

## Memorandum 2019-34

**Recodification of Toxic Substance Statutes  
("Chapter 3. General Powers and Duties" and "Chapter 4. Releases of  
Hazardous Substances" of Part 2)**

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In this study, the Commission<sup>1</sup> is undertaking a nonsubstantive reorganization of Chapters 6.5 (commencing with Section 25100) and 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.<sup>2</sup> The Commission decided to proceed with the recodification of Chapter 6.8 first, then move to the recodification of Chapter 6.5.<sup>3</sup>

The Commission has been preparing a draft of the proposed recodification for Chapter 6.8. Attached to this memorandum is an initial draft of "Chapter 3: General Powers and Duties" and "Chapter 4. Releases of Hazardous Substances."

Commissioners and other interested persons should review the attached draft and raise any concerns identified. **Comments on any aspect of the draft, including issues that the Commission should consider adding to the list of substantive items for possible future study, would be welcome.**

Unless otherwise indicated, any statutory citations are to the Health and Safety Code.

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

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

Written comments can be in any form. They should be directed to [kburford@clrc.ca.gov](mailto:kburford@clrc.ca.gov). Comments may also be made orally at the upcoming Commission meeting (scheduled for May 30, 2019), which will be open to the public. The agenda is available at [http://www.clrc.ca.gov/Menu1\\_meetings/agenda.html](http://www.clrc.ca.gov/Menu1_meetings/agenda.html).

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

3. Minutes (Feb. 2019), p. 3.

## GENERAL DRAFTING APPROACH

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

Certain minor language changes to conform to legislative drafting practices or correct clear technical errors were made without notation.<sup>4</sup> Otherwise, any proposed changes to the language of the provision are described in the corresponding Staff Note.<sup>5</sup>

In accordance with the Commission's prior decisions in this study, certain minor changes were made as a matter of course, but these changes are flagged in the corresponding Staff Note.<sup>6</sup>

In a few instances, the staff discovered problems with the existing language or cross-references.<sup>7</sup> Where possible, the staff corrected the provision.<sup>8</sup> Where the appropriate resolution was unclear, the staff requested comment on the issue.<sup>9</sup>

In addition, the staff identified a few provisions that could benefit from restatement for clarity.<sup>10</sup> In one instance, the difficulties posed in understanding the provision seem to clearly justify future study.<sup>11</sup> In that case, the staff has included a Staff Note proposing to add that provision to the list of issues for future work. In other instances, it seemed that the provision might be sufficiently clear to practitioners familiar with this area of law.<sup>12</sup> For such provisions, a Staff Note was included requesting comment on the provision. For the provisions where comment is requested, the Commission can decide, based on the comment received, on the appropriate course of action for these provisions (i.e., leave unchanged, restate, or add to list for future study).

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4. Changes the staff made to conform to legislative drafting practice included eliminating uses of the words "such and "thereof," changing uses of the word "which" to "that" and adding a missing comma in a cross-reference. In rare cases, these changes may be flagged in a Staff Note. See, e.g., proposed Section 68530.

5. See, e.g., Staff Notes for proposed Sections 68420, 68535, 68545, 68655, and 68660 (Note 2).

6. See Minutes (Apr. 2019), p. 3-4. Such changes are discussed in Staff Notes for proposed Sections 68440 (Note 1), 68535 (Note 1), 68655 (Note 1), 68660 (Note 1), and 68790.

7. See Staff Notes for proposed Sections 68440 (Notes 2 and 3), 68505, 68510, 68535 (Note 2), 68545, 68555, 68560 (Note 2), 68565, 68575 (Note 1), 68655 (Notes 2, 3, 4, and 5), 68675, 68720, 68765 (Note 2).

8. See, e.g., Staff Note for proposed Sections 68535 (Staff Note 2) and 68675.

9. See, e.g., Staff Notes for proposed Sections 68555 and 68560 (Note 2).

10. See Staff Notes for proposed Sections 68420 (Note 2), 68450 (Note 3), and proposed Article 4.

11. See, e.g., Staff Note for proposed Article 4.

12. See, e.g., Staff Note for proposed Section 68420 (Note 2).

The proposed legislation contains an introductory, explanatory Staff Note.<sup>13</sup> This initial Staff Note describes the Commission's comments, the tables included in the proposed legislation, the Staff Notes, and other helpful information for stakeholders reviewing the proposed legislation. This Staff Note will be reproduced in future drafts of proposed legislation and will be updated as needed.

#### STRUCTURE OF PROPOSED CHAPTERS 3 AND 4

In preparing the attached proposed legislation, the staff found that it made sense to divide the material that was originally anticipated to be in a single chapter into two separate chapters.

Proposed Chapter 3 includes provisions on general powers and duties related to hazardous substance release sites and cleanup. They are organized into the following articles:

- (1) Regulatory Authority
- (2) Federal Assistance
- (3) Public Outreach
- (4) Investigatory Powers
- (5) Protection of Trade Secrets
- (6) Abandoned Sites
- (7) Laboratories
- (8) Technology Demonstration Program
- (9) Content of Biennial Report

Proposed Chapter 4 includes provisions that establish powers and duties related specifically to the release of a hazardous substance. The provisions in proposed Chapter 4 would be organized into the following articles:

- (1) General Powers of Director
- (2) Reporting Requirement
- (3) Disclosure Requirement
- (4) Securing Site of Release
- (5) Listing of Hazardous Substance Release Sites

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13. See page i of attached draft proposed legislation.

## ISSUES ENCOUNTERED IN PREPARING THE DRAFT

Staff Notes in the attached draft discuss the issues that the staff encountered in drafting. At the Commission meeting, the staff only plans to discuss the Staff Notes for the following provisions:

- Proposed Article 4 of Chapter 3 and Section 68450 (Note 3)
- Proposed Section 68505
- Proposed Section 68510
- Proposed Sections 68560 (Note 2), 68655 (Note 5), and 68720 (uses of “hazardous waste”)
- Proposed Article 9 of Chapter 3 and Section 68575 (Notes 1 and 2)
- Proposed Section 68675

Commissioners or stakeholders are welcome to raise other issues from the draft for discussion.

## NEXT STEPS

The staff will prepare an updated cumulative draft, which incorporates these provisions and reflects any decisions made by the Commission on the attached proposed legislation.

Respectfully submitted,

Kristin Burford  
Staff Counsel

PROPOSED CHAPTERS 3 & 4 OF PART 2 OF  
DIVISION 45 OF HEALTH & SAFETY CODE

1 **Staff Note.** This is a work in progress. The material shown below may be changed.  
2 For a tentative outline of new Part 2 of Division 45 of the Health & Safety Code, see  
3 Memoranda 2019-10 and 2019-23. All of the proposed provisions would be located in the Health  
4 & Safety Code. All references are to the Health & Safety Code unless otherwise indicated.

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

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

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

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

22 Staff Notes serve to flag issues requiring special attention or treatment. The staff does not plan  
23 to discuss each of these matters at the upcoming meeting. Rather, persons should review the draft,  
24 identify any issues of concern, and then raise those issues for discussion at the meeting or express  
25 their concerns in writing before the meeting, or both. Where a Staff Note serves as a prompt for  
26 public comment, these prompts for comment will typically be continued in the Commission’s  
27 tentative recommendation as “Notes” calling for comment. However, where the Commission  
28 decides against a staff-proposed restatement and reverts to existing statutory language, the Staff  
29 Note would not be continued in future drafts.

30 **Cross-references.** In some places, the provisions proposed for recodification in this draft  
31 cross-refer to provisions contained in Chapter 6.8. Where the cross-referenced provision has not  
32 yet been included in the recodification draft, the cross-reference is unchanged and is shown in  
33 bold text. As new Division 45 is drafted, these references will be updated to reflect the new  
34 numbering scheme. Where the cross-referenced material is contained in this or a prior draft of the  
35 recodification, the cross-reference was updated to reflect the proposed recodification. When a  
36 cross-reference needs to be updated, but it is unclear how that cross-reference should be changed  
37 the existing cross-reference is shown in brackets and bold text. In these cases, a Staff Note  
38 describes the issue and seeks comment on how the provision should be changed.

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

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DRAFT LEGISLATION

1 **Health & Safety Code §§ 68000-[6XXXX] (added). Hazardous substance response**  
2 SEC. \_\_\_\_ . Division 45 (commencing with Section 68000) is added to the Health  
3 and Safety Code, to read:

4 DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE

5 ...

6 PART 2. HAZARDOUS SUBSTANCE ACCOUNT

7 ...

8 CHAPTER 3. GENERAL POWERS AND DUTIES

9 Article 1. Regulatory Authority

10 **§ 68400. Authority to adopt regulations**

11 68400. The department shall adopt any regulations necessary to carry out its  
12 responsibilities pursuant to this part, including, but not limited to, regulations  
13 governing the expenditure of, and accounting procedures for, moneys allocated to  
14 state, regional, and local agencies pursuant to this part.

15 **Comment.** Section 68400 continues former Section 25351.5 without substantive change.  
16 See Section 68050 (“department” defined).

17 Article 2. Federal Assistance

18 **§ 68410. Obligation to seek federal funds and agreements**

19 68410. The state shall actively seek to obtain all federal funds to which it is  
20 entitled under the federal act and shall take all actions necessary to enter into  
21 contractual or cooperative agreements under Sections 104(c)(3) and 104(d)(1) of  
22 the federal act (42 U.S.C. Sec. 9604(c)(3) and 42 U.S.C. Sec. 9604(d)(1)).

23 **Comment.** Section 68410 continues former Section 25358 without substantive change.  
24 See Section 68065 (“federal act” defined).

Article 3. Public Outreach

§ 68420. Community service offices

68420. (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 **subdivision (c) of Section 25390.3**, 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 Article 7.8 (commencing with Section 25390)** 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 25358.7.1**. 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 workplan required to be adopted by the department pursuant to **Section 25358.7**.

(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**, 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 68420 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.

See Sections 68050 (“department” defined), 68100 (“regional board” defined).

**Staff Notes. (1)** The first sentence of subdivision (a) of Section 25358.7.2 provides:

“On or before July 1, 2000, 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.”

Proposed Section 68420(a) does not continue the introductory clause, “[o]n or before July 1, 2000.” Given that it is well past July 1, 2000, this language would appear to be obsolete. The changes reflected in proposed Section 68420(a) are intended to be nonsubstantive. **The staff welcomes any comment on this proposed change.**

**(2)** The staff believes that subdivision (d) is difficult to understand and could benefit from restatement for clarity. **The staff welcomes comment on the meaning of this provision and whether stakeholders find this provision sufficiently clear.**

Article 4. Investigatory Powers

**Staff Note.** Proposed Article 4 contains the substance of Section 25358.1. This provision would benefit from changes to standardize terms and provide short forms for lengthy, repeated phrases. In many cases, the subdivisions use different terms (or, more often, groups of terms) to refer to roughly the same concepts. In the staff’s view, it seems likely that some of these differences are immaterial and the terms are used interchangeably. For instance, it is unclear why one provision governs “[t]he department, *a representative of the department*, or any person designated by the director” (see proposed Section 68435), while another governs “[a]ny officer or employee of the department, *a representative of the director*, or a person designated by the director” (see proposed Section 68440(a)), and, yet another, governs “[a]n officer, employee, *representative*, or designee” (proposed Section 68450(d)).

Similarly, the provisions describe the purposes for which different activities authorized by the article may be undertaken. Overall, proposed Section 68435 provides that the actions in this article may be taken 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.” However, proposed Section 68440(c) indicates that a person required to provide information to the department must allow the department access to the records “for purposes of assisting the department in determining the need for a response action.” And, proposed Section 68460 grants immunity to an authorized person for entering land “for the purpose of taking a response action pursuant to this part.” The staff was unsure whether the different purposes for different provisions were intended or might be inadvertent.

The staff believes that this proposed Article could be improved by standardizing terminology and using defined terms to simplify the provisions and improve readability. Such changes, however, pose a risk of substantive change. **For this reason, the staff proposes adding restatement of this article to standardize terms, simplify the provisions and improve readability to the list of substantive issues for possible future study that will be included in the Commission’s recommendation.**

**§ 68435. Purpose of investigation**

68435. 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 68435 continues subdivision (a) of former Section 25358.1 without substantive change.

See Sections 68050 (“department” defined), 68055 (“director” defined), 68075 (“hazardous substance” defined), 68085 (“person” defined), 68105 (“release” defined), 68140 (“response” defined).

**§ 68440. Authority to require person to provide relevant information**

68440. (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 (1) The identification, nature, and quantity of materials that have been, or are,  
2 generated, treated, stored, or disposed of at a hazardous substance release site or  
3 that have been, or are, transported to a hazardous substance release site.

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

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

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

10 (c) A person who is required to provide information pursuant to subdivision (a)  
11 shall, in accordance with Section 68455, allow the officer, employee,  
12 representative, or designee, upon reasonable notice and at reasonable times, to  
13 have access to, and copy, all records relating to the hazardous substances for  
14 purposes of assisting the department in determining the need for a response action.

15 **Comment.** Section 68440 continues subdivisions (b)–(d), inclusive, of former Section 25358.1  
16 without substantive change.

17 See Sections 68050 (“department” defined), 68055 (“director” defined), 68065 (“federal act”  
18 defined), 68075 (“hazardous substance” defined), 68085 (“person” defined), 68105 (“release”  
19 defined), 68140 (“response” defined), 68155 (“site” defined).

20 **Staff Notes. (1)** Section 25358.1(b)(3) contains a reference to “subdivision (e) of Section 104 of  
21 the federal act (42 U.S.C. Sec. 9604(e)).” In proposed Section 68440(a)(3), the format of this  
22 citation has been standardized in accordance with the predominant form for federal act citations  
23 contained in Chapter 6.8.

24 **(2)** Proposed Section 68440(c) provides that a person required to provide information *shall* allow  
25 access to records “pursuant to Section 68455.” Proposed Section 68455 applies when the  
26 department is denied access to property. That section requires the department to obtain an  
27 inspection warrant (pursuant to Title 13 of Part 3 of the Code of Civil Procedure), unless it is an  
28 emergency.

29 The purpose of the cross-reference to Section 68455 is unclear in this provision. The cross-  
30 reference may simply be intended to clarify that the department should seek a warrant in  
31 accordance with proposed Section 68455 *if* access to records is denied.

32 Another reading of this provision could be that this provision places additional requirements on  
33 the department seeking record access, even with a warrant. In particular, this provision could be  
34 read to require the department, after obtaining a warrant for record access, to seek access only  
35 “upon reasonable notice and at reasonable times.” However, those requirements appear to be in  
36 tension with Code of Civil Procedure Section 1822.56, which places notice and timing  
37 requirements on the execution of an inspection warrant, but authorizes immediate execution in  
38 specified circumstances with court approval.

39 **The staff welcomes comment on these issues.**

40 **(3)** Proposed Section 68440(c) requires access to records “relating to hazardous substances for  
41 purposes of assisting the department in determining the need for a response action.” This  
42 contrasts with proposed Section 68450(a)(4), which allows access to property “to determine the  
43 need for a response action, *or the appropriate remedial action, to effectuate a response action*  
44 *under this part*” (emphasis added). The difference in these provisions suggests that the  
45 department’s ability to seek documentary information is more limited than the department’s  
46 ability to enter and inspect property. In particular, the department’s access to documentary  
47 information seems to extend only to information relevant to whether a response action is needed,  
48 and not the scope or design of the needed response action. The staff cannot discern a policy

1 justification for this discrepancy and, thus, believes that the discrepancy may be unintentional.  
2 **The staff welcomes comment on this issue.**

3 **§ 68445. Disclosure of information**

4 68445. (a) The department may disclose information submitted pursuant to this  
5 article to authorized representatives, contractors, or other governmental agencies  
6 only in connection with the department’s responsibilities pursuant to this part. The  
7 department shall establish procedures to ensure that information submitted  
8 pursuant to this article is used only in connection with these responsibilities and is  
9 not otherwise disseminated without the consent of the person who provided the  
10 information to the department.

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

17 **Comment.** Section 68445 continues subdivisions (j) and (k) of former Section 25358.1 without  
18 substantive change.

19 See Sections 68050 (“department” defined), 68085 (“person” defined).

20 **§ 68450. Entry, inspection, and sampling of property**

21 68450. (a) Any officer or employee of the department, representative of the  
22 director, or person designated by the director may, in accordance with Section  
23 68455, enter, at reasonable times, any of the following properties:

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

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

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

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

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

1 (b) Any officer or employee of the department, representative of the director, or  
2 person designated by the director may, in accordance with Section 68455, carry  
3 out any of the following activities:

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

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

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

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

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

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

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

20 (A) Comply with all procedures established pursuant to Section 68490.

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

23 (C) Upon the request of the person owning the facility, submit a copy of any  
24 photograph to the person for the purpose of determining whether trade secret  
25 information, as defined in Section 68480, or facility security, would be revealed  
26 by the photograph.

27 (2) “Disclosure,” as used in Section 68485, for purposes of this paragraph, does  
28 not include the review of the photograph by a court of competent jurisdiction or by  
29 an administrative law judge. A court or judge may review the photograph in  
30 camera.

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

35 **Comment.** Section 68450 continues subdivisions (e)–(h), inclusive, of former Section 25358.1  
36 without substantive change.

37 See Sections 68050 (“department” defined), 68055 (“director” defined), 68075 (“hazardous  
38 substance” defined), 68085 (“person” defined), 68105 (“release” defined), 68125 (“remedy”  
39 defined), 68140 (“response” defined).

40 **Staff Notes.** (1) Proposed Section 68450(c)(1)(C) contains a cross-reference to a definition for  
41 “trade secret.” Currently, that cross-reference points to Section 25358.2. Section 25358.2 is  
42 proposed for recodification as Article 5 in this draft. The definition of “trade secret” is contained  
43 in proposed Section 68480. As proposed above, the updated cross-reference would refer only to  
44 proposed Section 68480, as opposed to proposed Article 5 as a whole. This change is intended to

1 be nonsubstantive, but it seemed more helpful to more precisely point to the relevant provision.  
2 **The staff welcomes comment on this proposed cross-reference update.**

3 (2) Proposed Section 68450(c)(2) contains a cross-reference to a use of the term “disclosure.”  
4 Currently, that cross-reference points to Section 25358.2, which is proposed for recodification as  
5 Article 5. The term “disclosure” was only used once in Section 25358.2. Proposed Section 68485  
6 will continue the portion of Section 25358.2 that uses the term “disclosure.” For this reason, the  
7 updated cross-reference would refer only to proposed Section 68485, as opposed to proposed  
8 Article 5 as a whole. This change is intended to be nonsubstantive, but it seemed more helpful to  
9 more precisely point to the relevant provision. **The staff welcomes comment on this proposed**  
10 **cross-reference update.**

11 (3) Proposed Section 68450 would seem to benefit from a restatement for clarity. In the staff’s  
12 review of this provision, we identified several issues that may need to be addressed. The most  
13 significant of these are discussed in turn below. **The staff welcomes comment on these issues**  
14 **and whether they have caused problems in practice.**

15 • Overall, the section suffers from a lack of parallelism. For instance, the section uses different  
16 terms to refer to the same general concept (e.g., “establishment or other place or property” in  
17 subdivision (a), “facility” in subdivision (c), “premises” in paragraph (b)(3)). It is not clear  
18 whether the different terms are interchangeable or, if not, how the different terms relate to each  
19 other (e.g., is “facility” a subset of “establishment or other place or property”?).

20 • Proposed paragraph (a)(5) would seem to benefit from restatement for clarity. This paragraph  
21 appears to permit entry to residential property if three conditions are established:

- 22 (1) The property, were it nonresidential, would meet the criteria in paragraphs (1)-(4)
- 23 (2) Hazardous substances have been released onto or under the property
- 24 (3) Entry is made at a reasonable time after reasonable notice

25 The first criterion appears to be superfluous. Anytime the second criterion is met, it would seem  
26 that the first criterion would necessarily be satisfied (proposed paragraph (a)(2) applies when  
27 “hazardous substance has been ...released” to/from property). **The staff welcomes comment on**  
28 **how this provision is understood in practice.**

29 • Proposed subdivision (b) is unclear and inconsistent in its description of activities and  
30 locations. For this reason, the scope of the provisions is not clear from the text of the statutes. For  
31 instance, paragraph (1) permits obtaining samples at a specified place, while paragraph (2)  
32 permits obtaining samples “*of any substances*” at the specified place.

33 • Proposed paragraph (c)(4) contains a limitation on the term “[d]isclosure, as used in  
34 [proposed Section 68485 (Section 25358.2)]” that applies for “the purposes of this paragraph.”  
35 The legal effect of this provision is unclear. First, it appears that the limitation (“for purposes of  
36 this paragraph”) is too narrow, as “disclosure” is not otherwise used in the paragraph. Even  
37 assuming a broader application was intended, the staff cannot determine the intended effect of  
38 this provision.

39 **§ 68455. Entry to property without voluntary grant of access**

40 68455. If the owner or the owner’s authorized representative does not  
41 voluntarily grant access to a place, establishment, or property pursuant to this  
42 article, the officer, employee, representative, or designee shall first obtain a  
43 warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the  
44 Code of Civil Procedure. However, if there is an emergency posing an immediate  
45 threat to public health and safety, the officer, employee, representative, or  
46 designee may enter the place, establishment, or property without the consent of the  
47 owner or owner’s authorized representative and without the issuance of a warrant.

1 **Comment.** Section 68455 continues subdivision (i) of former Section 25358.1 without  
2 substantive change.

3 **§ 68460. Immunity for entry and response action**

4 68460. The department, and any person authorized by the department to enter  
5 upon any lands for the purpose of taking a response action pursuant to this part,  
6 shall not be held liable, in either a civil or criminal proceeding, for trespass or for  
7 any other acts that are necessary to carry out the response action.

8 **Comment.** Section 68460 continues subdivision (l) of former Section 25358.1 without  
9 substantive change.

10 See Sections 68050 (“department” defined), 68085 (“person” defined), 68140 (“response”  
11 defined).

12 Article 5. Protection of Trade Secrets

13 **§ 68480. “Trade secrets”**

14 68480. “Trade secrets,” as used in this article, may include, but are not limited  
15 to, any formula, plan, pattern, process, tool, mechanism, compound, procedure,  
16 production data, or compilation of information that is not patented, that is known  
17 only to certain individuals within a commercial concern who are using it to  
18 fabricate, produce, develop, or compound an article of trade or a service having  
19 commercial value, and that gives its user an opportunity to obtain a business  
20 advantage over competitors who do not know or use it.

21 **Comment.** Section 68480 continues subdivision (a) of former Section 25358.2 without  
22 substantive change.

23 **§ 68485. Identification of trade secret information**

24 68485. Any person providing information pursuant to subdivision (a) of Section  
25 68440 shall, at the time of its submission, identify all information that the person  
26 believes is a trade secret. Any information or record not identified as a trade secret  
27 is available to the public, unless exempted from disclosure by other provisions of  
28 law.

29 **Comment.** Section 68485 continues subdivision (c) of former Section 25358.2 without  
30 substantive change.

31 See Sections 68085 (“person” defined), 68480 (“trade secret” defined).

32 **§ 68490. Procedures for protection of trade secret information**

33 68490. The department shall establish procedures to ensure that trade secret  
34 information is utilized by the department only in connection with the  
35 responsibilities of the department pursuant to this part and is not otherwise  
36 disseminated without the consent of the person who provided the information to  
37 the department. However, any information shall be made available to  
38 governmental agencies for use in making studies and for use in judicial review or  
39 enforcement proceedings involving the person furnishing the information.

1 **Comment.** Section 68490 continues subdivision (b) of former Section 25358.2 without  
2 substantive change.

3 See Sections 68050 (“department” defined), 68085 (“person” defined), 68480 (“trade secret”  
4 defined).

5 **§ 68495. Penalty for knowing and willful dissemination of trade secret information**

6 68495. Any person who knowingly and willfully disseminates information  
7 protected by this article or procedures established by the department pursuant to  
8 Section 68490 shall, upon conviction, be punished by a fine of not more than five  
9 thousand dollars (\$5,000), imprisonment in the county jail not to exceed one year,  
10 or by both that fine and imprisonment.

11 **Comment.** Section 68495 continues subdivision (d) of former Section 25358.2 without  
12 substantive change.

13 See Sections 68050 (“department” defined), 68085 (“person” defined).

14 **Article 6. Abandoned Sites**

15 **§ 68505. Notice regarding abandoned sites**

16 68505. (a) The director shall notify, within 20 working days, each of the  
17 appropriate county health officers as to all the potential abandoned sites of which  
18 the department has knowledge or that the department is investigating for releases  
19 of hazardous substances that may have occurred or might be occurring at  
20 abandoned sites. The county health officers may request quarterly updates on the  
21 status of the investigations of these sites.

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

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

33 **Comment.** Section 68505 continues former Section 25359.6 without substantive change.

34 See Sections 68050 (“department” defined), 68055 (“director” defined), 68075 (“hazardous  
35 substance” defined), 68105 (“release” defined), 68135 (“remove” defined), 68155 (“site”  
36 defined).

37 **Staff Note.** Proposed Section 68505(a) requires the director to notify county health officers of all  
38 potential abandoned sites “of which the department has knowledge or that the department is  
39 investigating for releases of hazardous substances.” The director must perform this notification  
40 “within 20 working days.” It appears that this subdivision required a one-time, initial notification  
41 to county health officers of the status of the department’s abandoned site work within 20 working  
42 days of the effective date of the legislation enacting this duty. It is not clear whether this

1 provision has an ongoing effect and needs to be continued. **The staff welcomes comment on this**  
2 **issue.**

3 Article 7. Laboratories

4 § 68510. Accreditation requirement

5 68510. The analysis of any material that is required to demonstrate compliance  
6 with this part shall be performed by a laboratory accredited by the State Water  
7 Resources Control Board pursuant to Article 3 (commencing with Section 100825)  
8 of Chapter 4 of Part 1 of Division 101.

9 **Comment.** Section 68510 restates former Section 25358.4 without substantive change. The  
10 reference to the “State Department of Health Services” in former Section 25358.4 was changed to  
11 refer instead to the “State Water Resources Control Board.” Formerly, the State Department of  
12 Health Services was the state agency authorized to accredit laboratories under Article 3  
13 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101. See former Section  
14 100825(c)(1), (4), (18) as added by 2005 Cal. Stat. ch. 406, § 2. Currently, the State Water  
15 Resources Control Board is the agency authorized to accredit laboratories under that article. See  
16 Section 100825(c)(1), (4), (11), (12).

17 **Staff Note.** Proposed Section 68510 would replace a reference to the “State Department of Health  
18 Services” with a reference to the “State Water Resources Control Board.” Formerly, the State  
19 Department of Health Services had the accreditation authority under the referenced article. See  
20 former Section 100825(c)(1), (4), (18), as added by 2005 Cal. Stat. ch. 406, § 2 (AB 1317).  
21 Currently, the State Water Resources Control Board is the agency granted the authority to  
22 accredit laboratories under that article. See Section 100825(c)(1), (4), (11), (12).

23 The change to the agency reference is intended to be nonsubstantive. **The staff welcomes**  
24 **comment on this proposed change.**

25 The staff did not simply delete the agency name, which could prevent future discrepancies  
26 from arising if the accrediting agency changes. The staff concluded that deleting the agency name  
27 could potentially be substantive. The referenced article provides for a second form of  
28 accreditation (“TNI accreditation”) conducted by accrediting bodies recognized by a national  
29 nonprofit (“TNI”). See Section 100825(c)(14)-(20). It is unclear whether such accreditation  
30 would be sufficient for the purposes of laboratory analyses conducted under this part. **The staff**  
31 **welcomes comment on this issue.**

32 Article 8. Technology Demonstration Program

33 § 68525. Technology demonstration program for treatment technologies

34 68525. Notwithstanding **Section 25355.5**, the department shall carry out a  
35 program of full-scale demonstrations to evaluate treatment technologies that can  
36 be safely utilized for removal and remedial actions to hazardous substance  
37 releases.

38 **Comment.** Section 68525 continues former Section 25368 without substantive change.  
39 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105  
40 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68530 (“full-scale  
41 demonstration” and “treatment technologies” defined).

1 § 68530. Definitions

2 68530. For the purposes of this article, the following definitions apply:

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

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

15 **Comment.** Section 68530 restates former Section 25368.1 without substantive change.

16 See Sections 68075 (“hazardous substance” defined), 68105 (“release” defined), 68125  
17 (“remedy” defined), 68135 (“remove” defined), 68155 (“site” defined).

18 **Staff Note.** Proposed Section 68530(a) restates Section 25368.1 to eliminate the word “thereof.”  
19 “Thereof” was replaced with “of these characteristics.” This change is intended to be  
20 nonsubstantive. **The staff welcomes any comment on this proposed change.**

21 § 68535. Criteria for selection

22 68535. The department shall select technology demonstration projects to be  
23 evaluated pursuant to this article using criteria that include, at a minimum, all of  
24 the following requirements:

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

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

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

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

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

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

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

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

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

- 1 (1) Responsible parties.
- 2 (2) The United States Environmental Protection Agency.
- 3 (3) The state account.

4 **Comment.** Section 68535 restates former Section 25368.2 without substantive change.

5 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105  
6 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible  
7 party” defined), 68155 (“site” defined), 68165 (“state account” defined), 68530 (“full-scale  
8 demonstration” defined).

9 **Staff Notes. (1)** Proposed Section 68535(c) restates Section 25368.2(c) to add paragraphs and to  
10 eliminate uses of the singular and plural form of the same word (see Section 13; see also Staff  
11 Note for proposed Section 68300). Section 25368.2(c) reads as follows (with emphasis on  
12 relevant text added):

13 “(c) The department has determined that a site is available and suitable for demonstrating the  
14 **technology or technologies**, taking into account the physical, biological, chemical, and  
15 geological characteristics of the site, the extent and type of contamination found at the site, and  
16 the capability to conduct demonstration projects in a manner to ensure the protection of human  
17 health and the environment.”

18 Section 13 provides “[t]he singular number includes the plural, and the plural the singular.” For  
19 this reason, it does not appear to be necessary to use both the singular and plural forms of the  
20 same word. Proposed Section 68535 was simplified to use only the singular form in accordance  
21 with standard drafting practice.

22 The changes reflected in proposed Section 68535 are intended to be nonsubstantive. **The staff  
23 welcomes any comment on the proposed restatement.**

24 **(2)** Section 25368.2(f)(2) lists “The Environmental Protection Agency” as a source of funding.  
25 Both the state and federal government have an Environmental Protection Agency. It seems likely  
26 that this provision was intended to refer to the federal agency, as the original enactment of these  
27 statutes occurred before the creation of the state agency. See 1987 Cal. Stat. ch. 1156, § 2;  
28 Executive Order W-5-91 of Governor Wilson (1991). For this reason, proposed Section  
29 68535(f)(2) was changed to read “[t]he *United States* Environmental Protection Agency”  
30 (emphasis added). This change is intended as a nonsubstantive correction. **The staff welcomes  
31 comment on this issue.**

#### 32 § 68540. Selection of sites

33 68540. The department shall identify hazardous substance release sites, listed  
34 pursuant to Article 7, that are particularly well-suited for technology  
35 demonstration projects. In identifying hazardous substance release sites, the  
36 department shall consider, at a minimum, all of the following:

37 (a) The state’s priority ranking for removal and remedial actions to hazardous  
38 substance release sites adopted pursuant to Article 7.

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

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

41 (d) The accessibility of the hazardous substance release.

42 (e) Availability of required utilities.

43 (f) Support of federal and local governments.

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

45 **Comment.** Section 68540 continues former Section 25368.3 without substantive change.

1 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105  
2 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68155 (“site”  
3 defined).

4 **§ 68545. Solicitation of proposals**

5 68545. (a) The department shall annually, on or before July 1, publish a  
6 solicitation for proposals to conduct treatment demonstration projects that utilize  
7 technologies that are at a stage of development suitable for full-scale  
8 demonstrations at hazardous substance release sites. The solicitation notice shall  
9 prescribe information to be included in the proposal, including technical and  
10 economic data derived from the applicant’s own research and development efforts,  
11 and any other information that may be prescribed by the department to assess the  
12 technology’s potential and safety and the types of removal or remedial action to  
13 which it may be applicable.

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

19 **Comment.** Section 68545 restates former Section 25368.4 without substantive change.

20 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085  
21 (“person” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135 (“remove”  
22 defined), 68140 (“response” defined), 68155 (“site” defined), 68530 (“full-scale demonstration”  
23 defined).

24 **Staff Note.** Proposed Section 68545(b) restates the introductory clause of the subdivision. The  
25 introductory clause of Section 25368.4(b) provides “[a]ny person and private or public entity”  
26 may submit an application to propose a treatment demonstration project. The use of the  
27 conjunction “and” in this phrase appears to be an error. The proposed change reflected in Section  
28 68545 is intended to be nonsubstantive. **The staff welcomes comment on this issue.**

29 **§ 68550. Selection of technology demonstration projects**

30 68550. (a) On or before January 1, after reviewing all proposals submitted  
31 pursuant to Section 68545, the department shall annually select at least two  
32 treatment demonstration projects, to be commenced during that calendar year,  
33 using, at a minimum, the criteria specified in Section 68535.

34 (b) If the department determines that the required number of demonstrations  
35 required by subdivision (a) cannot be initiated consistent with the criteria specified  
36 in Section 68535 in any fiscal year, the department shall inform the appropriate  
37 committees of the Legislature of the reasons for its inability to conduct these  
38 demonstration projects.

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

42 **Comment.** Section 68550 continues former Section 25368.5 without substantive change.

43 See Sections 68050 (“department” defined), 68085 (“person” defined).

1 § 68555. Recovery of incremental costs

2 68555. Notwithstanding **Section 25360**, if the department determines that using  
 3 an alternative treatment technology to conduct a removal or remedial action at a  
 4 hazardous substance release site listed pursuant to **[paragraph (2) or (3) of**  
 5 **subdivision (b) of Section 25356]** would be more costly than another available  
 6 and feasible removal or remedial action method that would also achieve  
 7 satisfactory results, the department may determine not to attempt to recover from  
 8 the liable person the incremental costs of the removal or remedial action  
 9 attributable to the alternative treatment technology.

10 **Comment.** Section 68555 continues former Section 25368.6 without substantive change.

11 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105  
 12 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible  
 13 party” defined), 68155 (“site” defined), 68530 (“treatment technologies” defined).

14 **Staff Note.** Section 25368.6 references a hazardous substance release site listed “pursuant to  
 15 paragraph (2) or (3) of subdivision (b) of Section 25356.” Section 25356(b), which is proposed  
 16 (with renumbering of the provisions) for recodification in this draft as proposed Section 68520,  
 17 does not currently have a paragraph (3). However, an earlier version of Section 25356(b) did have  
 18 a paragraph (3). See former Section 25356, as amended by 1988 Cal Stat. ch. 1387, § 6. At that  
 19 time, the “list” was significantly different and structured differently. And, it appears that a site  
 20 “listed pursuant to paragraph (2) and (3)...” would include only sites where the department (as  
 21 opposed to a responsible party) was conducting the response action.

22 Given the significant changes to the law since this cross-reference was added originally, the  
 23 staff is unsure whether this cross-reference can or should be updated to achieve the same  
 24 substantive result as the cross-reference did previously. Regardless, this cross-reference is broken  
 25 and must be updated in the recodification. **The staff invites comment on how this cross-**  
 26 **reference should be revised.**

27 § 68560. Technology transfer program

28 68560. (a) The department shall conduct a technology transfer program that  
 29 shall include the development, collection, evaluation, coordination, and  
 30 dissemination of information relating to the utilization of alternative or innovative  
 31 hazardous waste treatment technologies demonstrated pursuant to this article.

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

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

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

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

41 **Comment.** Section 68560 restates former Section 25368.7 without substantive change.

42 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105  
 43 (“release” defined), 68530 (“treatment technologies” defined).

44 **Staff Notes. (1)** Proposed Section 68560 restates Section 25368.7 to add subdivisions. Section  
 45 25368.7 provides:

1 25368.7. The department shall conduct a technology transfer program that shall include  
2 the development, collection, evaluation, coordination, and dissemination of information relating  
3 to the utilization of alternative or innovative hazardous waste treatment technologies  
4 demonstrated pursuant to this article. The information shall include an evaluation of each  
5 treatment demonstration project's efficacy relating to performance and cost in achieving  
6 permanent and significant reduction in risks from hazardous substance releases. The information  
7 shall also include documentation of the testing procedures utilized in the project, the data  
8 collected, and the quality assurance and quality control which was conducted. The information  
9 shall also include the technology's applicability, pretreatment and posttreatment measurements,  
10 and the technology's advantages or disadvantages compared to other available technologies.

11 The changes reflected in proposed Section 68560 are intended to be nonsubstantive. **The staff  
12 welcomes any comment on the proposed restatement.**

13 (2) Proposed Section 68560 uses the term "hazardous waste." The term "hazardous waste" is not  
14 defined in Chapter 6.8. The provisions of Chapter 6.8 mostly address "hazardous substances."  
15 And, proposed Section 68560 generally governs technologies used for responding to a "hazardous  
16 substance" release. See, e.g., proposed Sections 68525, 68530, 68535. Given this context, it  
17 seems likely that the use of the term "hazardous waste" in this section should be replaced with  
18 "hazardous substance." **The staff welcomes comment on this issue.**

19 **§ 68565. Consideration of cost-effectiveness**

20 68565. Notwithstanding **paragraph (5) of subdivision (c) of Section 25356.1,**  
21 **when preparing or approving a remedial action plan for a site listed pursuant to**  
22 **[paragraph (2) or (3) of subdivision (b) of Section 25356],** that has been  
23 selected for a treatment demonstration project pursuant to this article, the  
24 department shall consider the cost-effectiveness of the project but is not required  
25 to choose the most cost-effective measure.

26 **Comment.** Section 68565 continues former Section 25368.8 without substantive change.  
27 See Section 68050 ("department" defined), 68125 ("remedy" defined), 68155 ("site" defined).

28 **Staff Note.** Section 25368.8 references a hazardous substance release site listed "pursuant to  
29 paragraph (2) or (3) of subdivision (b) of Section 25356." As described in the staff note for  
30 proposed Section 68555, Section 25356(b)(3) does not currently exist. It is unclear how this  
31 cross-reference should be updated, for the reasons described in the earlier Staff Note.

32 **The staff welcomes comment on the appropriate resolution of this issue.**

33 **Article 9. Content of Biennial Report**

34 **Staff Note.** The reporting requirements in this proposed article both pertain to "the biennial report  
35 specified in Section 25178." It may be beneficial to consolidate all of the required contents of that  
36 report in Section 25178.

37 Section 25178 is currently located in Chapter 6.5 of Division 20, which is also included in the  
38 Commission's recodification assignment. Section 25178 provides:

39 "25178. On or before January 1 of each odd-numbered year, the department shall post on  
40 its Web site, at a minimum, all of the following:

41 (a) The status of the regulatory and program developments required pursuant to legislative  
42 mandates.

43 (b) (1) The status of the hazardous waste facilities permit program that shall include all of the  
44 following information:

45 (A) A description of the final hazardous waste facilities permit applications received.

46 (B) The number of final hazardous waste facilities permits issued to date.

- 1 (C) The number of final hazardous waste facilities permits yet to be issued.  
2 (D) A complete description of the reasons why the final hazardous waste facilities permits yet  
3 to be issued have not been issued.  
4 (2) For purposes of paragraph (1), “hazardous waste facility” means a facility that uses a land  
5 disposal method, as defined in subdivision (d) of Section 25179.2, and that disposes of wastes  
6 regulated as hazardous waste pursuant to the federal act.  
7 (c) The status of the hazardous waste facilities siting program.  
8 (d) The status of the hazardous waste abandoned sites program.  
9 (e) A summary of enforcement actions taken by the department pursuant to this chapter and  
10 any other actions relating to hazardous waste management.  
11 (f) Summary data on annual quantities and types of hazardous waste generated, transported,  
12 treated, stored, and disposed.  
13 (g) Summary data regarding onsite and offsite disposition of hazardous waste.  
14 (h) Research activity initiated by the department.  
15 (i) Regulatory action by other agencies relating to hazardous waste management.  
16 (j) A revised listing of recyclable materials showing any additions or deletions to the list  
17 prepared pursuant to Section 25175 that have occurred since the last report.  
18 (k) Any other data considered pertinent by the department to hazardous waste management.  
19 (l) The information specified in subdivision (c) of Section 25161, paragraph (4) of subdivision  
20 (a) of Section 25197.1, subdivision (c) of Section 25354, and Sections 25334.7, and 25356.5.  
21 (m) A status report on the cleanup of the McColl Hazardous Waste Disposal Site in Orange  
22 County.”

23 The existing provisions that are proposed for recodification in this article are currently cross-  
24 referenced in subdivision (l). Subdivision (l) also contains an obsolete cross-reference to Section  
25 25356.5, which was part of Chapter 6.8, but has been repealed; this cross-reference will need to  
26 be deleted or corrected as appropriate when the Commission recodifies Chapter 6.5.

27 **The staff welcomes comment on the whether the requirements proposed for inclusion in  
28 this article should, instead, be incorporated into Section 25178.**

29 **§ 68575. San Gabriel Valley groundwater sites**

30 68575. (a) The department shall report to the Governor and the Legislature on  
31 the progress of the cleanup of the San Gabriel Valley groundwater sites in Los  
32 Angeles County, and on the progress of enforcement actions relating to those sites,  
33 in the biennial report specified in Section 25178. The report shall include, but not  
34 be limited to, all of the following:

35 (1) State expenditures and planned expenditures.

36 (2) Actions accomplished at the sites.

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

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

42 **Comment.** Section 68575 continues former Section 25334.7 without substantive change.  
43 See Section 68050 (“department” defined), 68155 (“site” defined).

44 **Staff Notes. (1)** Proposed Section 68575 requires that the department report “to the Governor and  
45 the Legislature...in the biennial report specified in Section 25178.” Section 25178 currently  
46 involves posting information on a website biennially and does not appear to require that a report  
47 be submitted to the Governor or the Legislature. Formerly, Section 25178 required a report to be

1 submitted to the Legislature biennially. See former Section 25178, as amended by 1987 Cal. Stat.  
2 ch. 822, § 1. The staff is unsure how to reconcile the requirements of proposed Section 68575 and  
3 Section 25178. **The staff welcomes comment on this issue.**

4 **(2)** Proposed Section 68575 requires the department to report to the Governor and the Legislature  
5 regarding the status of cleanup at the specified sites.

6 In the course of the staff's work on this study, the staff came across a Government Code  
7 provision regarding legislation that requires state agencies to submit reports to the Legislature.  
8 Specifically, Government Code Section 10231.5 provides, in part:

9 "10231.5. (a) A bill that, as introduced or amended in either house of the Legislature,  
10 would require a state agency to submit a report on any subject to either house of the Legislature  
11 generally, a committee or office of either house of the Legislature, or the Legislative Counsel  
12 Bureau shall include a provision that repeals the reporting requirement, or makes the requirement  
13 inoperative, no later than a date four years following the date upon which the bill, as enacted,  
14 becomes operative or four years after the due date of any report required every four or more  
15 years. If the bill requires that the report be submitted to either house of the Legislature generally,  
16 it shall also include a provision that requires the report to be submitted pursuant to Section 9795."

17 This provision seems to indicate a legislative policy determination that reporting requirements  
18 may become stale. This reporting requirement was originally enacted in 1990. See 1990 Cal. Stat.  
19 ch. 1624, § 1. It may be appropriate to consider and seek input on whether there is a continuing  
20 need for this particular report to be submitted to the Legislature. Given the nonsubstantive nature  
21 of this study, any change to the legal duty to provide a report to the Legislature would be beyond  
22 the scope of this study. However, the Commission may want to add this topic to the list of  
23 substantive issues for future study. **The staff welcomes comment on this issue.**

24 **§ 68580. Accounting of expenditures from emergency reserve account**

25 68580. The department shall include in the biennial report specified in Section  
26 25178 an accounting of the moneys expended pursuant to Section 68240.

27 **Comment.** Section 68580 continues the first sentence of subdivision (c) of former Section  
28 25354 without substantive change.

29 See Section 68050 ("department" defined).

30 **CHAPTER 4. RELEASES OF HAZARDOUS SUBSTANCES**

31 **Article 1. General Powers of Director**

32 **§ 68650. Powers of director in event of release or threatened release of hazardous**  
33 **substances**

34 68650. When the director determines that a release of a hazardous substance has  
35 occurred or is about to occur, the director may do any or all of the following:

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

40 (b) Undertake those planning, legal, fiscal, economic, engineering, architectural,  
41 and other studies or investigations that are necessary or appropriate to plan and

1 direct response actions, to recover the cost of those actions, and to enforce this  
2 part.

3 **Comment.** Section 68650 continues subdivision (b) of former Section 25358.3 without  
4 substantive change.

5 See Sections 68055 (“director” defined), 68075 (“hazardous substance” defined), 68105  
6 (“release” defined), 68140 (“response” defined).

7 **§ 68655. Authority to take or contract for response or other authorized actions**

8 68655. (a) Whenever there is a release or threatened release of a hazardous  
9 substance into the environment, the director may take or contract for any  
10 necessary removal or remedial action and may take or contract for any actions  
11 authorized by Section 68650, in compliance with the provisions of this part,  
12 including, but not limited to, **subdivision (b) of Section 25355**.

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

17 (1) The director determines, in writing, that the bidder, or, if the bidder is a  
18 business entity, any trustee, officer, director, partner, or any person holding more  
19 than 5 percent of the equity in or debt liability of that business entity, has engaged  
20 in activities resulting in any federal or state conviction that are significantly related  
21 to the fitness of the bidder to perform the bidder’s duties or activities under the  
22 contract. For purposes of this paragraph, “conviction” means a plea or verdict of  
23 guilty or a conviction following a plea of nolo contendere. Any action that the  
24 department may take pursuant to this subdivision relating to the department’s  
25 refusal to permit a person to bid on the contract may be based upon a conviction  
26 for which any of the following has occurred:

27 (A) The time for appeal has elapsed.

28 (B) The judgment of conviction has been affirmed on appeal.

29 (C) Any order granting probation is made suspending the imposition of  
30 sentence, notwithstanding a subsequent order pursuant to Section 1203.4 of the  
31 Penal Code permitting that person to withdraw the plea of guilty and to enter a  
32 plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
33 accusation, information, or indictment.

34 (2) The director determines, in writing, that the bidder, or, if the bidder is a  
35 business entity, any trustee, officer, director, partner, or any person holding more  
36 than 5 percent of the equity in or debt liability of that business entity, has violated  
37 or failed to comply with this part, Chapter 6.5 (commencing with Section 25100)  
38 or Chapter 6.7 (commencing with Section 25280) of Division 20, the Porter-  
39 Cologne Water Quality Control Act (Division 7 (commencing with Section 13000)  
40 of the Water Code), the federal act, the federal Resource Conservation and  
41 Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the federal  
42 Hazardous Materials Transportation Authorization Act of 1994, as amended (49

1 U.S.C. Sec. 5101 et seq.), the federal Toxic Substances Control Act (15 U.S.C.  
2 Sec. 2601 et seq.), or any other equivalent federal or state statute or any  
3 requirement or regulation adopted pursuant thereto relating to the generation,  
4 transportation, treatment, storage, recycling, disposal, or handling of a hazardous  
5 waste, as defined in Section 25117, a hazardous substance, as defined in  
6 subdivision (a) of Section 68075, or a hazardous material, as defined in Section  
7 353 of the Vehicle Code, if the violation or failure to comply shows a repeating or  
8 recurring pattern or may pose a threat to public health or safety or the  
9 environment.

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

14 **Comment.** Section 68655 restates subdivisions (c) and (d) of former Section 25358.3 without  
15 substantive change.

16 See Sections 68050 (“department” defined), 68055 (“director” defined), 68065 (“federal act”  
17 defined), 68075 (“hazardous substance” defined), 68085 (“person” defined), 68105 (“release”  
18 defined), 68125 (“remedy” defined), 68135 (“remove” defined).

19 **Staff Notes.** (1) Section 25358.3(d)(2) (proposed Section 68655(b)(2)) refers to the “the federal  
20 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended  
21 (42 U.S.C. Sec. 9601 et seq.)” Proposed Section 68655 replaces that reference with the “federal  
22 act.” In proposed Section 68065, “federal act” is defined as “the federal Comprehensive  
23 Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.  
24 9601 et seq.)”

25 The names of the other federal acts in proposed Section 68655(b)(2) have been updated to  
26 include the designation “federal” in accordance with drafting practice. The order of the listed  
27 federal acts was changed to improve clarity.

28 **The staff welcomes any comment on these proposed nonsubstantive changes.**

29 (2) As indicated above, Section 25358.3(d)(2) lists several federal acts. For all but one of those  
30 federal acts, the reference specifically refers to the act “as amended.” The reference to the federal  
31 Toxic Substances Control Act does not include the “as amended” designation. That may have  
32 been an error. **The staff welcomes comment on this issue.**

33 (3) Section 25358.3(d)(2) refers to “the Hazardous Materials Transportation Authorization Act of  
34 1994, as amended (49 U.S.C. Sec. 5101 et seq.)” The named act and the U.S. Code cite do not  
35 appear to be coextensive. The staff does not know how to interpret this cross-reference as drafted.  
36 **The staff welcomes comment on the meaning of this cross-reference and whether the cross-  
37 reference is causing problems in practice.**

38 (4) Section 25358.3(d)(2) refers to the definition for hazardous substance in “Section 25316.”  
39 Currently, Section 25316 defines “hazardous substance,” while Section 25317 contains  
40 exclusions from the definition for “hazardous substance.” It is not clear whether the reference to  
41 Section 25316 was intended to avoid incorporating the exclusions in Section 25317. **The staff  
42 welcomes comment on this issue.**

43 (5) Section 25358.3(d)(3) (proposed Section 68655(b)(3)) uses the term “hazardous waste”  
44 without reference to an applicable definition. The preceding paragraph also uses the term  
45 “hazardous waste,” but refers to a definition in “Section 25117.” It seems likely that the definition  
46 of “hazardous waste” in Section 25117 should also apply to the use of the term in paragraph  
47 (d)(3). **The staff welcomes comment on this issue.**

1 § 68660. Judicial proceedings

2 68660. (a) Whenever there is a release or threatened release of a hazardous  
3 substance, the director may request the Attorney General to secure such relief as  
4 may be necessary from the responsible party to abate the release or threatened  
5 release. The superior court of the county in which the release or threatened release  
6 occurs has jurisdiction to grant that relief that the public interest and equities of the  
7 case may require to protect the public health and safety and the environment.  
8 Upon a showing by the department that a release or threatened release of a  
9 hazardous substance has occurred or is occurring, and that there may be an  
10 imminent or substantial endangerment to the public health and safety or to the  
11 environment, the court may grant a temporary restraining order or a preliminary or  
12 permanent injunction.

13 (b) Upon the failure of any person to comply with any order issued by the  
14 department pursuant to this article, **subdivision (a) of Section 25358.3**, or **Section**  
15 **25355.5**, the director may request the Attorney General to petition the superior  
16 court for the issuance of an injunction requiring that person to comply with the  
17 order. The superior court shall have jurisdiction to grant a temporary restraining  
18 order or a preliminary or permanent injunction.

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

28 **Comment.** Section 68660 restates subdivisions (e)-(g), inclusive, of former Section 25358.3  
29 without substantive change.

30 See Sections 68050 (“department” defined), 68055 (“director” defined), 68075 (“hazardous  
31 substance” defined), 68085 (“person” defined), 68105 (“release” defined), 68125 (“remedy”  
32 defined), 68145 (“responsible party” defined).

33 **Staff Notes. (1)** Proposed Section 68660(a) restates subdivision (e) of Section 25358.3 to  
34 eliminate uses of the singular and plural form of the same word (see Section 13; see also Staff  
35 Note for proposed Section 68300). Section 25358.3(3) reads as follows (with emphasis on  
36 relevant text added):

37 “(e) Whenever there is a release or threatened release of a hazardous substance, the director  
38 may request the Attorney General to secure such relief as may be necessary from the responsible  
39 **party or parties** to abate the release or threatened release. The superior court of the county in  
40 which the release or threatened release occurs has jurisdiction to grant that relief that the public  
41 interest and equities of the case may require to protect the public health and safety and the  
42 environment. Upon a showing by the department that a release or threatened release of a  
43 hazardous substance has occurred or is occurring, and that there may be an imminent or  
44 substantial endangerment to the public health and safety or to the environment, the court may  
45 grant a temporary restraining order or a preliminary or permanent injunction.”

1 Section 13 provides “[t]he singular number includes the plural, and the plural the singular.” For  
2 this reason, it does not appear to be necessary to use both the singular and plural forms of the  
3 same word. Proposed Section 68660 was simplified to use only the singular form in accordance  
4 with standard drafting practice.

5 The changes reflected in proposed Section 68660 are intended to be nonsubstantive. **The staff**  
6 **welcomes any comment on the proposed restatement.**

7 (2) Section 25358.3(g), proposed for recodification as Section 68660(c), contained a semicolon.  
8 The provision has been restated to avoid the use of a semicolon by making the material after the  
9 semicolon a separate sentence.

## 10 Article 2. Reporting Requirement

### 11 § 68675. Prohibition and reporting requirement for releases

12 68675. (a) A person shall not release, or allow or cause a release of, a reportable  
13 quantity of a hazardous substance into the environment that is not authorized or  
14 permitted pursuant to state law.

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

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

19 (2) The release is authorized by state law.

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

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

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

26 (c) For the purposes of this article, “reportable quantity” means either of the  
27 following:

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

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

35 **Comment.** Section 68675 continues subdivisions (a)-(c), inclusive, of former Section 25359.4  
36 without substantive change. A cross-reference to Section 25507 has been corrected to refer to  
37 Section 25510.

38 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085  
39 (“person” defined), 68105 (“release” defined).

40 **Staff Note.** Proposed Section 68675(b)(3) pertains to a release that “requires immediate reporting  
41 to the Office of Emergency Services...pursuant to Section 25507.” The cross-reference to Section  
42 25507 appears to be inapt. Section 25507 governs which businesses are required to implement a  
43 business plan for emergency response for hazardous material releases. Another section in the

1 same article, Section 25510, pertains to immediate reporting of hazardous material releases.  
2 Section 25510 provides, in part:

3 “Except as provided in subdivision (b), the handler or an employee, authorized  
4 representative, agent, or designee of a handler, shall, upon discovery, immediately report any  
5 release or threatened release of a hazardous material, or an actual release of a hazardous  
6 substance, as defined in Section 374.8 of the Penal Code, to the UPA, and to the [Office of  
7 Emergency Services], in accordance with the regulations adopted pursuant to this section. The  
8 handler or an employee, authorized representative, agent, or designee of the handler shall provide  
9 all state, city, or county fire or public health or safety personnel and emergency response  
10 personnel with access to the handler’s facilities.”

11 The cross-reference has been updated to refer to Section 25510 in proposed Section 68675. **The  
12 staff welcomes comment on the proposed correction to this cross-reference.**

13 **§ 68680. Liability for failure to report**

14 68680. (a) The owner of property on which a reportable release has occurred and  
15 any person who releases, or causes a reportable release and who fails to make the  
16 written report required by subdivision (b) of Section 68675, shall be liable for a  
17 penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate  
18 violation and for each day that a violation continues. Each day on which the  
19 released hazardous substance remains is a separate violation unless the person has  
20 either filed the report or is in compliance with an order issued by a local, state, or  
21 federal agency with regard to the release.

22 (b) Liability under this article may be imposed in a civil action or may be  
23 administratively imposed by the department pursuant to **Section 25359.3**.

24 (c) If the violation of subdivision (b) of Section 68675 results in, or significantly  
25 contributes to, an emergency, including, but not limited to, a fire, to which a  
26 county, city, or district is required to respond, the responsible party may be  
27 assessed the full cost of the emergency response by the city, county, or district.

28 **Comment.** Section 68680 continues subdivisions (d)-(f), inclusive, of former Section 25359.4  
29 without substantive change.

30 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085  
31 (“person” defined), 68105 (“release” defined), 68140 (“response” defined), 68145 (“responsible  
32 party” defined).

33 **Article 3. Disclosure Requirement**

34 **§ 68700. Disclosure requirement for property owner**

35 68700. Any owner of nonresidential real property who knows, or has reasonable  
36 cause to believe, that any release of hazardous substance has come to be located  
37 on or beneath that real property shall, prior to the sale, lease, or rental of the real  
38 property by that owner, give written notice of that condition to the buyer, lessee,  
39 or renter of the real property. Failure of the owner to provide written notice when  
40 required by this section to the buyer, lessee, or renter shall subject the owner to  
41 actual damages and any other remedies provided by law. In addition, where the  
42 owner has actual knowledge of the presence of any release of a material amount of

1 a hazardous substance and knowingly and willfully fails to provide written notice  
2 to the buyer, lessee, or renter, as required by this section, the owner is liable for a  
3 civil penalty not to exceed five thousand dollars (\$5,000) for each separate  
4 violation.

5 **Comment.** Section 68700 continues subdivision (a) of former Section 25359.7 without  
6 substantive change.

7 See Sections 68075 (“hazardous substance” defined), 68105 (“release” defined), 68125  
8 (“remedy” defined).

9 **§ 68705. Disclosure requirement for lessee or renter**

10 68705. Any lessee or renter of real property who knows or has reasonable cause  
11 to believe that any release of a hazardous substance has come or will come to be  
12 located on or beneath that real property shall, within a reasonable period of time,  
13 either prior to the release or following the discovery by the lessee or renter of the  
14 presence or believed presence of the hazardous substance release, give written  
15 notice of that condition to the owner of the real property or to the lessor under the  
16 lessee’s or renter’s lease or rental agreement.

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

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

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

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

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

41 **Comment.** Section 68705 continues subdivision (b) of former Section 25359.7 without  
42 substantive change.

1 See Sections 68075 (“hazardous substance” defined), 68105 (“release” defined), 68125  
2 (“remedy” defined), 68135 (“remove” defined).

3 Article 4. Securing Site of Release

4 § 68720. Conditions when order to secure site is required

5 68720. After making a determination, based upon a preliminary site assessment  
6 that there has been a release of a hazardous substance on, under, or into the land  
7 on a site, the department or a county health officer shall order the property owner  
8 to secure the site if all of the following conditions apply to that site:

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

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

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

14 **Comment.** Section 68720 continues subdivision (a) of former Section 25359.5 without  
15 substantive change.

16 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105  
17 (“release” defined), 68155 (“site” defined).

18 **Staff Note.** Proposed Section 68720(b) refers to “hazardous waste.” The term “hazardous waste”  
19 is not defined in Chapter 6.8. The provisions of Chapter 6.8 mostly address “hazardous  
20 substances.” And, proposed Section 68720 itself governs a site where there has been a release of a  
21 “hazardous substance.” It seems unlikely that the use of the term “hazardous waste” was intended  
22 in this provision, particularly without an applicable definition. **The staff welcomes comment on  
23 this issue.**

24 § 68725. Requirements of order to secure site

25 68725. (a) The order to secure the site shall require, within five days after  
26 receiving notification of the order, the posting of the site with signs. The order  
27 shall also require, within five days after receiving notification of the order, that the  
28 site be enclosed with a fence, unless it is physically and economically infeasible or  
29 unless the fencing is unnecessary because it will not alleviate the danger to the  
30 public health.

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

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

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

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

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

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

6 **Comment.** Section 68725 continues subdivisions (b) and (c) of former Section 25359.5  
7 without substantive change.

8 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085  
9 (“person” defined), 68155 (“site” defined).

10 **§ 68730. Advising agencies on health risks and site requirements**

11 68730. The department or the county health officer shall advise other agencies  
12 on the public health risks and the need for fencing and posting of sites when those  
13 agencies confirm the release of a hazardous substance pursuant to Section 68720.

14 **Comment.** Section 68730 continues subdivision (e) of former Section 25359.5 without  
15 substantive change.

16 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105  
17 (“release” defined), 68155 (“site” defined).

18 **§ 68735. Penalty for failure to comply with order to secure site**

19 68735. (a) A property owner who fails to comply with an order of the  
20 department or the county health officer is subject to a civil penalty of up to  
21 twenty-five thousand dollars (\$25,000). In determining the amount of a civil  
22 penalty to be imposed, the court shall consider all relevant circumstances,  
23 including, but not limited to, the economic assets of the property owner and  
24 whether the property owner has acted in good faith.

25 (b) If the property owner fails to secure and post the site, the department or the  
26 county health officer shall secure and post the site pursuant to subdivision (a) of  
27 Section 68725 within 30 days of the expiration of the five-day period and shall  
28 seek recovery of the costs of that securing and posting from the property owner. If  
29 the site is an abandoned site, as defined in Section 68505, if the site cannot be  
30 traced to a specific owner, or if the owner is the subject of an order for relief in  
31 bankruptcy, the department or the county health officer shall secure and post the  
32 site, using any source of funds, pursuant to subdivision (a) of Section 68725.

33 **Comment.** Section 68735 continues subdivision (d) of former Section 25359.5 without  
34 substantive change.

35 See Sections 68050 (“department” defined), 68155 (“site” defined).

36 **§ 68740. Remedies and penalties not exclusive**

37 68740. The remedies and penalties specified in this article and Section 68505  
38 are in addition to, and do not affect, any other remedies, enforcement actions,  
39 requirements, or penalties otherwise authorized by law.

40 **Comment.** Section 68740 continues subdivision (f) of former Section 25359.5 without  
41 substantive change.

Article 5. Listing of Hazardous Substance Release Sites

§ 68760. List of selected hazardous substance release sites

68760. (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 68765 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 68770, 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 68760 continues subdivision (b) of former Section 25356 without substantive change.

See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085 (“person” defined), 68105 (“release” defined), 68140 (“response” defined), 68155 (“site” defined), 68170 (“tier” defined).

§ 68765. Criteria for selection of hazardous substance release sites

68765. (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 68765 restates subdivision (a) of former Section 25356 without substantive change. A cross-reference to the federal act has been corrected.

See Sections 68050 (“department” defined), 68065 (“federal act” defined), 68075 (“hazardous substance” defined), 68105 (“release” defined), 68140 (“response” defined), 68155 (“site” defined).

**Staff Notes.** (1) Proposed Section 68765(a) restates Section 25356(a)(1), which provides as follows:

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

7 The changes reflected in proposed Section 68765(a) are intended to be nonsubstantive. **The staff  
8 welcomes any comment on the proposed restatement.**

9 **(2)** The cross-reference to the federal act in the last sentence of proposed Section 68765(a) has  
10 been corrected. The existing cross-reference refers to “Section 105(8) of the federal act (42  
11 U.S.C. Sec. 9605(8)).” This cross-reference is missing a subdivision designation. Only  
12 subdivision (a) of Section 105 has a paragraph 8. For this reason, the cross-reference was  
13 corrected to refer to “Section 105(a)(8) of the federal act (42 U.S.C. Sec. 9605(a)(8)).” **The staff  
14 welcomes comments on this proposed correction.**

15 **§ 68770. Priority tiers for listed hazardous substance release sites**

16 68770. The department shall assign each site listed pursuant to Section 68760 to  
17 one of the following priority tiers for the purpose of informing the public of the  
18 relative hazard of listed sites:

19 (a) “Priority tier one” shall include any site that the department determines,  
20 using the criteria described in Section 68760, meets any of the following  
21 conditions:

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

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

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

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

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

40 **Comment.** Section 68770 continues subdivision (c) of former Section 25356 without  
41 substantive change.

42 See Sections 68050 (“department” defined), 68135 (“remove” defined), 68140 (“response”  
43 defined), 68155 (“site” defined), 68170 (“tier” defined).

1    **§ 68775. Requirements for listed hazardous substance release sites**

2    68775. Hazardous substance release sites listed by the department pursuant to  
3    Section 68760 are subject to this part and all actions carried out in response to  
4    hazardous substance releases or threatened releases at listed sites shall comply  
5    with the procedures, standards, and other requirements set forth in this part or  
6    established pursuant to the requirements of this part.

7    **Comment.** Section 68775 continues subdivision (d) of former Section 25356 without  
8    substantive change.

9    See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105  
10 (“release” defined), 68140 (“response” defined), 68155 (“site” defined).

11   **§ 68780. Conformance of expenditures with prioritization of sites**

12    68780. (a) Except as provided in subdivision (b), the department shall expend all  
13    funds appropriated to the department for any response action pursuant to this part,  
14    and shall take all response action pursuant to this part, in conformance with the  
15    assignment of sites to priority tiers pursuant to Section 68770.

16    (b) The department may expend funds appropriated for a response action and  
17    take a response action, without conforming to the listing of sites by tier pursuant to  
18    Section 68770, or at a site that has not been listed pursuant to Section 68760, if  
19    any of the following apply:

20    (1) The department is monitoring a response action conducted by a responsible  
21    party at a site listed pursuant to Section 68760 or at a site that is not listed but is  
22    being voluntarily remediated by a responsible party or another person.

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

25    (3) The department is assessing, evaluating, and characterizing the nature and  
26    extent of a hazardous substance release at a site for which the department has not  
27    been able to identify a responsible party, the responsible party is defunct or  
28    insolvent, or the responsible party is not in compliance with an order issued, or an  
29    enforceable agreement entered into, pursuant to **subdivision (a) of Section**  
30    **25355.5.**

31    (4) The department is carrying out activities pursuant to **paragraph (2) or (3) of**  
32    **subdivision (b) of, or subdivision (c) or (d) of, Section 25355.5.**

33    (c) The department may, at any one time, expend funds and take a response  
34    action at more than one site on the list established pursuant to Section 68760. In  
35    addition, the department may, at any one time, oversee the performance of any  
36    activities conducted by a responsible party on more than one site on the list  
37    established pursuant to Section 68760.

38    **Comment.** Section 68780 continues subdivision (f) of former Section 25356 without  
39    substantive change.

40    See Sections 68050 (“department” defined), 68065 (“federal act” defined), 68075 (“hazardous  
41    substance” defined), 68085 (“person” defined), 68105 (“release” defined), 68140 (“response”  
42    defined), 68145 (“responsible party” defined), 68155 (“site” defined), 68170 (“tier” defined).

1 § 68785. Commencement of response actions at sites

2 68785. This article does not require the department to characterize every site  
3 listed pursuant to Section 68760 before the department begins response actions at  
4 those sites.

5 **Comment.** Section 68785 continues subdivision (g) of former Section 25356 without  
6 substantive change.

7 See Sections 68050 (“department” defined), 68140 (“response” defined), 68155 (“site”  
8 defined).

9 § 68790. Responsibility for response action compliance

10 68790. The department, or, if appropriate, the regional board, is the state agency  
11 with sole responsibility for ensuring that required action in response to a  
12 hazardous substance release or threatened release at a listed site is carried out in  
13 compliance with the procedures, standards, and other requirements set forth in this  
14 part, and shall, as appropriate, coordinate the involvement of interested or affected  
15 agencies in the response action.

16 **Comment.** Section 68790 continues subdivision (h) of former Section 25356 without  
17 substantive change.

18 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68100  
19 (“regional board” defined), 68105 (“release” defined), 68140 (“response” defined), 68155 (“site”  
20 defined).

21 **Staff Note.** Section 25356(h) refers to the “California regional water quality board.” It appears  
22 that this provision should instead refer to the “California regional water quality *control* board.”  
23 Proposed Section 68790 replaces the phrase with the “regional board.” In proposed Section  
24 68100, “regional board” is defined as “a California regional water quality control board.”

25 § 68795. Application of administrative rulemaking requirements

26 68795. (a) The adoption of the minimum hazard threshold pursuant to  
27 subdivision (b) of Section 68765, the department’s development and publication  
28 of the list of sites pursuant to Section 68760, and the assignment of sites to a tier  
29 pursuant to Section 68770, including the classification of a site as within a  
30 minimum threshold pursuant to Section 68770, are not subject to Chapter 3.5  
31 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the  
32 Government Code.

33 (b) The adoption of the criteria used by the department pursuant to Section  
34 68760 to determine the extent to which deferral of a response action at a site will  
35 result, or is likely to result, in a rapid increase in response costs at a site or in a  
36 significant increase in risk to human health or safety or the environment is subject  
37 to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2  
38 of the Government Code.

39 **Comment.** Section 68795 continues subdivision (e) of former Section 25356 without  
40 substantive change.

41 See Sections 68050 (“department” defined), 68140 (“response” defined), 68155 (“site”  
42 defined), 68170 (“tier” defined).



DISPOSITION OF EXISTING LAW

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

<b>Existing Provision</b>	<b>Corresponding New Provision</b>
25334.7 .....	68575
25351.5 .....	68400
25354(c), 1st sent. ....	68580
25356(a) .....	68765
25356(b) .....	68760
25356(d) .....	68775
25356(e) .....	68795
25356(f) .....	68780
25356(g) .....	68785
25356(h) .....	68790
25356(c) .....	68770
25358 .....	68410
25358.1(a) .....	68435
25358.1(b)-(d) .....	68440
25358.1(j), (k) .....	68445
25358.1(e)-(h) .....	68450
25358.1(i) .....	68455
25358.1(l) .....	68460
25358.2(d) .....	68495
25358.2(b) .....	68490
25358.2(c) .....	68485
25358.2(a) .....	68480
25358.3(b) .....	68650
25358.3(c)-(d) .....	68655
25358.3(e)-(g) .....	68660
25358.4 .....	68510
25358.7.2(a) 1st sent., (b)-(d) .....	68420
25359.4(a)-(c) .....	68675
25359.4(d)-(f) .....	68680
25359.5(a) .....	68720
25359.5(b)-(c) .....	68725
25359.5(e) .....	68730
25359.5(d) .....	68735
25359.5(f) .....	68740
25359.6 .....	68505
25359.7(a) .....	68700
25359.7(b) .....	68705
25368 .....	68525
25368.1 .....	68530
25368.2 .....	68535

25368.3 .....	68540
25368.4 .....	68545
25368.5 .....	68550
25368.6 .....	68555
25368.7 .....	68560
25368.8 .....	68565

DERIVATION OF NEW LAW

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

<b>Proposed New Provision</b>	<b>Corresponding Existing Provision</b>
68400 .....	25351.5
68410 .....	25358
68420 .....	25358.7.2(a) 1st sent., (b)-(d)
68435 .....	25358.1(a)
68440 .....	25358.1(b)-(d)
68445 .....	25358.1(j), (k)
68450 .....	25358.1(e)-(h)
68455 .....	25358.1(i)
68460 .....	25358.1(l)
68480 .....	25358.2(a)
68485 .....	25358.2(c)
68490 .....	25358.2(b)
68495 .....	25358.2(d)
68505 .....	25359.6
68510 .....	25358.4
68525 .....	25368
68530 .....	25368.1
68535 .....	25368.2
68540 .....	25368.3
68545 .....	25368.4
68550 .....	25368.5
68555 .....	25368.6
68560 .....	25368.7
68565 .....	25368.8
68575 .....	25334.7
68580 .....	25354(c), 1st sent.
68650 .....	25358.3(b)
68655 .....	25358.3(c)-(d)
68660 .....	25358.3(e)-(g)
68675 .....	25359.4(a)-(c)
68680 .....	25359.4(d)-(f)
68700 .....	25359.7(a)
68705 .....	25359.7(b)
68720 .....	25359.5(a)
68725 .....	25359.5(b)-(c)
68730 .....	25359.5(e)
68735 .....	25359.5(d)
68740 .....	25359.5(f)
68760 .....	25356(b)
68765 .....	25356(a)
68770 .....	25356(c)

68775 .....	25356(d)
68780 .....	25356(f)
68785 .....	25356(g)
68790 .....	25356(h)
68795 .....	25356(e)

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