

Memorandum 2023-20

**Recodification of Toxic Substance Statutes:
Chapter 6.5 of Division 20 of Health and Safety Code
(Legislative Update)**

In this study, the Commission¹ was tasked with preparing a nonsubstantive recodification of Chapters 6.5 and 6.8 of Division 20 of the Health and Safety Code.² Work on Chapter 6.5 was concluded in 2022, with enactment of the Commission's recommended recodification of that chapter.³

In 2021, the Commission provisionally approved a draft of the first portion of a recodified Chapter 6.5.⁴ It then suspended work on this study while waiting to see if the Legislature would enact the Commission's recommendations on Chapter 6.8.

This memorandum presents updates to the 2021 draft, to conform to legislation enacted after that draft was approved in 2021 and 2022. These would be nonsubstantive revisions, simply bringing the 2021 draft into accord with current law. Strikeout and underscore are used to show changes from the prior draft.

The staff intends that this memorandum be a consent item. Unless the Commission or members of the public request otherwise, it will be presented for approval without staff discussion.

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

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

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

2. See 2021 Cal. Stat. res. ch. 108.

3. See *Hazardous Substance Account Recodification Act*, 48 Cal. L. Revision Comm'n Reports __ (2021); *Hazardous Substance Account Recodification Act: Conforming Revisions*, 48 Cal. L. Revision Comm'n Reports __ (2021); 2022 Cal. Stat. chs. 257, 258.

4. See Memorandum 2021-19; Minutes (April 2021), p. 3.

Definitions

Section 4 of Chapter 73 of the Statutes of 2021 added a definition of the term “board.” **The staff recommends it be added to the draft legislation as proposed Section 60088:**

Proposed § 60088. “Board”

60088. “Board” means the Board of Environmental Safety established pursuant to Section 25125.

Comment. Section 60088 continues former Section 25110.3 without substantive change.

Toxic Substances Control Account

Section 24 of Chapter 73 of the Statutes of 2021 made changes to Section 25173.6. **The staff recommends that proposed Section 60495 be revised to reflect those changes:**

Proposed § 60495. Appropriations from account

60495. (a) The funds deposited in the Toxic Substances Control Account may be appropriated to the department for the following purposes:

(1) The administration and implementation of the following:

(A) Part 2 (commencing with Section 78000) of Division 45, except that funds shall not be expended from the Toxic Substances Control Account for purposes of Article 16 (commencing with Section 79350) of Chapter 5 of Part 2 of Division 45.

(B) Chapter 6.86 (commencing with Section 25396) of Division 20.

(C) Article 10 (commencing with Section 7710) of Chapter 1 of Division 4 of the Public Utilities Code, to the extent the department has been delegated responsibilities by the secretary for implementing that article.

(D) Activities of the department related to pollution prevention and technology development, authorized pursuant to this division Article 10 (commencing with Section 25210), Article 10.01 (commencing with Section 25210.5), Article 10.02 (commencing with Section 25210.9), Article 10.1.1 (commencing with Section 25214.1), Article 10.1.2 (commencing with Section 25214.4.3), Article 10.2.1 (commencing with Section 25214.8.1), Article 10.4 (commencing with Section 25214.11), Article 10.5 (commencing with Section 25215), Article 10.5.1 (commencing with Section 25215.8), Article 13.5 (commencing with Section 25250.50), Article 14 (commencing with Section 25251), and Section 25214.10.

(E) Green chemistry (Article 14 (commencing with Section 25251)).

(2) The administration of the following units, and successor organizations of those units, within the department, and the

implementation of programs administered by those units or successor organizations:

(A) The Human and Ecological Risk Office.

(B) The Environmental Chemistry Laboratory.

(C) The Office of Pollution Prevention and Technology Development.

(D) The Safer Consumer Products Program.

(3) For allocation to the Office of Environmental Health Hazard Assessment, pursuant to an interagency agreement, to assist the department as needed in administering the programs described in subparagraphs (A) and (B) of paragraph (1).

(4) For allocation to the California Department of Tax and Fee Administration to pay refunds of fees collected pursuant to Section 43054 of the Revenue and Taxation Code.

(5) For the state share mandated pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

(6) For the purchase by the state, or by a local agency with the prior approval of the director, of hazardous substance response equipment and other preparations for response to a release of hazardous substances. However, all equipment shall be purchased in a cost-effective manner after consideration of the adequacy of existing equipment owned by the state or the local agency, and the availability of equipment owned by private contractors.

(7) For payment of all costs of removal and remedial action incurred by the state, or by a local agency with the approval of the director, in response to a release or threatened release of a hazardous substance, to the extent the costs are not reimbursed by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(8) For payment of all costs of actions taken pursuant to Section 78650, to the extent that these costs are not paid by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(9) For all costs incurred by the department in cooperation with the Agency for Toxic Substances and Disease Registry established pursuant to subsection (i) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(i)) and all costs of health effects studies undertaken regarding specific sites or specific substances at specific sites. Funds appropriated for this purpose shall not exceed five hundred thousand dollars (\$500,000) in a single fiscal year. However, these actions shall not duplicate reasonably available federal actions and studies.

(10) For repayment of the principal of, and interest on, bonds sold pursuant to Article 5 (commencing with Section 78280) of Chapter 2 of Part 2 of Division 45.

(11) Direct site remediation costs.

(12) For the department's expenses for staff to perform oversight of investigations, characterizations, removals, remediations, or long-term operation and maintenance.

(13) For the administration and collection of the fees imposed pursuant to Section 25205.6.

(14) For allocation to the office of the Attorney General, pursuant to an interagency agreement or similar mechanism, for the support of the Toxic Substance Enforcement Program in the office of the Attorney General, in carrying out the purposes of Chapter 6.86 (commencing with Section 25396) of Division 20, Article 10 (commencing with Section 25210), Article 10.01 (commencing with Section 25210.5), Article 10.02 (commencing with Section 25210.9), Article 10.1.1 (commencing with Section 25214.1), Article 10.1.2 (commencing with Section 25214.4.3), Article 10.2.1 (commencing with Section 25214.8.1), Article 10.4 (commencing with Section 25214.11), Article 10.5 (commencing with Section 25215), Article 10.5.1 (commencing with Section 25215.8), Article 13.5 (commencing with Section 25250.50), Article 14 (commencing with Section 25251), and Section 25214.10, and Part 2 (commencing with Section 78000) of Division 45.

(15) For funding the California Environmental Contaminant Biomonitoring Program established pursuant to Chapter 8 (commencing with Section 105440) of Part 5 of Division 103.

(16) As provided in Sections 25214.3 and 25215.82 and, with regard to penalties recovered pursuant to Section 25214.22.1, to implement and enforce Article 10.4 (commencing with Section 25214.11).

(17) For the costs of performance or review of analyses of past, present, or potential environmental public health effects related to extremely hazardous waste, as defined in Section 25115, and hazardous waste, as defined in Section 25117.

(18) For costs incurred by the Board of Environmental Safety in the administration and implementation of its duties and responsibilities established in Article 2.1 (commencing with Section 25125).

(b) The funds deposited in the Toxic Substances Control Account may be appropriated by the Legislature to the Office of Environmental Health Hazard Assessment and the State Department of Public Health for the purposes of carrying out their duties pursuant to the California Environmental Contaminant Biomonitoring Program (Chapter 8 (commencing with Section 105440) of Part 5 of Division 103).

Comment. Section 60495 continues subdivisions (b) and (c) of former Section 25173.6 without substantive change. An obsolete cross-reference to Section 25215.7 was corrected to refer to Section 25215.82. See 2019 Cal. Stat. ch. 497, § 164.

See Sections 60160 (“department”), 60165 (“director”), 60195 (“extremely hazardous waste”), 60215 (“hazardous waste”), 60345 (“secretary”).

Hazardous Waste Control Account

Section 25 of Chapter 73 of the Statutes of 2021 made changes to Section 25174. **The staff recommends that proposed Sections 60450, 60455, 60460, 60465, 60470, and 60575 be revised to reflect those changes:**

Proposed § 60450. Deposits

60450. (a) There is in the General Fund the Hazardous Waste Control Account, which shall be administered by the director.

(b) In addition to any other money that may be deposited in the Hazardous Waste Control Account, pursuant to statute, all of the following amounts shall be deposited in the account:

(1) The fees collected pursuant to ~~Sections~~ Section 25174.1, 25205.2, 25205.5, 25205.15, and 25205.16.

(2) The funds collected pursuant to Section 25187.2, to the extent that those funds are payments for the costs incurred by the department in overseeing corrective action taken under this division.

(3) Any interest earned upon the money deposited in the Hazardous Waste Control Account.

(4) Any money received from the federal government pursuant to the federal act to pay for department costs at sites or activities at sites other than those operated by a hazardous waste facility authorized to operate under this division.

(5) Any reimbursements for funds expended from the Hazardous Waste Control Account for services provided by the department pursuant to this division at a site other than a site operated by a hazardous waste facility authorized to operate under this division, including, but not limited to, the reimbursements required pursuant to Sections 25201.9 and 25205.7.

Comment. Section 60450 restates subdivision (a) of former Section 25174 without substantive change.

See Sections 60160 (“department”), 60165 (“director”), 60200 (“federal act”), 60220 (“hazardous waste facility”).

Proposed § 60455. Expenditures

60455. The funds deposited in the Hazardous Waste Control Account may be appropriated by the Legislature, for expenditure as follows:

(a) To the department for the administration and implementation of this division costs to administer and implement this division, but not including the costs of regulatory activities at sites operated by a hazardous waste facility authorized to operate under this division, and not including regulatory activities authorized under Article 10

(commencing with Section 25210), Article 10.01 (commencing with Section 25210.5), Article 10.02 (commencing with Section 25210.9), Article 10.1.1 (commencing with Section 25214.1), Article 10.1.2 (commencing with Section 25214.4.3), Article 10.2.1 (commencing with Section 25214.8.1), Article 10.4 (commencing with Section 25214.11), Article 10.5 (commencing with Section 25215), Article 10.5.1 (commencing with Section 25215.8), Article 13.5 (commencing with Section 25250.50), Article 14 (commencing with Section 25251), and Section 25214.10.

(b) To the department for allocation to the State Board of Equalization California Department of Tax and Fee Administration to pay refunds of fees collected pursuant to Sections 43051 and Section 43053 of the Revenue and Taxation Code and for the administration and collection of the fees imposed pursuant to Article 9.1 (commencing with Section 25205.1) Section 25205.5 that are deposited into the Hazardous Waste Control Account.

(c) To the department for the costs of performance or review of analyses of past, present, or potential environmental public health effects related to toxic substances, including extremely hazardous waste and hazardous waste.

(d) (c)(1) To the department for allocation to the office of the Attorney General for the support of the Toxic Substance Enforcement Program in the office of the Attorney General in carrying out the purposes of this division investigations, inspections, and audits, and the administrative enforcement and adjudication thereof, for purposes of this division, but not for purposes related to a site operated by a hazardous waste facility authorized to operate under this division or related to the owner or operator of a hazardous waste facility authorized to operate under this division, and not for regulatory activities authorized under Article 10 (commencing with Section 25210), Article 10.01 (commencing with Section 25210.5), Article 10.02 (commencing with Section 25210.9), Article 10.1.1 (commencing with Section 25214.1), Article 10.1.2 (commencing with Section 25214.4.3), Article 10.2.1 (commencing with Section 25214.8.1), Article 10.4 (commencing with Section 25214.11), Article 10.5 (commencing with Section 25215), Article 10.5.1 (commencing with Section 25215.8), Article 13.5 (commencing with Section 25250.50), Article 14 (commencing with Section 25251), and Section 25214.10.

(2) On or before October 1 of each year, the Attorney General shall report to the Legislature on the expenditure of any funds allocated to the office of the Attorney General for the preceding fiscal year pursuant to this paragraph and paragraph (14) of subdivision (a) of Section 60495. The report shall include all of the following:

(A) A description of cases resolved by the office of the Attorney General through settlement or court order, including the monetary benefit to the department and the state.

(B) A description of injunctions or other court orders benefiting the people of the state.

(C) A description of any cases in which the Attorney General's Toxic Substance Enforcement Program is representing the department or the state against claims by defendants or responsible parties.

(D) A description of other pending litigation handled by the Attorney General's Toxic Substance Enforcement Program.

(3) Nothing in paragraph (2) shall require the Attorney General to report on any confidential or investigatory matter.

(e) ~~(d)~~ To the department for administration and implementation of Chapter 6.11 (commencing with Section 25404) of Division 20.

(e) To the department for costs incurred by the Board of Environmental Safety in the administration and implementation of its duties and responsibilities established in Article 2.1 (commencing with Section 25125).

Comment. Section 60455 restates subdivision (b) of former Section 25174 without substantive change.

See Sections 60160 ("department"), 60195 ("extremely hazardous waste"), 60215 ("hazardous waste"), 60220 ("hazardous waste facility").

~~Proposed § 60460. Expenditures from account for support of other state agencies~~

~~60460. Expenditures from the Hazardous Waste Control Account for support of state agencies other than the department shall, upon appropriation by the Legislature to the department, be subject to an interagency agreement or similar mechanism between the department and the state agency receiving the support.~~

Comment. Section 60460 continues paragraph (1) of subdivision (c) of former Section 25174 without substantive change.

See Section 60160 ("department").

Proposed § 60465. Loan from general fund to account

60465. The Director of Finance, upon the request of the director, may make a loan from the General Fund to the Hazardous Waste Control Account to meet cash needs. The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

Comment. Section 60465 continues subdivision (j) ~~(i)~~ (d) of former Section 25174 without substantive change.

See Section 60165 ("director").

Proposed § 60470. Required reserve

~~60470. The department shall establish, within the Hazardous Waste Control Account, a reserve of at least one million dollars (\$1,000,000) each year to ensure that all programs funded by the Hazardous Waste Control Account will not be adversely affected by any revenue shortfalls.~~

Comment. ~~60470 continues subdivision (k) of former Section 25174 without substantive change.
See Section 60160 (“department”).~~

Proposed § 60575. Reporting for budget

60575. (a)(1) ~~The department shall, at the time of the release of the annual Governor’s Budget, describe the budgetary amounts proposed to be allocated to the State Board of Equalization California Department of Tax and Fee Administration, as specified in subdivision (b) of Section 60455, and the California Department of Tax and Fee Administration, as specified in paragraph (4) of subdivision (a) of Section 60495, for the upcoming fiscal year.~~

~~(2) (b) It is the intent of the Legislature that moneys appropriated in the annual Budget Act each year for the purpose of reimbursing the State Board of Equalization California Department of Tax and Fee Administration, a private party, or other public agency, for the administration and collection of the fees imposed pursuant to Article 9.1 (commencing with Section 25205.1) Section 25205.5, and deposited in the Hazardous Waste Control Account, shall not exceed the costs incurred by the State Board of Equalization California Department of Tax and Fee Administration, the private party, or other public agency, for the administration and collection of those fees.~~

~~(b) With respect to expenditures for the purposes of subdivisions (a) and (c) of Section 60455 and paragraphs (1) and (2) of subdivision (a) of Section 60495, the department shall, at the time of the release of the annual Governor’s Budget, also make available the budgetary amounts and allocations of staff resources of the department proposed for the following activities:~~

~~(1) The department shall identify, by permit type, the projected allocations of budgets and staff resources for hazardous waste facilities permits, including standardized permits, closure plans, and postclosure permits.~~

~~(2) The department shall identify, with regard to surveillance and enforcement activities, the projected allocations of budgets and staff resources for the following types of regulated facilities and activities:~~

~~(A) Hazardous waste facilities operating under a permit or grant of interim status issued by the department, and generator activities conducted at those facilities. This information shall be reported by permit type.~~

~~(B) Transporters.~~

~~(C) Response to complaints.~~

~~(3) The department shall identify the projected allocations of budgets and staff resources for both of the following activities:~~

~~(A) The registration of hazardous waste transporters.~~

~~(B) The operation and maintenance of the hazardous waste manifest system.~~

~~(4) The department shall identify, with regard to site mitigation and corrective action, the projected allocations of budgets and staff resources for the oversight and implementation of the following activities:~~

~~(A) Investigations and removal and remedial actions at military bases.~~

~~(B) Voluntary investigations and removal and remedial actions.~~

~~(C) State match and operation and maintenance costs, by site, at joint state and federally funded National Priority List Sites.~~

~~(D) Investigation, removal and remedial actions, and operation and maintenance at the Stringfellow Hazardous Waste Site.~~

~~(E) Investigation, removal and remedial actions, and operation and maintenance at the Casmalia Hazardous Waste Site.~~

~~(F) Investigations and removal and remedial actions at nonmilitary, responsible party lead National Priority List Sites.~~

~~(G) Preremedial activities under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).~~

~~(H) Investigations, removal and remedial actions, and operation and maintenance at state-only orphan sites.~~

~~(I) Investigations and removal and remedial actions at nonmilitary, non-National Priority List responsible party lead sites.~~

~~(J) Investigations, removal and remedial actions, and operation and maintenance at Expedited Remedial Action Program sites pursuant to former Chapter 6.85 (commencing with Section 25396) of Division 20, added by Section 2 of Chapter 435 of the Statutes of 1994.~~

~~(K) Corrective actions at hazardous waste facilities.~~

~~(5) The department shall identify, with regard to the regulation of hazardous waste, the projected allocation of budgets and staff resources for the following activities:~~

~~(A) Determinations pertaining to the classification of hazardous wastes.~~

~~(B) Determinations for variances made pursuant to Section 25143.~~

~~(6) The department shall identify projected allocations of budgets and staff resources needed to do all of the following:~~

~~(A) Identify, remove, store, and dispose of, suspected hazardous substances or hazardous materials associated with the investigation of clandestine drug laboratories.~~

~~(B) Respond to emergencies pursuant to Section 78875.~~

~~(C) Create, support, maintain, and implement the railroad accident prevention and immediate deployment plan developed pursuant to Section 7718 of the Public Utilities Code.~~

~~(D) Determinations, other than those specified in paragraph (5), and responses to public inquiries made by the department regarding the regulation of hazardous waste and hazardous substances.~~

~~(7) The department shall identify projected allocations of budgets and staff resources for the administration and implementation of the unified hazardous waste and hazardous materials regulatory~~

~~program established pursuant to Chapter 6.11 (commencing with Section 25404) of Division 20.~~

~~(8) The department shall identify the total cumulative expenditures of the Regulatory Structure Update and Site Mitigation Update projects since their inception, and shall identify the total projected allocations of budgets and staff resources that are needed to continue these projects.~~

~~(9) The department shall identify the total projected allocations of budgets and staff resources that are necessary for all other activities proposed to be conducted by the department.~~

~~**Comment.** Section 60575 restates paragraphs (2) and (3) of subdivision (c) and subdivision (d) continues subdivision (c) of former Section 25174 without substantive change. An obsolete reference to the “State Board of Equalization” was updated to refer to the “California Department of Tax and Fee Administration.” See 2019 Cal. Stat. ch. 497, § 161. A reference to the “federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (42 U.S.C. Sec. 9601 et seq.)” was revised to include an “as amended” designation.~~

~~See Section 60160 (“department”), 60215 (“hazardous waste”), 60250 (“manifest”).~~

Cross References to Former Chapter 6.8

In a number of provisions in the 2021 draft of Chapter 6.5, there were cross-references to former Chapter 6.8. Those cross-references were updated to be consistent with the Commission’s proposed renumbering of Chapter 6.8. *They were shown in italics in the 2021 draft.*

With the enactment of the Commission’s recommendations regarding Chapter 6.8, those cross-references were revised in existing law. With one exception, the only change to the 2021 draft that those revisions require is to remove the italics, as the italicized references are now consistent with existing law.⁵

The exception is in proposed Section 60490(b)(8). In that provision, the italicized reference was erroneous. The error was caught and corrected in the legislation that enacted the Commission’s recommendations.⁶ The staff recommends that a conforming change be made to proposed Section 60490:

Proposed § 60490. Toxic Substances Control Account

60490. (a) There is in the General Fund the Toxic Substances Control Account, which shall be administered by the director.

5. The proposed sections where italics need to be removed are proposed Sections 60230, 60490, 60495, 60520, 60550, 60575, and 60700.

6. See 2022 Cal. Stat. ch. 258, § 42.

(b) In addition to any other money that may be appropriated by the Legislature to the Toxic Substances Control Account, all of the following shall be deposited in the account:

(1) The fees collected pursuant to Section 25205.6.

(2) The funds collected pursuant to Section 25187.2, to the extent that those funds are payments for the costs incurred overseeing a removal or remedial action taken under Chapter 6.86 (commencing with Section 25396) of Division 20 or Part 2 (commencing with Section 78000) of Division 45.

(3) Except as directed otherwise by Section 25192, fines or penalties collected pursuant to this division, including, but not limited to, fines or penalties recovered pursuant to Section 25214.3, 25214.22.1, and 25215.82.

(4) Interest earned upon money deposited in the Toxic Substances Control Account.

(5) All money recovered pursuant to Section 79650, except any amount recovered on or before June 30, 2006, that was paid from the Hazardous Substance Cleanup Fund.

(6) All money recovered pursuant to Article 7 (commencing with Section 81030) of Chapter 12 of Part 2 of Division 45.

(7) Fines or penalties collected pursuant to Chapter 6.86 (commencing with Section 25396) of Division 20, or Part 2 (commencing with Section 78000) of Division 45.

(8) Reimbursements for funds expended from the Toxic Substances Control Account for services provided by the department, including, but not limited to, reimbursements required pursuant to Sections 25201.9 and ~~69105~~ 79105.

(9) Money received from the federal government pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(10) Money received from responsible parties for remedial action or removal at a specific site, except as otherwise provided by law.

Comment. Section 60490 restates subdivision (a) of former Section 25173.6 without substantive change.

See Sections 60160 (“department”), 60165 (“director”).

Next Steps

The Commission needs to decide whether to approve the updates set out above. At the May meeting, the staff will prepare a “cumulative draft” that incorporates any approved updates into the draft legislation that was provisionally approved in 2021.

Respectfully submitted,

Steve Cohen
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