section." See Sections 78075 ("hazardous substance"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80000 ("fund").

Article 6. Operative Date

§ 80100. Operative date

80100. (a) This chapter shall become operative on the operative date of the statute that does either, or both, of the following:

(1) Appropriates funds to the fund to implement this chapter.

(2) Establishes a revenue source for the fund.

(b) Notwithstanding subdivision (a), the operation of this chapter shall be suspended during any fiscal year in which both no funds are appropriated to the fund to implement this chapter and no revenue source for the fund is operative.

Comment. Section 80100 continues former Section 25390.9 without substantive change. See Section 80000 ("fund").

CHAPTER 10. CLEANUP LOANS AND ENVIRONMENTAL ASSISTANCE TO NEIGHBORHOODS

Article 1. Definitions

§ 80200. Application of definitions

80200. For purposes of this chapter, the definitions contained in this article shall apply.

Comment. Section 80200 restates the initial clause of former Section 25395.20(a) without substantive change.

§ 80205. "Account"

80205. "Account" means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 80350.

Comment. Section 80205 continues former Section 25395.20(a)(1) without substantive change.

§ 80210. "Brownfield"

80210. (a) "Brownfield" means property that meets all of the following conditions:

(1) It is located in an urban area.

(2) It was previously the site of an economic activity that is no longer in operation at that location.

(3) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan pursuant to this chapter.

(b) "Brownfield" does not include any of the following:

(1) Property listed, or proposed for listing, on the National Priorities List pursuant to Section 105(a)(8)(B) of the federal act (42 U.S.C. Sec. 9605(a)(8)(B)).

(2) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is a brownfield described in paragraph (5) of subdivision (a) of Section 80230.

Comment. Section 80210 continues former Section 25395.20(a)(2) without substantive change. A technical change was made to conform to the standard citation format for the federal act. See Section 78065.

See Sections 78065 ("federal act"), 78155 ("site"), 80225 ("economic activity"), 80250 ("no longer in operation"), 80260 ("property"), 80280 ("urban area").

§ 80215. "Cleanup and abatement order"

80215. "Cleanup and abatement order" means an order issued by a regional board pursuant to Section 13304 of the Water Code.

Comment. Section 80215 continues former Section 25395.20(a)(3) without substantive change. See Section 78100 ("regional board").

§ 80220. "Cleanup Loans and Environmental Assistance to Neighborhoods Program" or "CLEAN"

80220. "Cleanup Loans and Environmental Assistance to Neighborhoods Program" or "CLEAN" means the loan program established by the department pursuant to Article 6 (commencing with Section 80450), to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property.

Comment. Section 80220 continues former Section 25395.20(a)(4) without substantive change. See Sections 78050 ("department"), 78105 ("release"), 78140 ("response"), 80230 ("eligible property"), 80235 ("hazardous material").

§ 80225. "Economic activity"

80225. "Economic activity" means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

Comment. Section 80225 continues former Section 25395.20(a)(5) without substantive change.

§ 80230. "Eligible property"

80230. (a) "Eligible property" means a site that is any of the following:

(1) A brownfield.

(2) An underutilized property that is a property described in paragraph (5) of subdivision (d) of Section 80275.

(3) An underutilized property that is a property located in any of the following:

(A) An enterprise zone established pursuant to the former Enterprise Zone Act (former Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code).

(B) A project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33330) of Chapter 4 of Part 1 of Division 24.

(C) An eligible area, as determined pursuant to paragraph (2) of subdivision (c) of former Section 7072 of the Government Code.

(4) An underutilized property that is a property, the redevelopment of which will result in any of the following:

(A) An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the economic activity located on the property before redevelopment occurred.

(B) An increase in property taxes paid to the local government that is at least 100 percent greater than the property taxes paid by the property owner before redevelopment occurred.

(C) Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the property after the redevelopment occurs.

(D) Housing for very low, low-, or moderate-income households, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

(E) The construction of new or expanded school facilities, public day care centers, parks, or community recreational facilities.

(5) A brownfield or an underutilized property described in paragraph (3) that will be the site of a contiguous expansion of an operating industrial or commercial facility owned or operated by one of the following:

(A) A small business.

(B) A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Religious Corporation Law (Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code).

(C) A small business incubator that is undertaking the expansion with the assistance of a loan guarantee provided pursuant to Section 63089.71 of the Government Code.

(b) "Eligible property" does not include any of the following:

(1) Property listed or proposed for listing on the National Priorities List pursuant to Section 105(a)(8)(B) of the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(2) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property meets the criteria specified in paragraph (5) of subdivision (a).

Comment. Section 80230 restates former Section 25395.20(a)(6) and (7) without substantive change. Technical changes were made to conform to the standard citation format for the federal act. See Section 78065. In paragraph (a)(3) and subparagraph (a)(5)(C), technical changes were made to correct obsolete or erroneous cross-references.

See Sections 78065 ("federal act"), 78155 ("site"), 80210 ("brownfield"), 80225 ("economic activity"), 80255 ("project"), 80260 ("property"), 80265 ("small business"), 80275 ("underutilized property").

§ 80235. "Hazardous material"

80235. (a) "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 subdivision (a) of Section 78075.

(2) A hazardous waste, as defined in Section 25117.

(3) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(4) A substance specified in subdivision (b) of Section 78075.

(b) "Hazardous material" does not include undisturbed naturally occurring hazardous material unless it will adversely affect the reasonable use of a property after response action is completed.

Comment. Section 80235 restates former Section 25395.20(a)(8) without substantive change.

See Sections 78075 ("hazardous substance"), 78140 ("response"), 80260 ("property").

§ 80240. "Investigating site contamination program"

80240. "Investigating site contamination program" means the loan program established by the department pursuant to Article 5 (commencing with Section 80400) to conduct a preliminary endangerment assessment of a brownfield or an underutilized urban property.

Comment. Section 80240 continues former Section 25395.20(a)(10) without substantive change.

See Sections 78050 ("department"), 78095 ("preliminary endangerment assessment"), 80210 ("brownfield"), 80260 ("property").

§ 80245. "Leaking underground fuel tank"

80245. "Leaking underground fuel tank" has the same meaning as "tank," as defined in Section 25299.24.

Comment. Section 80245 continues former Section 25395.20(a)(11) without substantive change.

§ 80250. "No longer in operation"

80250. "No longer in operation" means an economic activity that is, or previously was, located on a property that is not conducting operations on the property of the type usually associated with the economic activity.

Comment. Section 80250 continues former Section 25395.20(a)(12) without substantive change.

See Sections 80225 ("economic activity"), 80260 ("property").

§ 80255. "Project"

80255. "Project" means any response action, and the planned future development, included in an application for a loan pursuant to Article 6 (commencing with Section 80450).

Comment. Section 80255 continues former Section 25395.20(a)(13) without substantive change.

See Section 78140 ("response").

§ 80260. "Property"

80260. "Property" means real property, as defined in Section 658 of the Civil Code.

Comment. Section 80260 continues former Section 25395.20(a)(14) without substantive change.

§ 80265. "Small business"

80265. "Small business" means an independently owned and operated business, that is not dominant in its field of operation, that, together with affiliates, has 100 or fewer employees, and that has average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or a business that is a manufacturer, as defined in Section 14837 of the Government Code, with 100 or fewer employees.

Comment. Section 80265 continues former Section 25395.20(a)(15) without substantive change.

§ 80275. "Underutilized property"

80275. "Underutilized property" means property that meets all of the following conditions:

(a) It is located in an urban area.

(b) An economic activity is conducted on the property.

(c) It is the subject of a proposal for development pursuant to this chapter.

(d) One of the following applies:

(1) The economic activity on the property is irregular or intermittent in nature and uses the property for productive purposes less than four months in any calendar year.

(2) The economic activity on the property employs less than 25 percent of the property for productive purposes.

(3) The structures, infrastructure, and other facilities on the property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal.

(4) The economic activity conducted on the property is a parking facility or an activity that offers a similar marginal economic service and the facility or activity will be replaced when the property is redeveloped.

(5) The property is adjacent to one or more brownfields or underutilized properties that are the subject of a project under this chapter and its inclusion in the project is

necessary in order to ensure that the redevelopment of the brownfield or brownfields or underutilized property or underutilized properties occurs.

(e) An underutilized property does not include any of the following:

(1) Property listed or proposed for listing on the National Priorities List pursuant to Section 105(a)(8)(B) of the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(2) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is an underutilized property described in paragraph (5) of subdivision (a) of Section 80230.

Comment. Section 80275 continues former Section 25395.20(a)(16) without substantive change. A technical change was made to conform to the standard citation format for the federal act. See Section 78065.

See Sections 78065 ("federal act"), 78155 ("site"), 80210 ("brownfield"), 80225 ("economic activity"), 80255 ("project"), 80260 ("property"), 80280 ("urban area").

§ 80280. "Urban area"

80280. "Urban area" means either of the following:

(a) The central portion of a city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile.

(b) An urbanized area as defined in paragraph (2) of subdivision (b) of former Section 21080.7 of the Public Resources Code, as enacted by Section 6 of Chapter 1130 of the Statutes of 1993.

Comment. Section 80280 continues former Section 25395.20(a)(19) without substantive change. The cross-reference to the Public Resources Code Section 21080.7 was updated to reflect the repeal of that provision.

See Section 78085 ("person").

Article 2. General Provisions

§ 80300. Governing law

80300. Except as provided in Sections 80570 and 80575, any response action carried out under this chapter shall be conducted in accordance with the requirements of this part and Chapter 6.65 (commencing with Section 25260) of Division 20.

Comment. Section 80300 continues the first sentence of former Section 25395.27(a)(1) without substantive change.

See Section 78140 ("response").

§ 80305. Administering agency

80305. (a)(1) Notwithstanding Section 80300, for purposes of Section 25262, the administering agency for any site that is the subject of a loan under this chapter shall either be the department pursuant to this chapter, or a regional board, the state board,

or a local oversight program agency under contract with the state board pursuant to Article 11 (commencing with Section 80570).

(2) A person shall not request that a different agency be designated as an administering agency for the site under Chapter 6.65 (commencing with Section 25260) of Division 20.

(b)(1) For purposes of this article, the Site Designation Committee created by Section 25261 is not required to meet and formally designate the department, a regional board, the state board, or a local oversight program agency under contract with the state board, as specified in Article 11 (commencing with Section 80570), as the administering agency pursuant to Section 25262 for a site that is the subject of a loan under this chapter.

(2) Upon the approval of a loan under Article 7 (commencing with Section 80480), the department shall notify the Site Designation Committee of the administering agency for the site.

Comment. Section 80305 restates the second sentence of former Section 25395.27(a)(1) without substantive change. The section also continues former Section 25395.27(a)(2) without substantive change.

See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78155 ("site"), 78168 ("state board").

§ 80310. References to "hazardous substance"

80310. For sites that are the subject of a loan under this chapter, all references in this part to a hazardous substance shall be deemed to be a reference to a hazardous material.

Comment. Section 80310 continues former Section 25395.27(b) without substantive change.

See Sections 78075 ("hazardous substance"), 78155 ("site"), 80235 ("hazardous material").

§ 80315. Application of part

80315. Except as provided in Sections 80570 and 80575, this part shall apply to a site that is the subject of a loan under this chapter, regardless of whether the site is on the list created pursuant to Article 5 (commencing with Section 78760) of Chapter 4.

Comment. Section 80315 continues former Section 25395.27(c) without substantive change.

See Section 78155 ("site").

§ 80320. Construction of chapter

80320. (a) Except as provided in Section 25264, this chapter shall not be construed to limit the authority of the department, the regional board, or the state board to take any action otherwise authorized under any other provision of law.

(b) This chapter shall not be construed to limit, extend, or affect local land use and zoning authority.

Comment. Subdivision (a) of Section 80320 continues former Section 25395.27(d) without substantive change. Subdivision (b) continues former Section 25395.26(e) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78168 ("state board").

§ 80325. Required posting

80325. (a)(1) The department shall post, and update at least monthly, a list of loan applications received pursuant to this chapter on the department's internet website.

(2) The list shall include the name of the applicant, the location of the property that is the subject of the loan application, the administering agency, and a contact at the department for further information.

(b) The department shall also annually post on that website a summary of the response action status for each site with a loan approved under Article 7 (commencing with Section 80480).

Comment. Section 80325 continues former Section 25395.27(e) without substantive change. See Sections 78050 ("department"), 78140 ("response"), 78155 ("site"), 80260 ("property").

Article 3. Financial Provisions

§ 80350. Cleanup Loans and Environmental Assistance to Neighborhoods Account

80350. The Cleanup Loans and Environmental Assistance to Neighborhoods Account is hereby established in the General Fund to provide low-interest loans to qualified applicants for the purpose of funding preliminary endangerment assessments and response actions at brownfields and underutilized properties located in the state pursuant to this chapter, and for any other purpose determined by the department to stimulate the redevelopment of brownfields and underutilized properties, if the department determines that the redevelopment will result in the overall improvement of the community in which the property is located and will provide a reasonable economic or social benefit, in accordance with Section 80355. All of the following moneys shall be deposited in the account:

(a) Funds appropriated by the Legislature for the purposes of this chapter.

(b) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.

(c) Proceeds from loan repayments.

(d) Proceeds from the sale, pursuant to this chapter, of property that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest.

Comment. Section 80350 restates former Section 25395.20(b) without substantive change. See Sections 78050 ("department"), 78095 ("preliminary endangerment assessment"), 78140 ("response"), 80205 ("account"), 80210 ("brownfield"), 80260 ("property").

§ 80355. Appropriation and expenditure

80355. (a) Except as provided in subdivision (b), notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated, without regard to fiscal years, to the department for the purpose of providing loans pursuant to Articles 5 (commencing with Section 80400) and 6 (commencing with Section 80450) and for the purpose of providing subsidies for environmental

insurance pursuant to Chapter 11 (commencing with Section 80680), the California Financial Assurance and Insurance for Redevelopment Program.

(b) The money in the account may be expended by the department, a regional board, the state board, and the agency for the implementation and administration of this article and for implementation and administration of the California Financial Assurance and Insurance for Redevelopment Program (Chapter 11 (commencing with Section 80680)), only upon appropriation by the Legislature in the annual Budget Act or in another measure.

Comment. Section 80355 continues former Section 25395.20(c) without substantive change. An erroneous citation to the California Financial Assurance and Insurance for Redevelopment Program was corrected.

See Sections 78040 ("agency"), 78050 ("department"), 78100 ("regional board"), 78168 ("state board"), 80205 ("account").

Article 4. Loans Generally

§ 80370. Ineligible persons

80370. The following persons are not eligible to apply for a loan under this chapter:

(a) A person who has been convicted of a felony or misdemeanor involving the regulation of hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under former Section 25395.13 (repealed by Section 73 of Chapter 39 of the Statutes of 2012).

(b) A person who has been convicted of a felony or misdemeanor involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering.

(c) A person who is in violation of an administrative order or agreement issued by or entered into with any federal, state, or local agency that requires response action at a site or a judicial order or consent decree that requires response action at a site.

(d) A person who knowingly made a false statement regarding a material fact or knowingly failed to disclose a material fact in connection with an application submitted to the secretary under this chapter.

Comment. Section 80370 restates former Section 25395.30 without substantive change. The cross-reference to Section 25395.13 has been updated to reflect the repeal of that provision.

See Sections 78085 ("person"), 78140 ("response"), 78150 ("secretary"), 78155 ("site"), 80235 ("hazardous material").

§ 80375. Interest rate for loans

80375. The rate of interest to be applied to loans made pursuant to this chapter shall be the same rate earned on investments in the Surplus Money Investment Fund during the loan repayment period. If a loan recipient defaults on a loan, the rate of interest to be applied to the loan shall be 10 percent from the date of default, or whatever greater rate is reflected in the agreement entered into pursuant to subdivision (a) of Section 80520.

Comment. Section 80375 continues former Section 25395.31 without substantive change.

§ 80380. Reporting on loan program

80380. On or before January 10 of each year when a loan under this chapter is made or repaid during the previous fiscal year, the secretary shall report to the Joint Legislative Budget Committee and to the chairs of the appropriate policy committees of the Senate and the Assembly, and shall post on the internet website of the agency, all of the following:

(a) The number and dollar amount of loans approved pursuant to Article 5 (commencing with Section 80400), the number and dollar amount of those loans that have been repaid, and, the number and dollar amount of those loans that are in default.

(b) The number and dollar amount of loans waived pursuant to Section 80425.

(c) The number and dollar amount of loans approved pursuant to Article 7 (commencing with Section 80480), the number and dollar amount of those loans that have been repaid, and the number and dollar amount of those loans that are in default.

(d) The number of preliminary endangerment assessments completed pursuant to agreements entered into under this chapter.

(e) The number of sites where necessary response actions have been completed pursuant to agreements entered into under this chapter.

Comment. Section 80380 continues former Section 25395.32 without substantive change.

See Sections 78040 ("agency"), 78095 ("preliminary endangerment assessment"), 78140 ("response"), 78150 ("secretary"), 78155 ("site").

Article 5. Investigating Site Contamination Program

§ 80400. Establishment of program

80400. The department, with the approval of the secretary, shall establish an Investigating Site Contamination Program to provide loans to eligible persons to conduct preliminary endangerment assessments of brownfields and underutilized properties. A loan provided pursuant to this article shall not be used for the cost of a phase I environmental assessment or the department's oversight of the preparation and approval of the preliminary endangerment assessment.

Comment. Section 80400 continues former Section 25395.21(a) without substantive change.

See Sections 78050 ("department"), 78085 ("person"), 78090 ("phase I environmental assessment"), 78095 ("preliminary endangerment assessment"), 78150 ("secretary"), 78155 ("site"), 80210 ("brownfield"), 80240 ("investigating site contamination program").

§ 80405. Loan application

80405. The department shall develop a loan application form for an investigating site contamination program loan and shall include, in the form, any provisions that the department considers to be appropriate. The application form shall be signed by

the loan applicant and shall be submitted to the department with all of the following documentation:

(a) The phase I environmental assessment for the property that is the subject of the loan application.

(b) Information that demonstrates that the property is a brownfield or an underutilized property.

(c) If the owner of the property that is the subject of the loan application is not the loan applicant, one of the following:

(1) Documentation that demonstrates that the owner consents to the performance of the preliminary endangerment assessment of the property.

(2) A copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(3) If the loan applicant is a local government entity, or a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, a demonstration to the department that the local government entity, or developer or prospective purchaser acting together with the local government entity pursuant to an enforceable agreement, has legal access to perform the preliminary endangerment assessment at the property, or will have legal access, prior to receiving loan funds.

(d) Any other information the department deems necessary.

Comment. Section 80405 continues former Section 25395.21(b) without substantive change. See Sections 78050 ("department"), 78090 ("phase I environmental assessment"), 78095 ("preliminary endangerment assessment"), 78155 ("site"), 80210 ("brownfield"), 80240 ("investigating site contamination program"), 80260 ("property"), 80275 ("underutilized property").

§ 80410. Decision on loan application

80410. The department shall determine whether to approve a loan application pursuant to this article based upon the information submitted pursuant to Section 80405. In making a decision regarding whether to approve a loan application, the department shall approve a loan pursuant to this article for a property only if the department determines the property is a brownfield or an underutilized property.

Comment. Section 80410 continues former Section 25395.21(c) without substantive change. See Sections 78050 ("department"), 80210 ("brownfield"), 80260 ("property"), 80275 ("underutilized property").

§ 80415. Maximum loan amount

80415. The maximum amount of a loan granted pursuant to this article shall not exceed one hundred thousand dollars ($100,000).

Comment. Section 80415 continues former Section 25395.21(d) without substantive change.

§ 80420. Loan repayment

80420. (a) Except as provided in subdivision (b) and in Section 80425, upon approval of the loan application by the department, the loan recipient shall execute

an agreement with the department to repay the loan over a period not to exceed three years.

(b) If the loan is to a local government entity, or to a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, the department may delay the beginning of the loan repayment period.

(c) Except as provided in subdivision (d), the agreement made pursuant to subdivision (a) shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the loan application, any money so recovered, except for reasonable costs and the fees incurred to recover that money, shall be used first to repay the loan or repay the grant.

(d) Notwithstanding subdivision (c), a loan recipient is not required to first use the money recovered to repay the loan or grant, if the recipient can demonstrate, to the satisfaction of the department, that the recovered money is necessary to, and is being applied to, the total environmental remediation of the property, and that the total of the recovered money and the loan amount does not exceed the cost of remediation.

Comment. Section 80420 continues former Section 25395.21(e) without substantive change. See Sections 78050 ("department"), 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80260 ("property").

§ 80425. Waiver of loan repayment

80425. If a loan recipient who is not the owner of the property and the department determine, after the completion of the preliminary endangerment assessment, that the sum of the cost of remediation and the property purchase price makes the redevelopment of the property not economically feasible, the department may waive the repayment of up to 75 percent of the loan, and the amount waived shall be deemed a grant to the loan recipient. If the department waives the repayment of part of the loan, the recipient shall repay the remaining portion of the loan within one year of that waiver.

Comment. Section 80425 continues former Section 25395.21(f) without substantive change. See Sections 78050 ("department"), 78095 ("preliminary endangerment assessment"), 80260 ("property").

§ 80430. Oversight agreement

80430. Upon approval of a loan, the recipient shall enter into an agreement with the department for the department to provide regulatory oversight of the preparation and approval of the preliminary endangerment assessment.

Comment. Section 80430 continues former Section 25395.21(g) without substantive change. See Sections 78050 ("department"), 78095 ("preliminary endangerment assessment").

§ 80435. Nonliability for oversight costs

80435. Notwithstanding any requirement of Division 20 or this part regarding cost recovery or reimbursement for oversight costs, a loan recipient is not liable for

paying the department's cost associated with the oversight of the preparation and approval of the preliminary endangerment assessment if the department determines there are sufficient funds in the account to reimburse the department for that oversight. If the department determines that the account has insufficient funds to pay for the oversight costs associated with the oversight of the preparation and approval of the preliminary endangerment assessment, the loan recipient shall pay the department the amount of those costs.

Comment. Section 80435 continues former Section 25395.21(h) without substantive change.

See Sections 78050 ("department"), 78095 ("preliminary endangerment assessment"), 80205 ("account").

Article 6. Cleanup Loans and Environmental Assistance to Neighborhoods Program

§ 80450. Establishment of CLEAN Program

80450. The department, with the approval of the secretary, shall establish a Cleanup Loans and Environmental Assistance to Neighborhoods Program to provide loans to finance the performance of any action necessary to respond to the release or threatened release of hazardous material at an eligible property.

Comment. Section 80450 continues the first sentence of former Section 25395.22(a) without substantive change.

See Sections 78050 ("department"), 78105 ("release"), 78140 ("response"), 78150 ("secretary"), 80220 ("Cleanup Loans and Environmental Assistance to Neighborhoods Program"), 80230 ("eligible property"), 80235 ("hazardous material").

§ 80455. CLEAN loan application

80455. The department shall develop an application form for a loan under the CLEAN program and shall include, in the form, any provisions that the department determines to be appropriate to carry out the CLEAN program. The application shall be signed by the loan applicant and shall be accompanied by all of the following:

(a) A preliminary endangerment assessment that has been approved by the department, or an environmental assessment with equivalent information, that discloses the presence of a release or threatened release of a hazardous material at the property at concentrations that may pose a risk to public health and safety and the environment.

(b) The name and address of the project coordinator for the site and the résumé of the coordinator that demonstrates that the coordinator possesses the requisite qualifications to manage the response action at the site.

(c) Documentation that the property is an eligible property and, if the department has implemented the priority scoring system set forth in Article 7 (commencing with Section 80480), sufficient information to enable the department to determine the priority score for the property.

(d) Documentation that the planned future development of the site is consistent with the current and reasonably foreseeable future land uses of the property.

(e) If the owner of the eligible property that is the subject of the loan application is not the loan applicant, one of the following:

(1) Documentation that demonstrates that the owner agrees to use the property as a security interest for the loan to finance necessary response action at the property.

(2) A copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(3) If the loan applicant is a local government entity, or a developer or prospective purchaser acting in concert with a local government entity pursuant to an enforceable agreement, a demonstration to the department that the local government entity, or developer or prospective purchaser acting in concert with a local government entity pursuant to an enforceable agreement, has legal access to perform any action necessary to respond to the release or threatened release of hazardous material at an eligible property, or will have legal access, prior to receiving loan funds.

(f) Any other information the department deems necessary.

Comment. Section 80455 continues former Section 25395.22(b) without substantive change.

See Sections 78050 ("department"), 78095 ("preliminary endangerment assessment"), 78105 ("release"), 78140 ("response"), 78155 ("site"), 80220 ("Cleanup Loans and Environmental Assistance to Neighborhoods Program"), 80230 ("eligible property"), 80235 ("hazardous material"), 80255 ("project"), 80260 ("property").

§ 80460. Use of CLEAN loan funds

80460. (a) A recipient of a loan to perform an action to respond to a release or threatened release of a hazardous material at an eligible property that is granted pursuant to this article may also use the loan funds to pay the premium for environmental insurance products to facilitate the development of the site, if the insurance company has an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger and is authorized to offer environmental insurance in California.

(b) A loan provided pursuant to this article shall not be used to pay for a phase I environmental assessment, a preliminary endangerment assessment, the department's oversight of actions necessary to respond to the release or threatened release of hazardous material at an eligible property, or any operation and maintenance activity at a site.

Comment. Section 80460 continues the second and fourth sentences of former Section 25395.22(a) without substantive change.

See Sections 78050 ("department"), 78090 ("phase I environmental assessment"), 78095 ("preliminary endangerment assessment"), 78105 ("release"), 78140 ("response"), 78155 ("site"), 80230 ("eligible property"), 80235 ("hazardous material").

§ 80465. Use of CLEAN loans by local government

80465. The department shall take those necessary actions to promote the use of loans under the CLEAN program by local governments.

Comment. Section 80465 continues the third sentence of former Section 25395.22(a) without substantive change.

See Section 78050 ("department"), 80220 ("Cleanup Loans and Environmental Assistance to Neighborhoods Program").

Article 7. Review of CLEAN Loan Applications

§ 80480. Approval of CLEAN loans

80480. (a) The department, after consultation with the secretary, the Secretary of Business, Transportation and Housing, and the Director of the Office of Planning and Research, may approve loan applications submitted pursuant to Article 6 (commencing with Section 80450).

(b) The department may approve a loan only for those response actions necessary to address a release or threatened release of a hazardous material at an eligible property.

Comment. Section 80480 continues former Section 25395.23(a) without substantive change. See Sections 78050 ("department"), 78105 ("release"), 78140 ("response"), 78150 ("secretary"), 80230 ("eligible property"), 80235 ("hazardous material").

§ 80485. Ranking loan applications

80485. If the department determines, based on estimates of the number of loan requests that will be submitted in any fiscal year and the amount of loan funds that will be available during that fiscal year, that sufficient funding to meet the demand for loans will not be available, the department shall establish a system for ranking loan applications based on priority scores. Priority scores shall be calculated for each loan application by scoring the project that is the subject of the loan application using scales that measure the factors listed in Section 80490. The department shall approve loans for a project based on its priority scores.

Comment. Section 80485 continues former Section 25395.23(b) without substantive change. See Section 78050 ("department"), 80255 ("project").

§ 80490. Factors for ranking loan applications

80490. The system for ranking loan applications pursuant to Section 80485 shall establish priority scores for projects that are the subjects of the loan applications using scales that measure all of the following factors:

(a) The degree of community support expressed for the project, including, but not limited to, letters of support from local governmental entities, state or local elected officials, community leaders, and the general public.

(b) Financial support for the project provided at the local level, including grants or other subsidies, and funding provided by the issuance of bonds pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) or financing under the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24).

(c) The potential for the project to provide additional protection of the public health and safety.

(d) The potential for the project to enhance strategic community development, including, but not limited to, all of the following:

(1) The creation of new jobs.

(2) Generation of additional tax revenue.

(3) The likelihood that the project will stimulate additional redevelopment in adjacent areas.

(4) The degree to which implementation of the project will improve local property values.

(5) The degree to which implementation of the project will result in the development of new parks.

(6) The extent to which the project may have a beneficial effect on the construction of new schools.

(7) The extent to which the project will result in the construction of affordable inner-city housing.

(8) The potential for the project to have a beneficial impact on existing local and regional infrastructure or projected infrastructure needs, or otherwise promote infill development.

(e) The economic viability of the project, including, but not limited to, an analysis of the current value of the property as compared to its projected value after all necessary response actions have been completed.

(f) The ability of the loan applicant to successfully perform the response action at the site and repay the loan if funding is provided.

(g) The geographic location of the project, taking into consideration the number and amounts of loans approved for projects located in that area, as compared to those approved for other needy areas throughout the state.

(h) The degree of likelihood that the response action would not be completed if a loan pursuant to Article 6 (commencing with Section 80450) is not made, including whether any necessary response action is already being paid for by a responsible party pursuant to an administrative order, an agreement issued or entered into with a federal, state, or local agency, a judicial order, or a consent decree.

(i) The ability to obtain conventional financing absent a loan under this program.

Comment. Section 80490 restates former Section 25395.23(c) without substantive change. An erroneous cross-reference to the Mello-Roos Community Facilities Act of 1982 was corrected.

See Sections 78140 ("response"), 78145 ("responsible party"), 78155 ("site"), 80255 ("project"), 80260 ("property").

Article 8. Conditions for Loan Approval

§ 80500. Maximum loan amount

80500. The department may approve all, or part of, a loan request pursuant to Article 7 (commencing with Section 80480), except the maximum amount of a loan approved pursuant to Article 7 (commencing with Section 80480) shall not exceed two million five hundred thousand dollars ($2,500,000).

Comment. Section 80500 continues former Section 25395.24(a) without substantive change. See Section 78050 ("department").

§ 80505. Percentage of debt to future value

80505. The department shall not approve a loan pursuant to Article 7 (commencing with Section 80480) if the total debt against the eligible property subject to the release or threatened release of a hazardous material on which the response action will be taken exceeds 80 percent of the estimated value of the property after all necessary response actions are complete.

Comment. Section 80505 continues former Section 25395.24(b) without substantive change. See Sections 78050 ("department"), 78105 ("release"), 78140 ("response"), 80230 ("eligible property"), 80235 ("hazardous material"), 80260 ("property").

Article 9. Obligations of Loan Recipient

§ 80520. Obligations

80520. Upon the approval of a loan pursuant to Article 7 (commencing with Section 80480), the loan recipient shall do all of the following:

(a) Enter into an agreement with the department to repay the loan over a period of not more than seven years. If the loan is to a local government entity, or to a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, the department may delay the beginning of the loan repayment period.

(1) The agreement shall include those terms and conditions that the department deems appropriate.

(2)(A) The agreement shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the response action pursuant to the agreement, the loan recipient shall use the recovered money, except for reasonable costs and the fees incurred to recover that money, first to satisfy the loan.

(B) Notwithstanding subparagraph (A), a loan recipient is not required to first use the money recovered to repay the loan or grant if the recipient can demonstrate, to the satisfaction of the department, that the recovered money is necessary to, and is being applied to, the total environmental remediation of the property, and that the total of the recovered money and the loan amount does not exceed the cost of remediation.

(b)(1) Enter into an agreement with the department or with the regional board or state board pursuant to Article 11 (commencing with Section 80570) for the oversight and approval of the response action at the site. This agreement shall include any necessary conditions and assurances to ensure that post-completion, ongoing operation and maintenance activities, and any necessary institutional controls on future uses of the property, are complied with. This agreement shall be

provided to the department before the department may release any loan funds to the loan recipient.

(2) Notwithstanding any requirement of Division 20 or this part regarding cost recovery or reimbursement for oversight costs, a loan recipient is not liable for paying the department's costs pursuant to this chapter or the regional board's or state board's costs pursuant to Article 11 (commencing with Section 80570) associated with the oversight of the response action at the site subject to the agreement, if the department determines there are sufficient funds in the account to reimburse the department's costs pursuant to this chapter or the regional board's or state board's costs pursuant to Article 11 (commencing with Section 80570) for that oversight. If the department determines that the account has insufficient funds to pay for the oversight costs associated with the oversight of the response action at the site subject to the agreement, the loan recipient shall pay the department's costs pursuant to this chapter or the regional board's or state board's costs pursuant to Article 11 (commencing with Section 80570) for the amount of those costs.

(c)(1) Except as provided in paragraph (2), obtain secured creditor insurance, as defined in Section 80730, from the insurance company selected by the secretary pursuant to Section 80760, or comparable insurance from any insurance company with an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger that is authorized to offer environmental insurance in California. This insurance shall be obtained before the department may release any loan funds to the loan recipient.

(2) The secretary may waive the requirement of paragraph (1) to obtain insurance or any specific insurance coverage if either of the following apply:

(A) No money is available for the environmental insurance subsidies authorized pursuant to Section 80800.

(B) The secretary determines that the scope of the response action is limited and the cost of the premiums of the prenegotiated package of environmental insurance products equals or exceeds the estimated response action costs, or is otherwise not commercially feasible.

Comment. Section 80520 continues former Section 25395.25 without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78105 ("release"), 78140 ("response"), 78145 ("responsible party"), 78150 ("secretary"), 78155 ("site"), 78168 ("state board"), 80205 ("account"), 80260 ("property").

Article 10. Security for Loan

§ 80540. Security required

80540. (a) A loan approved pursuant to Article 7 (commencing with Section 80480) shall be secured by the property subject to the release or threatened release of the hazardous material on which the response action will be taken or by another form of security that the department determines will adequately protect the state's interest.

(b) The department shall obtain an appropriate security interest in the property or other alternative form of security approved by the department.

(c)(1) The department may foreclose on property, or the alternative form of security approved by the department, that is subject to a security interest pursuant to this article.

(2) Any funds received through a foreclosure or through the enforcement of any other security interest pursuant to this chapter shall be deposited in the account.

Comment. Section 80540 continues former Section 25395.26(a) without substantive change.

See Sections 78050 ("department"), 78105 ("release"), 78140 ("response"), 80205 ("account"), 80235 ("hazardous material"), 80260 ("property").

§ 80545. Liability of security interest holder

80545. (a) The state, the secretary, the department, and the account are not liable under any state or local statute, regulation, or ordinance because the department holds the security interest identified in Section 80540 or because the department acquired property through foreclosure or its equivalent in satisfaction of a loan issued pursuant to this chapter.

(b) Chapter 6.96 (commencing with Section 25548) of Division 20 does not apply to the state, the secretary, the department, the agency, or the account with regard to a loan secured pursuant to Section 80540.

Comment. Section 80545 continues former Section 25395.26(b) and (c) without substantive change.

See Sections 78040 ("agency"), 78050 ("department"), 78150 ("secretary"), 80205 ("account"), 80260 ("property").

§ 80550. Application of other laws

80550. (a) Notwithstanding any other provision of law, no approval or review shall be required from the Department of General Services to obtain any security interest or exercise any rights, including, but not limited to, foreclosure, under any security interest or other agreement made pursuant to this chapter.

(b) The acquisition of a property pursuant to this chapter through foreclosure or its equivalent is not subject to Article 2 (commencing with Section 14660) of Chapter 2 of Part 5.5 of Division 3 of Title 2 of the Government Code.

(c) The department shall promptly dispose of any property acquired through the exercise of any security interest pursuant to this chapter at the property's current market value and the disposal of this property is exempt from Section 11011.1 of the Government Code and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code.

Comment. Section 80550 continues former Section 25395.26(d) without substantive change.

See Section 78050 ("department"), 80260 ("property").

Article 11. Administering Agency

§ 80570. Administering agency for leaking underground fuel tank property

80570. (a) Except as provided in subdivision (b) and Section 80575, upon the request of a regional board or the state board, the administering agency for any site that is the subject of a loan approved under Article 7 (commencing with Section 80480) shall be a regional board, the state board, or a local oversight program agency under contract with the state board in accordance with Chapter 6.7 (commencing with Section 25280) of Division 20 and Chapter 6.75 (commencing with Section 25299.10) of Division 20, if the property is subject to a release from a leaking underground fuel tank and the release from the leaking underground fuel tank is the principal threat at that property, as determined by the regional board, the state board, and the department.

(b) If the site specified in subdivision (a) was not subject to oversight by a local oversight program agency prior to the date the loan application was submitted to the department pursuant to Article 6 (commencing with Section 80450), the regional board shall serve as the administering agency.

(c) Any response action for a property subject to this section for a leaking underground fuel tank shall be carried out under Chapter 6.65 (commencing with Section 25260), Chapter 6.7 (commencing with Section 25280), and Chapter 6.75 (commencing with Section 25299.10) of Division 20.

Comment. Section 80570 continues former Section 25395.28(a) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78105 ("release"), 78140 ("response"), 78155 ("site"), 78168 ("state board"), 80245 ("leaking underground fuel tank"), 80260 ("property").

§ 80575. Administering agency for site subject to Water Code orders or agreements

80575. (a) Upon the request of a regional board, the regional board shall be the administering agency for a property specified in Section 80570, if the site is subject to one or more of the following orders or agreements under Division 7 (commencing with Section 13000) of the Water Code prior to the date the loan application was submitted to the department pursuant to Article 6 (commencing with Section 80450):

(1) A cleanup and abatement order.

(2) Another cleanup order issued by a regional board.

(3) A written voluntary agreement with a regional board.

(b) Any response action for a site subject to this section shall be carried out pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20.

Comment. Section 80575 continues former Section 25395.28(b) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78155 ("site"), 80215 ("cleanup and abatement order"), 80260 ("property").

§ 80580. Request for department to be administering agency

80580. Notwithstanding Sections 80570 and 80575, the regional board and the state board, in consultation with the department, may request the department to be the administering agency for a property subject to this article.

Comment. Section 80580 continues former Section 25395.28(c) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78168 ("state board"), 80260 ("property").

§ 80585. Administering agency for site subject to multiple agreements or orders

80585. Notwithstanding Section 80575, if a regional board has issued a cleanup order or entered into a written voluntary agreement under Division 7 (commencing with Section 13000) of the Water Code for a site and the department has issued an order or entered into an enforceable agreement under Chapter 6.5 (commencing with Section 25100) of Division 20 or this part, the regional board and the department shall consult and determine which agency shall be the administering agency for the site under this chapter.

Comment. Section 80585 continues former Section 25395.28(d) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78155 ("site").

§ 80590. Notice of loan application

80590. The department shall provide a written notice of the receipt of a loan application under Article 6 (commencing with Section 80450), including the name and address of the loan applicant and the location of the property, to both of the following:

(a) A regional board for any property within that regional board's jurisdiction.

(b) The state board for any property that contains a leaking underground fuel tank.

Comment. Section 80590 continues former Section 25395.28(e) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78168 ("state board"), 80245 ("leaking underground fuel tank"), 80260 ("property").

§ 80595. Election to oversee response action

80595. The regional board or state board shall respond with a written notice to the department within 20 working days after receipt of the notice or information provided pursuant to Section 80590 indicating whether the regional board or a local oversight program agency under contract with the state board will oversee the response action pursuant to this article. If the regional board or state board does not provide this notice within that time period, the regional board or state board shall be deemed to have elected not to oversee the response action.

Comment. Section 80595 continues former Section 25395.28(f) without substantive change. See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78168 ("state board").

§ 80600. Reimbursement for oversight costs

80600. (a) If a regional board or a local oversight program agency under contract with the state board oversees a response action pursuant to this article, the department shall reimburse the regional board or state board from the account for oversight costs, if all of the following occur:

(1) The department determines, pursuant to paragraph (2) of subdivision (b) of Section 80520, that there are sufficient funds in the account.

(2) The department receives the report required upon completion of the response action under Section 80605.

(3) The regional board or a local oversight program agency under contract with the state board, as appropriate, certifies that it is not eligible to be reimbursed for oversight costs from any other fund or account, including, but not limited to, the Underground Storage Tank Cleanup Fund pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20.

(b) If the department determines pursuant to paragraph (2) of subdivision (b) of Section 80520 that the account has insufficient funds, the regional board or state board shall recover its oversight costs from the loan recipient, and the department shall not be liable for these oversight costs.

(c) If a regional board or a local oversight program agency under contract with the state board oversees a response action pursuant to this article, the recipient of a loan approved pursuant to Article 7 (commencing with Section 80480) shall enter into an agreement with the regional board or the state board under paragraph (1) of subdivision (b) of Section 80520 for the oversight and approval of the response action at the site, prior to the release of loan funds by the department. The agreement shall meet the requirements specified in the regulations adopted pursuant to Article 12 (commencing with Section 80620).

Comment. Section 80600 continues former Section 25395.28(g) and (h) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78105 ("release"), 78140 ("response"), 78155 ("site"), 78168 ("state board"), 80205 ("account").

§ 80605. Reporting and notification of completion

80605. If the regional board or a local oversight program agency under contract with the state board serves as the administering agency pursuant to this article, the regional board or the state board shall do both of the following:

(a) Annually provide information to the department about the status of the response action, including any response action decision document that includes limitations on land use or other institutional controls.

(b) Notify the department upon completion of the response action.

Comment. Section 80605 continues former Section 25395.28(i) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78168 ("state board").

§ 80610. Application of article

80610. This article does not apply to any site subject to Chapter 1 (commencing with Section 17210) of Part 10.5 of Division 1 of Title 1 of the Education Code.

Comment. Section 80610 continues former Section 25395.28(j) without substantive change. See Section 78155 ("site").

Article 12. Emergency Regulations

§ 80620. Authority to adopt emergency regulations

80620. (a) The department may adopt regulations to implement this chapter as emergency regulations. The Office of Administrative Law shall consider the situation addressed by those regulations to be an emergency for purposes of Section 11349.6 of the Government Code.

(b) Notwithstanding the time period specified in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 80620 restates former Section 25395.29(a) without substantive change. See Sections 78050 ("department"), 78150 ("secretary").

§ 80625. Authority to adopt emergency regulations for Chapter 548 of the Statutes of 2001

80625. (a) The department may adopt emergency regulations to implement the changes made by Chapter 548 of the Statutes of 2001. The Office of Administrative Law shall consider the situation addressed by those regulations an emergency for purposes of Section 11349.6 of the Government Code.

(b) Notwithstanding the time period specified in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 80625 restates former Section 25395.29(b) without substantive change. See Sections 78050 ("department"), 78150 ("secretary").

CHAPTER 11. CALIFORNIA FINANCIAL ASSURANCE AND INSURANCE FOR REDEVELOPMENT PROGRAM

Article 1. Definitions

§ 80680. Application of definitions

80680. For purposes of this chapter, the definitions contained in this article shall apply.

Comment. Section 80680 restates the initial clause of former Section 25395.40 without substantive change.

§ 80685. "CLEAN Program"

80685. "CLEAN Program" means the Cleanup Loans and Environmental Assistance to Neighborhoods Program established pursuant to Section 80450.

Comment. Section 80685 continues former Section 25395.40(a) without substantive change.

§ 80690. "Cost overrun insurance"

80690. (a) "Cost overrun insurance" means insurance that covers some, or all of the response costs caused by a known pollution condition at a site, that exceed the estimated response action costs that have been accepted and approved by the insurer, based on information from the department and other relevant sources at the time the insurance is first obtained.

(b) Cost overrun insurance shall, at a minimum, provide for all of the following:

(1) The response costs in excess of the estimated response action costs that have been accepted and approved by the insurer.

(2) A policy period of sufficient length to cover the duration of the response activities, not including post-completion operation and maintenance.

(3) A self-insured retention amount not to exceed 25 percent of the estimated response action costs that have been accepted and approved by the insurer.

Comment. Section 80690 continues former Section 25395.40(b) without substantive change. See Sections 78050 ("department"), 78140 ("response"), 78155 ("site"), 80705 ("estimated response action costs"), 80720 ("pollution condition"), 80735 ("self-insured retention amount").

§ 80695. "Eligible property"

80695. "Eligible property" has the same meaning as defined in subdivision (a) of Section 80230.

Comment. Section 80695 continues former Section 25395.40(c) without substantive change.

§ 80700. "Environmental insurance"

80700. "Environmental insurance" means insurance intended to limit the liability associated with the discovery and cleanup of a hazardous material release, including secured creditor insurance, pollution liability insurance, and cost overrun insurance,

and any other insurance product that the secretary selects to be provided pursuant to Article 2 (commencing with Section 80750).

Comment. Section 80700 restates former Section 25395.40(d) without substantive change. The phrase "hazardous materials release" has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 78105 ("release"), 78150 ("secretary"), 80690 ("cost overrun insurance"), 80710 ("hazardous material"), 80725 ("pollution liability insurance"), 80730 ("secured creditor insurance").

§ 80705. "Estimated response action costs"

80705. "Estimated response action costs" means the projected costs of taking a response action in implementing an approved removal action work plan or remedial action plan prepared to address a pollution condition at a site.

Comment. Section 80705 continues former Section 25395.40(e) without substantive change.

See Sections 78125 ("remedy"), 78130 ("removal action work plan"), 78140 ("response"), 78155 ("site"), 80720 ("pollution condition").

§ 80710. "Hazardous material"

80710. "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:

(a) A hazardous substance, as defined in Section 25281 or subdivision (a) of Section 78075, including the substances specified in subdivision (b) of Section 78075.

(b) A hazardous waste, as defined in Section 25117.

(c) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

Comment. Section 80710 continues former Section 25395.40(g) without substantive change.

See Section 78075 ("hazardous substance").

§ 80715. "Insurance company"

80715. "Insurance company" means an insurance company authorized in California to offer environmental insurance and that has an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger.

Comment. Section 80715 continues former Section 25395.40(h) without substantive change.

See Section 80700 ("environmental insurance").

§ 80720. "Pollution condition"

80720. "Pollution condition" means a release or threatened release of a hazardous material and any resulting impact upon the environment.

Comment. Section 80720 continues former Section 25395.40(i) without substantive change.

See Section 78105 ("release"), 80710 ("hazardous material").

§ 80725. "Pollution liability insurance"

80725. (a) "Pollution liability insurance" means insurance that covers damages caused by a pollution condition from, or at, a site that is preexisting and unknown, or was otherwise unknown at the time the insurance is first obtained, and, at a minimum, provides for all of the following:

(1) A minimum policy period of five years after the completion of remediation activities, not including post-completion operation and maintenance.

(2) A duty to defend and pay for defense costs in an amount at least up to the amount of coverage available under the policy, irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the damages, so long as there already exists a reasonably quantifiable legal obligation to pay those damages.

(b) For purposes of this section, "damages" means either of the following:

(1) Property damage incurred at a site as an unforeseen and unexpected result of a pollution condition.

(2) Bodily injury, property damage, and response action costs sustained or incurred by a third party as a result of a pollution condition at a site.

(c) For purposes of this section, "damages" includes the property damage, bodily injury, and response costs specified in subdivision (b), irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the property damage, bodily injury, or response costs, so long as there exists a reasonably quantifiable legal obligation to pay for those damages.

Comment. Section 80725 continues former Section 25395.40(j) without substantive change. See Sections 78140 ("response"), 78155 ("site"), 80720 ("pollution condition").

§ 80730. "Secured creditor insurance"

80730. "Secured creditor insurance" means insurance made available to an insured that covers all of the following:

(a) Response costs at a site incurred by the lender after a default by the borrower or foreclosure by the lender that occurs as a result of a pollution condition at the site, and the costs are reasonably necessary to remediate the site for its intended use so that it can be sold.

(b) Damages or other liability for a pollution condition at a site incurred by a lender as a result of that lender exercising a foreclosure option.

(c) Loss or damages incurred by a lender as a result of a borrower's inability to satisfy a loan obligation or due to the existence of an unforeseen and unexpected pollution condition.

(d) A duty to defend and pay for defense costs in an amount at least up to the amount of coverage available under the policy, irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the loss, damages, or liability, so long as there exists a reasonably quantifiable legal obligation to pay damages.

Comment. Section 80730 continues former Section 25395.40(k) without substantive change.

See Sections 78140 ("response"), 78155 ("site"), 80720 ("pollution condition").

§ 80735. "Self-insured retention amount"

80735. "Self-insured retention amount" means response action costs in excess of the estimated response action costs that have been accepted and approved by the insurer that the insured is obligated to pay before being eligible to make a claim of an insurer under a cost overrun insurance policy.

Comment. Section 80735 continues former Section 25395.40(*l*) without substantive change. See Sections 78140 ("response"), 80690 ("cost overrun insurance"), 80705 ("estimated response action costs").

Article 2. Environmental Insurance Products

§ 80750. Request for proposal

80750. (a) The secretary shall solicit proposals for a package of environmental insurance products from insurance companies through a competitive bidding process.

(b)(1) The request for proposal prepared by the secretary shall identify the objectives of this chapter and the specific types and coverage limits of the insurance products desired, including endorsements and exclusions.

(2) The request for proposal shall require that the proposal allow a purchaser the opportunity to pay for additional coverage without losing the lower transaction costs structure of the prenegotiated policy.

(c) The secretary shall hold at least one public workshop in both the northern and the southern part of the state to present and solicit comments on the request for proposal prior to receiving any proposals.

Comment. Section 80750 continues former Section 25395.41(a) without substantive change. See Sections 78150 ("secretary"), 80700 ("environmental insurance").

§ 80755. Factors for evaluation of proposals

80755. The secretary shall evaluate the extent to which each proposal submitted pursuant to Section 80750 meets the objectives of the request for proposal and shall also evaluate each proposal and interested party using all of the following factors:

(a) Product pricing.

(b) Claims history.

(c) Underwriting history.

(d) Company financial strength and size.

(e) Scope of policy coverages, including endorsements and exclusions.

(f) Marketing and distribution of the insurance products.

(g) Any other factor that the secretary determines will affect the ability of the selected insurance company to meet the requirements of this chapter and provide the environmental insurance products in the most effective and efficient manner and at the least cost to the state and to persons seeking that insurance.

Comment. Section 80755 continues former Section 25395.41(b)(1) without substantive change.
See Sections 78085 ("person"), 78150 ("secretary"), 80700 ("environmental insurance"), 80715 ("insurance company").

§ 80760. Selection of state-designated provider

80760. (a) The secretary shall select one or more insurance companies that have submitted a proposal pursuant to Section 80750 to be the exclusive state-designated provider of environmental insurance under this chapter for a period of three years from the date of selection.

(b) The secretary shall select a company that, in the secretary's determination, has submitted a proposal that best meets the requirements of this chapter and the objectives stated in the request for proposal at the best possible price.

Comment. Section 80760 continues the first two sentences of former Section 25395.41(b)(2) without substantive change.
See Sections 78150 ("secretary"), 80700 ("environmental insurance").

§ 80765. Bidding every three years

80765. Every three years, the secretary shall repeat the competitive bidding process specified in this article.

Comment. Section 80765 continues the third sentence of former Section 25395.41(b)(2) without substantive change.
See Section 78150 ("secretary").

§ 80770. Offer of insurance products

80770. (a) An insurance company selected to provide prenegotiated environmental insurance products pursuant to Section 80760 shall offer this prenegotiated package of insurance products to any interested recipient of a loan under the CLEAN Program.

(b) The insurance company shall also offer the environmental insurance products made available under this chapter to any other person who conducts a response action in the state.

Comment. Section 80770 continues former Section 25395.41(c) without substantive change.
See Sections 78085 ("person"), 78140 ("response"), 80685 ("CLEAN Program"), 80700 ("environmental insurance"), 80715 ("insurance company").

§ 80775. Consultation with state agencies and interested parties

80775. The secretary shall implement this article in consultation with representatives of other appropriate state agencies, including the Business, Transportation and Housing Agency, the Office of Planning and Research, the Pollution Control Financing Authority, the Department of Insurance, the state board, the department, and with other interested parties, including developers, lenders, insurers, and representatives from environmental organizations.

Comment. Section 80775 continues the first sentence of former Section 25395.41(d) without substantive change.
See Sections 78050 ("department"), 78150 ("secretary"), 78168 ("state board").

§ 80780. Consistency with requirements for state procurement of services

80780. The secretary shall implement this article in a manner that is consistent with the requirements for state procurement of services set forth in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

Comment. Section 80780 continues the second sentence of former Section 25395.41(d) without substantive change.

See Section 78150 ("secretary").

Article 3. Subsidies

§ 80800. Funds for subsidies

80800. The secretary shall expend the funds from the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 80350 that are made available in the annual Budget Act for expenditure to subsidize the cost of the environmental insurance products offered by the insurance company selected pursuant to Section 80760, in accordance with Section 80805.

Comment. Section 80800 continues former Section 25395.42(a) without substantive change.

See Sections 78150 ("secretary"), 80700 ("environmental insurance"), 80715 ("insurance company").

§ 80805. Amount of subsidies

80805. The secretary shall provide the following subsidies, in accordance with the application process specified in this article, from the funds made available pursuant to Section 80800:

(a) Up to 50 percent of the cost of the premiums for the environmental insurance products provided pursuant to Section 80770.

(b)(1) Up to 80 percent of the self-insured retention amount of the cost overrun insurance provided pursuant to Section 80770, up to a maximum of five hundred thousand dollars ($500,000).

(2) The secretary may expend the funds available to pay a portion of the self-insured retention amount of the cost overrun insurance provided pursuant to Section 80770 only under all of the following conditions:

(A) The insured demonstrates that it exercised reasonably prudent business judgment in insuring the cost overrun, consistent with an attempt to minimize the incurred costs, and incurred the costs through no fault of its own.

(B) The insured pays, at a minimum, the first 20 percent of the self-insured retention amount.

(C) The secretary determines that the amount of the payment is in the best interests of the state, taking into account the environmental and economic benefits of the specified project, as compared to the benefit of conserving funds for assistance at other sites.

Comment. Section 80805 continues former Section 25395.42(b) without substantive change. In paragraph (b)(2), an erroneous cross-reference to "subdivision (b) of Section 25395.41" was corrected to refer to "Section 80770," which continues Section 25395.41(c).

See Sections 78150 ("secretary"), 78155 ("site"), 80690 ("cost overrun insurance"), 80700 ("environmental insurance"), 80735 ("self-insured retention amount").

§ 80810. Eligibility for subsidies

80810. (a) Any person who is conducting a response action at an eligible property under the oversight of the department or a regional board and who purchases the prenegotiated environmental insurance products from the insurance company selected pursuant to Section 80760 may apply to the secretary for the subsidies that are made available pursuant to this article.

(b) To the extent that the funds that are made available in the annual Budget Act for expenditure to subsidize the cost of the environmental insurance products provided pursuant to this chapter are available, an applicant is eligible for a subsidy in the order in which the applicant's application is received.

Comment. Section 80810 continues former Section 25395.43(a) without substantive change.

See Sections 78050 ("department"), 78085 ("person"), 78100 ("regional board"), 78140 ("response"), 78150 ("secretary"), 80695 ("eligible property"), 80700 ("environmental insurance"), 80715 ("insurance company").

§ 80815. Information to be provided by applicant

80815. An applicant for a subsidy made available pursuant to this article shall provide the secretary with all information necessary to demonstrate to the secretary that the applicant is eligible to receive a subsidy.

Comment. Section 80815 continues former Section 25395.43(b) without substantive change.

See Section 78150 ("secretary").

§ 80820. No obligation to provide subsidy funds

80820. The state and the Cleanup Loans and Environmental Assistance to Neighborhoods Account do not have any obligation to provide funds to any person that applies for a subsidy pursuant to this chapter.

Comment. Section 80820 continues the first sentence of former Section 25395.43(c) without substantive change.

See Section 78085 ("person").

§ 80825. Subsidy availability limited to reserved funds

80825. The secretary shall provide an applicant with a subsidy only to the extent that money in the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 80350 has been reserved in the annual Budget Act for the purpose of providing environmental insurance and the money that has been reserved for this purpose is available.

Comment. Section 80825 continues the second sentence of former Section 25395.43(c) without substantive change.

See Sections 78050 ("department"), 78100 ("regional board"), 78140 ("response"), 78150 ("secretary"), 80700 ("environmental insurance").

Article 4. Liability

§ 80840. Immunity from liability

80840. Notwithstanding any other provision of law, the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions or their employees, shall not be liable to any person for any of the following:

(a) Any acts or omissions by the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions or their employees, in implementing this chapter.

(b) Any acts or omissions by an insurance company selected to provide prenegotiated environmental insurance products pursuant to Section 80760.

(c) Any acts or omissions by any person that purchases a prenegotiated environmental insurance product made available pursuant to this chapter.

Comment. Section 80840 restates former Section 25395.44(a) without substantive change. See Sections 78040 ("agency"), 78085 ("person"), 78150 ("secretary"), 80700 ("environmental insurance"), 80715 ("insurance company").

§ 80845. Immunity includes specified acts

80845. The immunity from liability set forth in Section 80840 specifically includes, but is not limited to, immunity if an insurance company selected to provide prenegotiated environmental insurance products pursuant to Section 80760 does any of the following:

(a) Cancels, rescinds, or otherwise terminates its contract with the secretary.

(b) Fails, for any reason, to compensate an insured for a loss covered by a policy.

(c) Delays payment to an insured, or otherwise breaches a duty or covenant imposed by law or required by a policy or contract with an insured that purchased an environmental insurance product pursuant to this chapter.

Comment. Section 80845 continues former Section 25395.44(b) without substantive change. See Sections 78150 ("secretary"), 80700 ("environmental insurance"), 80715 ("insurance company").

§ 80850. Immunity in addition to other immunities and defenses

80850. The immunity set forth in this article is in addition to other immunities and defenses otherwise available to the agency, the secretary, the state, their respective employees and agents, and any of the state's political subdivisions and employees thereof.

Comment. Section 80850 continues former Section 25395.44(c) without substantive change. See Sections 78040 ("agency"), 78150 ("secretary").

§ 80855. Application of Insurance Code to acts under this chapter

80855. In implementing this chapter, the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions and employees thereof, may not:

(a) Be construed to be an insurer, as defined in Section 23 of the Insurance Code, an insurance agent, as defined in Sections 31 and 1621 of the Insurance Code, an insurance solicitor, as defined in Sections 34 and 1624 of the Insurance Code, or an insurance broker, as defined in Sections 33 and 1623 of the Insurance Code.

(b) Be construed to be transacting insurance, as defined in Section 35 of the Insurance Code.

(c) Be required to obtain a license or other authorization pursuant to any provision of the Insurance Code.

Comment. Section 80855 continues former Section 25395.44(d) without substantive change. See Sections 78040 ("agency"), 78150 ("secretary").

Article 5. Regulations

§ 80870. Adoption of regulations

80870. (a) The agency may adopt regulations to implement this chapter pursuant to this section.

(b)(1) The regulations adopted to implement this chapter shall be deemed to be emergency regulations for purposes of Section 11346.1 of the Government Code.

(2) Notwithstanding the time period specified in subdivision (e) of Section 11346.1 of the Government Code, those emergency regulations may remain in effect for up to 180 days.

Comment. Section 80870 continues former Section 25395.45 without substantive change. See Section 78040 ("agency").

CHAPTER 12. COMPENSATION

Article 1. Financial Provisions

§ 80900. Funds for payment of claims

80900. (a) Claims approved by the Department of General Services pursuant to this chapter shall be paid from the state account.

(b) The Legislature may appropriate up to two million dollars ($2,000,000) annually from the state account to be used by the Department of General Services for the payment of awards pursuant to this chapter.

(c) Claims against or presented to the Department of General Services shall not be paid in excess of the amount of money appropriated for this purpose from the state account. These claims shall be paid only when additional money is collected, appropriated, or otherwise added to that account.

Comment. Section 80900 continues former Section 25381(b)-(d), inclusive, without substantive change. See Section 78165 ("state account").

§ 80905. Funds for administration of program

80905. The Department of General Services may expend from the state account those sums of money as are reasonably necessary to administer and carry out this chapter.

Comment. Section 80905 continues former Section 25382 without substantive change. See Section 78165 ("state account").

Article 2. Claims for Compensation

§ 80920. Conditions for application for compensation

80920. Any person may apply to the Department of General Services, pursuant to Section 80925, for compensation of a loss caused by the release, in California, of a hazardous substance if any of the following conditions are met:

(a) The source of the release of the hazardous substance, or the identity of the party liable for damages in connection with the release or responsible for the costs of removal of the hazardous substance, is unknown or cannot, with reasonable diligence, be determined.

(b) The loss was not compensable pursuant to law, including Chapter 6.5 (commencing with Section 25100) of Division 20, because there is no liable party or the judgment could not be satisfied, in whole or part, against the party determined to be liable for the release of the hazardous substance.

(c) The person has presented a written demand for compensation, which sets forth the basis for the claim, to the party that the person reasonably believes is liable for a loss specified in subdivision (a) of Section 80940 that was incurred by that person and is compensable pursuant to this chapter, the person has presented the Department of General Services with a copy of the demand, and, within 60 days after presenting the demand, the party has either rejected, in whole or in part, the demand to be compensated for a loss specified in subdivision (a) of Section 80940, or has not responded to the demand. Only losses specified in subdivision (a) of Section 80940 are compensable under a claim filed pursuant to this subdivision.

Comment. Section 80920 restates former Section 25372 without substantive change. See Sections 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release"), 78135 ("remove"), 78140 ("response").

§ 80925. Forms and procedures

80925. (a) The Department of General Services shall prescribe appropriate forms and procedures for claims filed pursuant to this chapter, which shall include, as a minimum, all of the following:

(1) A provision requiring the claimant to make a sworn verification of the claim to the best of the claimant's knowledge.

(2) A full description, supported by appropriate evidence from government agencies of the release of the hazardous substance claimed to be the cause of the physical injury or illness or loss of income.

(3) Certification by the claimant of dates and places of residence for the five years preceding the date of the claim.

(4) Certification of the medical history of the claimant for the five years preceding the date of the claim, along with certification of the alleged physical injury or illness and expenses for the physical injury or illness. The certification shall be made by hospitals, physicians, or other qualified medical authorities.

(5) The claimant's income as reported on the claimant's federal income tax return for the preceding three years in order to compute lost wages or income.

(b) Any person who knowingly gives, or causes to be given, any false information as a part of any claim pursuant to this chapter shall be guilty of a misdemeanor and shall, upon conviction, be fined up to five thousand dollars ($5,000), or imprisoned for not more than one year, or both.

Comment. Section 80925 restates former Section 25373 without substantive change. See Sections 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release").

§ 80930. Time for presenting claims

80930. No claim may be presented to the Department of General Services pursuant to this chapter later than three years from the date of discovery of the loss or from January 1, 1982, whichever is later.

Comment. Section 80930 continues former Section 25376 without substantive change.

Article 3. Compensable Losses

§ 80940. Types of losses

80940. If the Department of General Services makes the determination, specified in Section 80945, that losses resulted from the claimant's damages, injury, or disease, only the following losses are compensable pursuant to this chapter:

(a) One hundred percent of uninsured, out-of-pocket medical expenses, for up to three years from the onset of treatment.

(b) Eighty percent of any uninsured, actual lost wages, or business income in lieu of wages, caused by injury to the claimant or the claimant's property, not to exceed fifteen thousand dollars ($15,000) per year for three years.

(c)(1) One hundred percent of uninsured, out-of-pocket expenses for remedial action on the claimant's property undertaken to address a release of a hazardous substance when all of the following apply:

(A) The claimant's property is an owner-occupied single-family residence.

(B) The remedial action was ordered by federal, state, or local authorities due to a release of a hazardous substance.

(C) The department makes one of the following determinations:

(i) The release of the hazardous substance originated outside the boundaries of the property.

(ii) The release of the hazardous substance occurred on the property, was the result of an action that violated state or federal law, and the responsible party cannot be

identified or cannot be located, or a judgment against the responsible party cannot be satisfied.

(2) The maximum compensation under this subdivision is limited to twenty-five thousand dollars ($25,000) per residence and to one hundred thousand dollars ($100,000) for five contiguous residential properties. Any compensation provided shall be reduced by the amount that the remedial action results in a capital improvement to the claimant's residence.

(d)(1) One hundred percent of the fair market value of owner-occupied real property that is rendered permanently unfit for occupancy because of the release of a hazardous substance.

(2) For purposes of this subdivision, real property is rendered permanently unfit for occupancy only if a state or federal agency requires that it be evacuated for a period of six or more months because of the release of a hazardous substance.

(3) The fair market value of the real property shall be determined by an independent appraiser, and shall be considered by the independent appraiser as being equal to the value of the real property prior to the release of the hazardous substance that caused the evacuation of the property.

(4) Where compensation is made by the Department of General Services pursuant to this subdivision, sole ownership of the real property shall be transferred to the state and any proceeds resulting from the final disposition of the real property shall be deposited into the state account, for expenditure by the department upon appropriation by the Legislature.

(5) To be eligible for compensation pursuant to this subdivision, claims for compensation shall be made within 12 months of the date on which the evacuation was ordered.

(e)(1) One hundred percent of the expenses incurred due to the evacuation of a residence ordered by a state or federal agency.

(2) For purposes of this subdivision, "evacuation expenses" include the cost of shelter and any other emergency expenditures incurred due to an evacuation ordered by a state or federal agency.

(3) The Department of General Services may provide compensation, pursuant to this subdivision, only if it finds that the evacuation expenses represent reasonable costs for the goods or services purchased, and would not have been incurred if an evacuation caused by a hazardous substance release had not occurred.

(4) The Department of General Services may provide compensation for these evacuation expenses only if they were incurred within 12 months from the date on which evacuation was ordered.

Comment. Section 80940 continues former Section 25375(a) without substantive change.

See Sections 78050 ("department"), 78075 ("hazardous substance"), 78105 ("release"), 78125 ("remedy"), 78145 ("responsible party"), 78165 ("state account").

§ 80945. Required findings

80945. A loss specified in Section 80940 is compensable if the Department of General Services makes all of the following findings, based upon a preponderance of the evidence:

(a) A release of a hazardous substance occurred.

(b) The claimant or the claimant's property was exposed to the release of the hazardous substance.

(c) The exposure of the claimant to the release of the hazardous substance was of such a duration, and to such a quantity of the hazardous substance, that the exposure caused the damages, injury, or disease that resulted in the claimant's loss.

(d) For purposes of subdivisions (d) and (e) of Section 80940, the hazardous substance release, or the order that resulted in the claim for compensation occurred on or after January 1, 1986.

(e) The conditions and requirements of this chapter including, but not limited to, the conditions of Sections 80920 and 80925, have been met.

Comment. Section 80945 continues former Section 25375(b) without substantive change. See Sections 78075 ("hazardous substance"), 78105 ("release").

§ 80950. Noncompensable claim

80950. No money shall be used for the payment of any claim authorized by this part, where the claim is the result of long-term exposure to ambient concentrations of air pollutants.

Comment. Section 80950 continues former Section 25375(c) without substantive change.

Article 4. Claim Proceedings

§ 80970. Applicable law

80970. (a) Except as specified in subdivision (b), the procedures specified in Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to the proceedings conducted by the Department of General Services pursuant to this chapter.

(b) Notwithstanding subdivision (a), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to the proceedings conducted by the Department of General Services pursuant to this chapter.

(c) The Department of General Services may consider evidence presented by any person against whom a demand was made pursuant to subdivision (c) of Section 80920. The evidence presented by that person shall become a part of the record upon which the Department of General Services shall base its decision.

Comment. Section 80970 restates former Section 25375.5 without substantive change. See Section 78085 ("person").

§ 80975. Decisions

80975. (a) All decisions rendered by the Department of General Services shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to the Department of General Services unless all the parties to the claim agree in writing to an extension of time.

(b) The decision shall be considered a final agency action for the purposes of judicial review of the decision by any party to the proceedings resulting in the decision.

Comment. Section 80975 continues former Section 25374 without substantive change. See Section 78040 ("agency").

Article 5. Relationship to Other Remedies

§ 80990. Claim not condition precedent to other remedies

80990. Nothing in this chapter shall require, or be deemed to require, pursuit of any claim against the Department of General Services as a condition precedent to any other remedy.

Comment. Section 80990 continues former Section 25377 without substantive change. See Section 78125 ("remedy").

§ 80995. Compensation from other sources

80995. (a) Compensation of any loss pursuant to this chapter shall preclude indemnification or reimbursement from any other source for the identical loss, and indemnification or reimbursement from any other source shall preclude compensation pursuant to this chapter.

(b) If a claimant recovers any compensation from a party in a civil or administrative action for a loss for which the claimant has received compensation pursuant to this chapter, the claimant shall reimburse the state account in an amount equal to the compensation that the claimant has received from the state account pursuant to this chapter. The Attorney General may bring an action against the claimant to recover the amount that the claimant is required to reimburse the state account, and until the account is reimbursed, the state shall have a lien of first priority on the judgment or award recovered by the claimant. If the state account is reimbursed pursuant to this subdivision, the state shall not acquire, by subrogation, the claimant's rights pursuant to Article 7 (commencing with Section 81030).

(c) The Legislature hereby finds and declares that it is the purpose of this section to prevent double recovery for a loss compensable pursuant to this chapter.

Comment. Section 80995 continues former Section 25378 without substantive change. See Section 78165 ("state account").

Article 6. Nonadmissibility of Evidence in Other Proceedings

§ 81010. Evidence not admissible

81010. (a) The following evidence is not admissible as evidence in any civil or criminal proceeding, including a subrogation action by the state pursuant to Article 7 (commencing with Section 81030), to establish the liability of any person for any damages alleged to have been caused by a release of a hazardous substance:

(1) A final decision made by the Department of General Services pursuant to this chapter.

(2) A decision made by the Department of General Services to admit or not admit any evidence.

(3) Any finding of fact or conclusion of law entered by the Department of General Services in a proceeding for a claim pursuant to this chapter.

(4) The fact that any person has done any of the following in a proceeding for a claim pursuant to Section 80920:

(A) Chosen to participate or appear.

(B) Chosen not to participate or appear.

(C) Failed to appear.

(D) Settled or offered to settle the claim.

(b) Subdivision (a) does not apply to any civil action or writ by a claimant against the Department of General Services for any act, decision, or failure to act on a claim submitted by the claimant.

Comment. Section 81010 continues former Section 25379 without substantive change. See Sections 78075 ("hazardous substance"), 78085 ("person"), 78105 ("release").

Article 7. State Recovery from Party Liable for the Loss

§ 81030. State acquisition of claimant's right to recover

81030. Compensation of any loss pursuant to this chapter shall be subject to the state's acquiring, by subrogation, all rights of the claimant to recover the loss from the party determined to be liable for the loss.

Comment. Section 81030 restates the first sentence of former Section 25380 without substantive change.

§ 81035. Action for recovery

81035. Upon the request of the Department of General Services, the Attorney General shall commence an action in the name of the people of the State of California to recover any amount paid in compensation for any loss pursuant to this chapter against any party who is liable to the claimant for any loss compensable pursuant to this chapter in accordance with the procedures set forth in Chapter 8 (commencing with Section 79650).

Comment. Section 81035 continues the second sentence of former Section 25380 without substantive change.

§ 81040. Deposit of recovered funds

81040. Moneys recovered pursuant to this article shall be deposited in the state account.

Comment. Section 81040 continues the third sentence of former Section 25380 without substantive change.

See Section 78165 ("state account").

Article 8. Implementing Rules and Regulations

§ 81050. Adoption and revision

81050. The Department of General Services shall, in consultation with the department, adopt, and revise when appropriate, all rules and regulations necessary to implement this chapter, including methods that provide for establishing that a claimant has exercised reasonable diligence in satisfying the conditions specified in Articles 3 (commencing with Section 80940) and 4 (commencing with Section 80970) and Sections 80920 and 80925, and regulations that specify the proof necessary to establish a loss compensable pursuant to this chapter.

Comment. Section 81050 continues former Section 25381(a) without substantive change.

See Section 78050 ("department").

UNCODIFIED

Operative date

SEC. ____. This act becomes operative on January 1, 2024.

Law Revision Commission Studies

SEC. ____. The California Law Revision Commission is authorized to study and to make recommendations to the Legislature and the Governor regarding minor substantive improvements to Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code, including improvements of that type identified in the report prepared by that commission pursuant to Resolution Chapter 46 of the Statutes of 2020.

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition, as reflected in this draft, of provisions in Chapter 6.8 of Division 20 of the Health and Safety Code (§§ 25300-25395.45), as the law existed on January 1, 2021. All statutory references are to the Health and Safety Code.

Existing Provision	New Provision
25300	78000(a)
25301	78005
25310	78035
25310.5	78040
25311	78045
25312	78050
25313	78055
25314	78060
25315	78065
25316	78075(a)
25317	78075(b)
25318.5	78080
25319	78085
25319.1	78090
25319.5	78095
25319.6	78100
25320	78105(a)
25321	78105(b)
25322	78125
25322.1	78115
25322.2	78120
25323	78135
25323.1	78130
25323.3	78140
25323.5	78145
25323.9	78155
25324(a)	78165
25324(b)	79680
25325	78070
25326	78110
25326.3	78150
25326.5	78160
25327	78170
25330.2	78265
25330.4(a)-(e), (f)(1)	78230
25330.4(f)(2)	Not cont'd
25330.5	78235
25331	78220
25334.7	78575
25337	78260
25342	78200
25343	79105
25350, 1st and 2nd sent.	78855
25350, 3rd sent.	78860
25351.2(a)	79160
25351.2(b)	79165
25351.2(c)	79170
25351.2(d)	79175
25351.5	78400
25351.7	79490
25351.8	79495
25352(a), (b)	79450
25352(c)	79685
25353(a), (b), (d), (f)	79070
25353(c)	79690
25353(e)	79075
25353.5	78210(b)-(g)
25354(a), 1st sent., (c), 2nd and 3rd sent., (d)	78240
25354(a), 2nd sent., (b)	78875
25354(c), 1st sent.	78580
25354.5(a)	79355
25354.5(b)(1), 1st sent.	79360
25354.5(b)(1), 2nd and 3rd sent.	79350
25354.5(b)(2)	79365
25354.5(c)	79370
25354.5(d)	79375
25354.5(e)	79380
25354.5(f)	78370
25354.5(g)	79385
25355(a)	78850
25355(b)	79130(a)
25355(c)(1), (d)	79135
25355(c)(2)	79005
25355.2(a)	79315
25355.2(b)	79320
25355.2(c), (d)	79325
25355.2(e)	79330
25355.2(f)	79310
25355.5(a)	79055
25355.5(b)	79060
25355.5(c), (d)	79065
25355.5(e)	79130(b)
25355.6(a)	78900
25355.6(b)	78905
25355.6(c), (d)	78910
25355.7	79000
25355.8	79100
25356(a)	78765
25356(b)	78760
25356(c)	78770
25356(d)	78775
25356(e)	78795
25356(f)	78780
25356(g)	78785
25356(h)	78790

Existing Provision	New Provision
25356.1(a) (“regional board”)	Not cont’d
25356.1(a) (“state board”)	78168
25356.1(b)	79195
25356.1(c)	79200
25356.1(d)	79205
25356.1(e), 1st-4th sent.	79210
25356.1(e), 5th sent., (f)	79215
25356.1(g)	79220
25356.1(h)(1), (2), (5)	79225
25356.1(h)(3)	79230
25356.1(h)(4)	79235
25356.1(i)	79240
25356.1.3(a)	79020
25356.1.3(b)	79025
25356.1.3(c)	79030
25356.1.3(d)	79035
25356.1.5(a)	79260
25356.1.5(b)	79265
25356.1.5(c)	79270
25356.1.5(d), (e)	79275
25357	78225
25357.5	79400
25358	78410
25358.1(a)	78435
25358.1(b)-(d)	78440
25358.1(e)-(h)	78450
25358.1(i)	78455
25358.1(j), (k)	78445
25358.1(*l*)	78460
25358.2(a)	78480
25358.2(b)	78490
25358.2(c)	78485
25358.2(d)	78495
25358.3(a)	78870
25358.3(b)	78650
25358.3(c), (d)	78655
25358.3(e)-(g)	78660
25358.4	78510
25358.5	78880
25358.6	78885
25358.6.1(a)	78590
25358.6.1(b)	78595
25358.6.1(c)(1)-(4)	78600
25358.6.1(c)(5)-(8)	78605
25358.6.1(d)	78610
25358.6.1(e)	78615
25358.6.1(f)	78620
25358.7	78930
25358.7.1(a), 1st and 4th sent.	78950
25358.7.1(a), 2nd sent.	78960
25358.7.1(a), 3rd sent.	78935
25358.7.1(b)	78955
25358.7.1(c)	78965
25358.7.1(d)	78970
25358.7.2(a), 1st sent., (b)-(d)	78420
25358.7.2(a), 2nd sent.	78925
25358.8	78975
25358.9(a)	79290
25358.9(b)	79295
25359	79570
25359.1	79580
25359.2	79550
25359.20	79465
25359.3(a)	79590
25359.3(b)	79595
25359.3(c)	79600
25359.4(a)-(c)	78675
25359.4(d)-(f)	78680
25359.4.5	79555
25359.5(a)	78720
25359.5(b), (c)	78725
25359.5(d)	78735
25359.5(e)	78730
25359.5(f)	78740
25359.6	78505
25359.7(a)	78700
25359.7(b)	78705
25360	79650
25360.1	79655
25360.2(a)	79780
25360.2(b)	79790
25360.2(c)	79795
25360.2(d)	79800
25360.2(e)	79785
25360.3(a)	79810
25360.3(b)	79820
25360.3(c)	79825
25360.3(d), (e)	79815
25360.4(a)	79730
25360.4(b)	79735
25360.4(c)	79740
25360.4(d)	79725
25360.4(e)	79745
25360.6	79920
25361(a)	79700
25361(b)	79705
25362	79710
25363(a), (b)	79760
25363(c)	79665
25363(d)	79670
25363(e)	79765
25363.5	79910
25364	79860
25364.1(a)	79875
25364.1(b)	79880
25364.1(c)	79885
25364.1(d)	79900
25364.1(e)	79890
25364.1(f)	79895
25364.7	79865

Existing Provision	New Provision
25365	79660
25365.6(a), (c)	79935
25365.6(b)	79950
25365.6(d), 1st sent.	79940
25365.6(d), 2nd and 3rd sent.	79945
25365.6(e)	79955
25366	78185
25366.5(a)	79845
25366.5(b)	79840
25366.5(c)	79850
25367(a) (except pt. of (a)(3) re Section 25358.3)	78470
25367(a)(3) (pt. re Section 25358.3)	78665
25367(b)	78465
25368	78525
25368.1	78530
25368.2	78535
25368.3	78540
25368.4	78545
25368.5	78550
25368.6	78555
25368.7	78560
25368.8	78565
25372	80920
25373	80925
25374	80975
25375(a)	80940
25375(b)	80945
25375(c)	80950
25375.5	80970
25376	80930
25377	80990
25378	80995
25379	81010
25380, 1st sent.	81030
25380, 2nd sent.	81035
25380, 3rd sent.	81040
25381(a)	81050
25381(b)-(d)	80900
25382	80905
25385	78280
25385.1	78285
25385.2	78290
25385.4	78295
25385.5	78300
25385.6	78305
25385.7	78310
25386	78315
25386.1	78320
25386.2	78325
25386.25	78330
25386.3	78335
25386.4	78340
25386.5	78345

Existing Provision	New Provision
25390	80000
25390.1	80005
25390.2	80010
25390.3(a), (b), (d)	80020
25390.3(c)	80025
25390.4(a)	80040
25390.4(b)	80045
25390.4(c), (d)	80050
25390.5	80070
25390.6(a)	80080
25390.6(b)	80085
25390.7	80055
25390.8	80090
25390.9	80100
25395.20(a), initial cl.	80200
25395.20(a)(1)	80205
25395.20(a)(2)	80210
25395.20(a)(3)	80215
25395.20(a)(4)	80220
25395.20(a)(5)	80225
25395.20(a)(6), (7)	80230
25395.20(a)(8)	80235
25395.20(a)(9)	Not cont'd
25395.20(a)(10)	80240
25395.20(a)(11)	80245
25395.20(a)(12)	80250
25395.20(a)(13)	80255
25395.20(a)(14)	80260
25395.20(a)(15)	80265
25395.20(a)(16)	80275
25395.20(a)(17)	Not cont'd
25395.20(a)(18)	78168
25395.20(a)(19)	80280
25395.20(b)	80350
25395.20(c)	80355
25395.21(a)	80400
25395.21(b)	80405
25395.21(c)	80410
25395.21(d)	80415
25395.21(e)	80420
25395.21(f)	80425
25395.21(g)	80430
25395.21(h)	80435
25395.22(a), 1st sent.	80450
25395.22(a), 2nd and 4th sent.	80460
25395.22(a), 3rd sent.	80465
25395.22(b)	80455
25395.23(a)	80480
25395.23(b)	80485
25395.23(c)	80490
25395.24(a)	80500
25395.24(b)	80505
25395.25	80520
25395.26(a)	80540
25395.26(b), (c)	80545

Existing Provision	New Provision
25395.26(d)	80550
25395.26(e)	80320(b)
25395.27(a)(1), 1st sent.	80300
25395.27(a)(1), 2nd sent., (a)(2)	80305
25395.27(b)	80310
25395.27(c)	80315
25395.27(d)	80320(a)
25395.27(e)	80325
25395.28(a)	80570
25395.28(b)	80575
25395.28(c)	80580
25395.28(d)	80585
25395.28(e)	80590
25395.28(f)	80595
25395.28(g), (h)	80600
25395.28(i)	80605
25395.28(j)	80610
25395.29(a)	80620
25395.29(b)	80625
25395.30	80370
25395.31	80375
25395.32	80380
25395.35	78360
25395.36	78365
25395.40, initial cl.	80680
25395.40(a)	80685
25395.40(b)	80690
25395.40(c)	80695

Existing Provision	New Provision
25395.40(d)	80700
25395.40(e)	80705
25395.40(f)	Not cont'd
25395.40(g)	80710
25395.40(h)	80715
25395.40(i)	80720
25395.40(j)	80725
25395.40(k)	80730
25395.40(*l*)	80735
25395.40(m)	Not cont'd
25395.41(a)	80750
25395.41(b)(1)	80755
25395.41(b)(2), 1st and 2nd sent.	80760
25395.41(b)(2), 3rd sent.	80765
25395.41(c)	80770
25395.41(d), 1st sent.	80775
25395.41(d), 2nd sent.	80780
25395.42(a)	80800
25395.42(b)	80805
25395.43(a)	80810
25395.43(b)	80815
25395.43(c), 1st sent.	80820
25395.43(c), 2nd sent.	80825
25395.44(a)	80840
25395.44(b)	80845
25395.44(c)	80850
25395.44(d)	80855
25395.45	80870

DERIVATION OF NEW LAW

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

New Provision	Existing Provision
78000(a)	25300
78000(b)	new
78005	25301
78010	new
78015	new
78020	new
78025	new
78030	new
78035	25310
78040	25310.5
78045	25311
78050	25312
78055	25313
78060	25314
78065	25315
78070	25325
78075(a)	25316
78075(b)	25317
78080	25318.5
78085	25319
78090	25319.1
78095	25319.5
78100	25319.6
78105(a)	25320
78105(b)	25321
78110	25326
78115	25322.1
78120	25322.2
78125	25322
78130	25323.1
78135	25323
78140	25323.3
78145	25323.5
78150	25326.3
78155	25323.9
78160	25326.5
78165	25324(a)
78168	25395.20(a)(18), 25356.1(a) ("state board")
78170	25327
78185	25366
78200	25342
78210(b)-(g)	25353.5
78210(a)	new
78220	25331
78225	25357
78230	25330.4(a)-(e), (f)(1)
78235	25330.5
78240(a), 1st sent., (b), (c)	25354(a), 1st sent., (c) 2nd and 3rd sent., (d)
78240(a), 2nd sent.	new
78260	25337
78265	25330.2
78280	25385
78285	25385.1
78290	25385.2
78295	25385.4
78300	25385.5
78305	25385.6
78310	25385.7
78315	25386
78320	25386.1
78325	25386.2
78330	25386.25
78335	25386.3
78340	25386.4
78345	25386.5
78360	25395.35
78365	25395.36
78370	25354.5(f)
78400	25351.5
78410	25358
78420	25358.7.2(a), 1st sent., (b)-(d)
78435	25358.1(a)
78440	25358.1(b)-(d)
78445	25358.1(j), (k)
78450	25358.1(e)-(h)
78455	25358.1(i)
78460	25358.1(l)
78465	25367(b)
78470	25367(a) (except pt. of (a)(3) re Section 25358.3)
78480	25358.2(a)
78485	25358.2(c)
78490	25358.2(b)
78495	25358.2(d)
78505	25359.6
78510	25358.4
78525	25368
78530	25368.1
78535	25368.2
78540	25368.3
78545	25368.4
78550	25368.5

New Provision	Existing Provision
78555	25368.6
78560	25368.7
78565	25368.8
78575	25334.7
78580	25354(c), 1st sent.
78590	25358.6.1(a)
78595	25358.6.1(b)
78600	25358.6.1(c)(1)-(4)
78605	25358.6.1(c)(5)-(8)
78610	25358.6.1(d)
78615	25358.6.1(e)
78620	25358.6.1(f)
78650	25358.3(b)
78655	25358.3(c), (d)
78660	25358.3(e)-(g)
78665	25367(a)(3) (pt. re Section 25358.3)
78675	25359.4(a)-(c)
78680	25359.4(d)-(f)
78700	25359.7(a)
78705	25359.7(b)
78720	25359.5(a)
78725	25359.5(b), (c)
78730	25359.5(e)
78735	25359.5(d)
78740	25359.5(f)
78760	25356(b)
78765	25356(a)
78770	25356(c)
78775	25356(d)
78780	25356(f)
78785	25356(g)
78790	25356(h)
78795	25356(e)
78850	25355(a)
78855	25350, 1st and 2nd sent.
78860	25350, 3rd sent.
78870	25358.3(a)
78875	25354(a), 2nd sent., (b)
78880	25358.5
78885	25358.6
78900	25355.6(a)
78905	25355.6(b)
78910	25355.6(c), (d)
78925	25358.7.2(a), 2nd sent.
78930	25358.7
78935	25358.7.1(a), 3rd sent.
78950	25358.7.1(a), 1st and 4th sent.
78955	25358.7.1(b)
78960	25358.7.1(a), 2nd sent.
78965	25358.7.1(c)
78970	25358.7.1(d)
78975	25358.8
79000	25355.7
79005	25355(c)(2)

New Provision	Existing Provision
79020	25356.1.3(a)
79025	25356.1.3(b)
79030	25356.1.3(c)
79035	25356.1.3(d)
79055	25355.5(a)
79060	25355.5(b)
79065	25355.5(c), (d)
79070	25353(a), (b), (d), (f)
79075	25353(e)
79100	25355.8
79105	25343
79130(a)	25355(b)
79130(b)	25355.5(e)
79135	25355(c)(1), (d)
79160	25351.2(a)
79165	25351.2(b)
79170	25351.2(c)
79175	25351.2(d)
79195	25356.1(b)
79200	25356.1(c)
79205	25356.1(d)
79210	25356.1(e), 1st-4th sent.
79215	25356.1(e), 5th sent., (f)
79220	25356.1(g)
79225	25356.1(h)(1), (2), (5)
79230	25356.1(h)(3)
79235	25356.1(h)(4)
79240	25356.1(i)
79260	25356.1.5(a)
79265	25356.1.5(b)
79270	25356.1.5(c)
79275	25356.1.5(d), (e)
79290	25358.9(a)
79295	25358.9(b)
79310	25355.2(f)
79315	25355.2(a)
79320	25355.2(b)
79325	25355.2(c), (d)
79330	25355.2(e)
79350	25354.5(b)(1), 2nd and 3rd sent.
79355	25354.5(a)
79360	25354.5(b)(1), 1st sent.
79365	25354.5(b)(2)
79370	25354.5(c)
79375	25354.5(d)
79380	25354.5(e)
79385	25354.5(g)
79400	25357.5
79450	25352(a), (b)
79465	25359.20
79490	25351.7
79495	25351.8
79550	25359.2
79555	25359.4.5
79570	25359

New Provision	Existing Provision
79580	25359.1
79590	25359.3(a)
79595	25359.3(b)
79600	25359.3(c)
79650	25360
79655	25360.1
79660	25365
79665	25363(c)
79670	25363(d)
79680	25324(b)
79685	25352(c)
79690	25353(c)
79700	25361(a)
79705	25361(b)
79710	25362
79725	25360.4(d)
79730	25360.4(a)
79735	25360.4(b)
79740	25360.4(c)
79745	25360.4(e)
79760	25363(a), (b)
79765	25363(e)
79780	25360.2(a)
79785	25360.2(e)
79790	25360.2(b)
79795	25360.2(c)
79800	25360.2(d)
79810	25360.3(a)
79815	25360.3(d), (e)
79820	25360.3(b)
79825	25360.3(c)
79840	25366.5(b)
79845	25366.5(a)
79850	25366.5(c)
79860	25364
79865	25364.7
79875	25364.1(a)
79880	25364.1(b)
79885	25364.1(c)
79890	25364.1(e)
79895	25364.1(f)
79900	25364.1(d)
79910	25363.5
79920	25360.6
79935	25365.6(a), (c)
79940	25365.6(d), 1st sent.
79945	25365.6(d), 2nd and 3rd sent.
79950	25365.6(b)
79955	25365.6(e)
80000	25390
80005	25390.1
80010	25390.2
80020	25390.3(a), (b), (d)
80025	25390.3(c)
80040	25390.4(a)

New Provision	Existing Provision
80045	25390.4(b)
80050	25390.4(c), (d)
80055	25390.7
80070	25390.5
80080	25390.6(a)
80085	25390.6(b)
80090	25390.8
80100	25390.9
80200	25395.20(a), initial cl.
80205	25395.20(a)(1)
80210	25395.20(a)(2)
80215	25395.20(a)(3)
80220	25395.20(a)(4)
80225	25395.20(a)(5)
80230	25395.20(a)(6), (7)
80235	25395.20(a)(8)
80240	25395.20(a)(10)
80245	25395.20(a)(11)
80250	25395.20(a)(12)
80255	25395.20(a)(13)
80260	25395.20(a)(14)
80265	25395.20(a)(15)
80275	25395.20(a)(16)
80280	25395.20(a)(19)
80300	25395.27(a)(1), 1st sent.
80305	25395.27(a)(1), 2nd sent., (a)(2)
80310	25395.27(b)
80315	25395.27(c)
80320(a)	25395.27(d)
80320(b)	25395.26(e)
80325	25395.27(e)
80350	25395.20(b)
80355	25395.20(c)
80370	25395.30
80375	25395.31
80380	25395.32
80400	25395.21(a)
80405	25395.21(b)
80410	25395.21(c)
80415	25395.21(d)
80420	25395.21(e)
80425	25395.21(f)
80430	25395.21(g)
80435	25395.21(h)
80450	25395.22(a), 1st sent.
80455	25395.22(b)
80460	25395.22(a), 2nd and 4th sent.
80465	25395.22(a), 3rd sent.
80480	25395.23(a)
80485	25395.23(b)
80490	25395.23(c)
80500	25395.24(a)
80505	25395.24(b)
80520	25395.25
80540	25395.26(a)

New Provision	Existing Provision
80545	25395.26(b), (c)
80550	25395.26(d)
80570	25395.28(a)
80575	25395.28(b)
80580	25395.28(c)
80585	25395.28(d)
80590	25395.28(e)
80595	25395.28(f)
80600	25395.28(g), (h)
80605	25395.28(i)
80610	25395.28(j)
80620	25395.29(a)
80625	25395.29(b)
80680	25395.40, initial cl.
80685	25395.40(a)
80690	25395.40(b)
80695	25395.40(c)
80700	25395.40(d)
80705	25395.40(e)
80710	25395.40(g)
80715	25395.40(h)
80720	25395.40(i)
80725	25395.40(j)
80730	25395.40(k)
80735	25395.40(l)
80750	25395.41(a)
80755	25395.41(b)(1)
80760	25395.41(b)(2), 1st and 2nd sent.
80765	25395.41(b)(2), 3rd sent.
80770	25395.41(c)

New Provision	Existing Provision
80775	25395.41(d), 1st sent.
80780	25395.41(d), 2nd sent.
80800	25395.42(a)
80805	25395.42(b)
80810	25395.43(a)
80815	25395.43(b)
80820	25395.43(c), 1st sent.
80825	25395.43(c), 2nd sent.
80840	25395.44(a)
80845	25395.44(b)
80850	25395.44(c)
80855	25395.44(d)
80870	25395.45
80900	25381(b)-(d)
80905	25382
80920	25372
80925	25373
80930	25376
80940	25375(a)
80945	25375(b)
80950	25375(c)
80970	25375.5
80975	25374
80990	25377
80995	25378
81010	25379
81030	25380, 1st sent.
81035	25380, 2nd sent.
81040	25380, 3rd sent.
81050	25381(a)

SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY

When the Legislature authorized the Commission to study Chapters 6.5 and 6.8 of Division 20 of the Health and Safety Code, the Legislature also directed the Commission to "include a list of substantive issues that the commission identifies in the course of its work, for possible future study." See 2018 Cal. Stat. res. ch. 158. The Legislature's grant of authority for this project precludes the Commission from making "any substantive changes to the law." See *id*.

In the course of the Commission's study of Chapter 6.8, the Commission identified the issues listed below for possible future study. Unless otherwise indicated, all statutory citations refer to provisions of the Health & Safety Code. All references to proposed provisions refer to provisions of the proposed legislation in this recommendation.

(1) Should the provision that governs the application of certain definitions (continued in proposed Section 78035) be revised to add an express exception to allow for a different meaning when appropriate (e.g., "unless the context requires otherwise")?

(2) Should the provision that provides for the application of definitions from the federal act (proposed Section 78035) be restated for clarity?

(3) Should limited-application definitions be adjusted to improve consistency for terminology used in this proposed part and Chapter 6.5 (commencing with Section 25100) of Division 20?

(4) Should the definition of "person" (proposed Section 78085) be restated for clarity?

(5) Should the definition of "release authorized or permitted pursuant to state law" (continued in proposed Section 78110) be restated for clarity?

(6) Should the definition of "remedy" (continued in proposed Section 78125) be restated for clarity?

(7) Are the uses of the undefined terms "remediate" and "remediation" problematic, in light of their similarity to the defined terms, "remedy" and "remedial action" in proposed Section 78125?

(8) Should the following provisions be repealed, in whole or in part, or revised to remove or update obsolete material?

- Proposed Section 78210(b)(2)
- Proposed Article 5 (commencing with Section 78280) of Chapter 2
- Proposed Section 78505(a)
- Proposed Section 78885(d)
- Proposed Section 78970(b)
- Proposed Section 79105(b), (c)
- Proposed Section 79330
- Proposed Section 79680

- Proposed Section 79730(b)
- Proposed Section 80490(b)
- Proposed Section 80625

(9) Should proposed Section 78210 be revised in light of changed circumstances regarding staffing needs?

(10) Is the provision discussing the successor fund to the Stringfellow Insurance Proceeds Account (proposed Section 78230(f)) current?

(11) Should the provision that provides for the application of the State General Obligation Bond Act to the Hazardous Substance Bond Act of 1984 (proposed Section 78290) be restated for clarity?

(12) Should proposed Section 78305(b)(2) (regarding conditions for expenditure of funds from bond proceeds) be restated for clarity?

(13) Should proposed Section 78420(d) (regarding expenditures for public participation activities) be restated for clarity?

(14) Should the provisions that govern the investigatory powers of the department (continued in proposed Article 4 (commencing with Section 78435) of Chapter 3) be restated to standardize terms, simplify the provisions, and improve readability?

(15) Should proposed Section 78440 be restated to clarify the scope of the authority to require a person to furnish relevant information?

(16) Should proposed Section 78450 (regarding the authority to enter, inspect, and sample property) be restated for clarity?

(17) Should proposed Section 78510, which provides for the accreditation of laboratories, be revised to permit TNI accreditation pursuant to Section 100825(c)(14)-(20)?

(18) Should the reference to "hazardous waste" in proposed Section 78560 instead refer to "hazardous substance"?

(19) Should the contents of proposed Article 9 (commencing with Section 78575) of Chapter 3, which relate to the required contents of a biennial report, be recodified with Section 25178?

(20) Should proposed Section 78575 be revised to reconcile the reporting requirements and rules in Section 25178 and Government Code Section 10231.5?

(21) Should the definition of "professional service" in proposed Section 78590 be adjusted for consistency with the definition of "architectural, landscape architectural, engineering, environmental, and land surveying services" in Government Code Section 4525?

(22) Should proposed Section 78655 be adjusted to address the following issues:

- To specify that the references are to the relevant acts "as amended"?
- To adjust the cross-reference to the federal Hazardous Materials Transportation Act?
- To clarify the treatment of exclusions from the defined terms "hazardous substance" and "hazardous waste"?

(23) Should the reference to "hazardous waste" in proposed Section 78720 instead refer to "hazardous substance"?

(24) Should proposed Section 78850 be amended to clarify the meaning of the "sites identified in Article 5 (commencing with Section 78760) of Chapter 4"?

(25) Should proposed Section 78855 be adjusted for consistency in identifying who (the director or the department) is authorized to make expenditures?

(26) Should proposed Section 78870 be adjusted for consistency with the operation of the defenses in Sections 101(35) and 107(b) of the federal act in practice?

(27) Should the scope of the exemption in proposed Section 78930 for emergency actions be expanded to include actions taken pursuant to proposed Section 78870?

(28) Should the scope of "business financial data and information" in proposed Section 78930 be clarified?

(29) Should the scope of "planned response action" in proposed Section 78935 be clarified?

(30) Should proposed Article 5 (commencing with Section 78950) of Chapter 5 be amended to address community advisory group transparency, conflicts of interest, funding, funding disclosure, membership, and technical expertise (see DTSC Independent Review Panel Fourth Report to the Governor and Legislature Pursuant to Health & Safety Code Section 57014(f), pp. 6-7 (Oct. 2016))?

(31) Should proposed Section 79020 be adjusted for consistency in identifying who (the director or the department) is authorized to issue orders?

(32) Should a provision be added to directly authorize the department to issue the orders and enter the agreements described in proposed Section 79055?

(33) Should the provisions regarding land use restrictions in proposed Section 79055(b) be recodified elsewhere?

(34) Should proposed Section 79100 be adjusted to specify what should occur when a person can provide identities and addresses for only some of the relevant property owners?

(35) Depending on the intended scope of the rule in proposed Section 79100(b) (regarding accommodating property owner participation in site remediation), should this provision be relocated elsewhere?

(36) Should the cross-reference to "Section 25343 as it read on December 31, 1997" in proposed Section 79105 be revised for ease of use?

(37) Should proposed Section 79160 (regarding prerequisites for local government-initiated response actions) be restated for clarity?

(38) Should proposed Section 79230(d) be repealed as redundant, given the rule in proposed Section 79225(a)?

(39) Should proposed Section 79235 be restated to improve consistency and clarity?

(40) Should proposed Section 79355 (regarding law enforcement notification regarding hazardous substances at illegal drug labs) be restated for clarity?

(41) Should proposed Article 2 (commencing with Section 79465) of Chapter 6 be repealed or amended in light of the 9th Circuit opinion in *Boeing Co. v. Movassaghi* (2014) 768 F.3d 832?

(42) Should the term "liable party [or parties]" in proposed Sections 79670 and 80920 refer instead to the defined term, "responsible party" or "liable person"?

(43) Should the provisions specifying how a presumption of nonliability may be rebutted (proposed Sections 79800 and 79820) apply to any action in which the presumption of nonliability may apply?

(44) Should the definitions of "owner" and "property" in proposed Section 79870 be restated to clarify the scope of these terms and to assess whether the scope of these definitions is consistent with the underlying legislative policy?

(45) Should proposed Section 79880 (regarding releases from liability for the former Kaiser Steel Corporation steel mill site) be restated for clarity?

(46) Does proposed Article 13 (commencing with Section 79935) of Chapter 8 regarding lien authority require adjustment to address situations in which the regional board incurred the costs or damages that constitute the lien?

(47) Should the referenced provisions in proposed Section 80085 be adjusted?

(48) Should proposed Section 80100(a) (regarding the operative date of the law on orphan share reimbursement) be discontinued as obsolete?

(49) Should proposed Section 80230 (defining "eligible property") and related provisions that cross-refer to this section be revised in light of the repeals and changes to the cross-referenced laws, which are used to determine whether a property is an "eligible property"?

(50) Should the definition of "hazardous material" in proposed Section 80235 be adjusted to exclude non-hazardous wastes?

(51) Should proposed Section 80280 (defining "urban area") be revised in light of the repeal of former Section 21080.7 of the Public Resources Code?

(52) Should proposed Section 80310 (deeming references to "hazardous substances" to be references to "hazardous materials") be restated for clarity?

(53) Should proposed Article 11 (commencing with Section 80570) of Chapter 10 (regarding the administering agency for a site) be restated for clarity?

(54) Should the definition of "hazardous material" in proposed Section 80710 be adjusted to address one or more of the following issues:

- To clarify whether the term includes a substance in proposed Section 78075(b)?
- To exclude non-hazardous waste from the definition?

(55) Should proposed Section 80730 (regarding persons ineligible to apply for loans) be restated for clarity?

(56) Should proposed Section 80900 be adjusted to clarify which funds are available for the payment of claims?

(57) Should proposed Section 80950 be adjusted to apply to any claim "under this chapter [Chapter 12 (commencing with Section 80900)]" as opposed to "under this part [Part 2 (commencing with Section 78000)]"?