

Study E-200

June 13, 2023

Memorandum 2023-33

**Recodification of Toxic Substance Statutes:
Chapter 6.5 – Next Portion**

In this study, the Commission¹ is currently preparing a nonsubstantive recodification of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, which would appear in a new proposed Division 44 of the Health and Safety Code.²

This memorandum continues the presentation of proposed recodified provisions from Chapter 6.5. This draft contains provisions that would be recodified as proposed Chapter 6 of Part 1, and Part 2, of the new division. The draft also includes proposed Commission Comments explaining each recodification, and Staff Notes that identify specific issues for which public comment is sought.

Unless otherwise indicated, all statutory citations in this memorandum are to sections of the existing Health and Safety Code, and all citations to “proposed” sections are to the proposed sections in the attached draft.

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 a list of items for possible future study, would be welcome.**³

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 (ACR 24 (Chau)). A Commission recommendation to recodify Chapter 6.8 of Division 20 has already been submitted to and enacted by the Legislature. See *Hazardous Substance Account Recodification Act* (December 2021); 2022 Cal. Stat. ch. 257. See also *Hazardous Substance Account Recodification Act: Conforming Revisions* (December 2021); 2022 Cal. Stat. ch. 258.

3. Written comments can be in any form. They should be directed to scohen@clrc.ca.gov. Comments may also be made orally at the upcoming Commission meeting (scheduled for June 22, 2023), which will be open to the public. The agenda is available at: http://www.clrc.ca.gov/Menu1_meetings/agenda.html.

REVISED ORGANIZATION OF PROPOSED DIVISION 44

As a first step in the Commission's work on Chapter 6.5, the staff previously presented for the Commission's approval a provisional outline for the organization of the recodified chapter.⁴

However, as was anticipated as a possibility at the time of that presentation, further work on the study has required some adjustment to the previously presented outline.

First, after further review of existing Chapter 6.5, it became clear to staff that two chapters previously suggested as Chapters 6 and 7 of Part 1 ("General Provisions")⁵ would be better located with other related provisions, later in the proposed organization. As a result, previously proposed Chapter 8 of Part 1 ("Laboratory Analysis") is presented in this draft as proposed Chapter 6 of that part, to follow Chapters 1 through 5 of Part 1 that were previously presented to and provisionally approved by the Commission.⁶

Second, since the last presentation of proposed recodified provisions to the Commission in 2021, the Legislature added a statutory article to Chapter 6.5,⁷ establishing within the Department of Toxic Substances Control a new state entity, the Board of Environmental Safety.⁸ The new board is charged with substantial oversight authority relating to the department,⁹ which itself has substantial responsibilities relating to Chapter 6.5. As a result, the staff felt that the provisions of this new article, which are primarily administrative in nature, should appear early in proposed Division 44.

Because this board commenced operations only last year, there is some possibility there will be future legislative enactments relating to board authority, responsibilities, or limitations. As a result, it is difficult to assess precisely how much space to provide in the organizational structure of the recodification to accommodate future legislation. For now, the staff has proposed that the new

4. See Memorandum 2020-13, Exhibit pp. 3-5; Minutes (May 2020), p. 4.

5. Proposed Chapters 6 ("Coordination Among State Agencies") and 7 ("Coordination with Federal Law").

6. See Exhibit to Memorandum 2021-19, Minutes (April 2021), p. 3.

7. See Article 2.1 (commencing with Section 25125) of Chapter 6.5.

8. See <https://bes.dtsc.ca.gov>.

9. See, e.g., Section 25125.2(b)(4) (requiring the Board to review and approve the department director's annual priorities, and adopt performance metrics), Section 25125.2(b)(5) (requiring the Board to analyze the fee structure supporting departmental activities funded by major accounts), Section 25125.2(b)(6) (requiring the Board to analyze departmental programs and the relationship between those programs and related programs in other regulatory agencies, and develop recommendations to improve coordination and reduce or eliminate duplication or overlap).

statutory article creating this board be recodified as a proposed Part 2 of new Division 44.

GENERAL DRAFTING APPROACH

As with prior draft legislation proposed in this study, the staff has continued to take a conservative approach to drafting proposed recodified provisions.¹⁰ For the most part, existing statutory text is repeated verbatim in the proposed recodification of the provision.

In accordance with the Commission's prior decisions in the study, certain minor changes continue to be made as a matter of course.¹¹ However, other than changes made to conform to generally accepted legislative drafting practices¹² or make clearly technical corrections, these changes are flagged in the Comment or Staff Note corresponding to the section where the change is proposed.

Where the staff has discovered an issue with wording of an existing section, the issue is identified in a Staff Note. In instances in which the resolution of the issue seemed apparent, the staff has also proposed that resolution.¹³ Where the appropriate resolution seemed unclear, the Staff Note requests public comment on a resolution.¹⁴

CONTENTS OF DRAFT

The attached draft of proposed legislation includes proposed Chapter 6 (Laboratory Analysis) of Part 1 (General Provisions) of Division 44 and proposed Part 2 (Board of Environmental Safety) of that division.

Proposed Chapter 6 of Part 1 would recodify the contents of Article 8.5 of existing Chapter 6.5 (which contains only one lengthy section, Section 25198), and proposed Part 2 would recodify the contents of Article 2.1 of Chapter 6.5.

The remainder of the memorandum discusses a few specific issues the staff encountered in preparing the attached draft.

10. See Memorandum 2020-13, p. 3.

11. See Minutes (May 2020), p. 4; Memorandum 2020-13, p. 4; Memorandum 2021-19, pp. 3-4.

12. These practices include eliminating most uses of the word "such," changing uses of the word "which" to "that," and revising gendered pronouns.

13. See, e.g., Staff Note following heading of Chapter 6, and following proposed Sections 60720 (Note 1) and 60725 (Note 1) in the attached Exhibit.

14. See, e.g., Staff Note following proposed Sections 60720 (Note 1, 2nd para), 60725 (Note 2), and 60730 in the attached Exhibit.

Discontinuation of Defined Term (Proposed Chapter 6 of Part 1)

A Staff Note applicable to the entire proposed Chapter 6 of Part 1 discusses an existing definition of the term “state department” (to mean the State Department of Health Services). This term is defined for the limited purpose of the section that contains the definition. Within the section, the term is used only once.

The staff is concerned that this defined term is very similar to the term “department,” which has a different meaning generally applicable to all provisions in Chapter 6.5.¹⁵ Given that the term “state department” is only used once, the staff proposes to discontinue the definition and substitute the full agency name where the term is used.

Discontinuation of Apparently Obsolete Rule (Proposed Section 60720)

The second Staff Note to proposed Section 60720 describes a seemingly obsolete rule about laboratories certified under former law. The rule deems those laboratories certified “until the time that certification under [the Environmental Laboratory Accreditation Act] has been either granted or denied, but not beyond the expiration date shown on the certificate previously issued under this section.”

As described in the Staff Note, it appears that provision refers to former law from the 1980s. At the time, the laboratory certifications appeared to be valid for two years from the date of issue.

Since over 30 years have passed since laboratories could have been certified under this law, it is almost certain that this rule has no ongoing effect. For this reason, the proposed legislation would not continue this apparently obsolete rule.

The Staff Note discusses the treatment of this rule and seeks comment on whether the rule has any ongoing validity.

Renumbering of Previously Presented Definitional Provisions

Following the presentation to the Commission of a draft of proposed Chapter 3 of Part 1 (“Definitions”),¹⁶ the staff discovered an error relating to the alphabetical ordering of the definitional provisions in that chapter. Correction of the error will require revising the section numbers of four proposed definitional

15. See existing Section 25111 (“‘Department’ means the Department of Toxic Substances Control.”)

16. See Exhibit to Memorandum 2021-19.

provisions in that chapter in the next cumulative draft presented to the Commission.¹⁷

In instances in which those definitional provisions are referenced in this draft, they are identified by the revised section number.

COMMISSION DECISION ON THE DRAFT

Does the Commission tentatively approve the proposed legislation in the attached draft, for inclusion in a future tentative recommendation?

Respectfully submitted,

Steve Cohen
Staff Counsel

Kristin Burford
Chief Deputy Director

17. The revisions will assign the following new section numbers to the following provisions: Section 60210 ("hazardous waste"), Section 60215 ("hazardous waste facility"), Section 60220 ("hazardous waste management"), and Section 60225 ("intermediate manufacturing process stream").

PROPOSED CHAPTER 6 OF PART 1 AND PART 2 OF
DIVISION 44 OF THE HEALTH & SAFETY CODE

Note. This is a work in progress. The material shown below may be changed. For a tentative outline of new Division 44 of the Health & Safety Code, see Memorandum 2020-13, Exhibit pp. 3-5. All of the proposed provisions would be located in the Health & Safety Code. All references are to the Health & Safety Code unless otherwise indicated.

Comments. A draft of an official Commission “Comment” follows each proposed code section in the recodification. Such Comments will be included in any final recommendation. The Comments are drafted as if the existing code sections have been repealed and replaced with the proposed legislation. Thus, existing code sections are referred to as “former” sections.

The Comments indicate the source of each recodified code section and describe how the recodified code section compares with prior law. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation.

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

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

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

Staff Notes serve to flag issues requiring special attention or treatment. Where a Staff Note serves as a prompt for public comment, it will typically be continued in the Commission’s tentative recommendation as a “Note” calling for comment. However, where, for instance, the Commission decides against a staff-proposed restatement and reverts to existing statutory language, the Staff Note describing the proposed restatement would not be continued in future drafts.

Cross-references. In some places, the provisions proposed for recodification in this draft cross-refer to provisions contained in Chapter 6.5. Where the cross-referenced provision has not yet been included in the recodification draft, the cross-reference is unchanged and is shown in bold text. Bracketed text designates cross-references that have been updated in form, but still need to be updated to reflect the recodified section number.

As new Division 44 is drafted, these references will be updated to reflect the new numbering scheme. Where the cross-referenced material is contained in this draft, the cross-reference was updated to reflect the recodified section number.

Where a proposed section or Commission Comment is drafted to refer to a section of the recodified law that has not yet been included in the draft, the text refers to “**Section [XXXXX]**.” These references will be updated when the relevant provision is drafted.

Public comment. The Commission welcomes public comment on any issue relating to the content of this draft or any other aspect of this study. Comments should be directed to Steve Cohen (scohen@clrc.ca.gov).

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DRAFT LEGISLATION

1 **Health & Safety Code §§ 60000-[XXXXX] (added). Toxics Reduction and Management**
2 SEC. ____ . Division 44 (commencing with Section 60000) is added to the Health
3 and Safety Code, to read:

4 DIVISION 44. TOXICS REDUCTION AND MANAGEMENT

5 PART 1. GENERAL PROVISIONS

6 ...

7 CHAPTER 6. LABORATORY ANALYSIS

8 **Staff Note.** Proposed Chapter 6 recodifies Section 25198. Subdivision (a) of this section defines
9 “state department” for the purposes of the section to mean the “State Department of Health
10 Services.” The term “state department” is only used once in the section. Given the term’s similarity
11 to the defined term “department” and the single use of the defined term “state department,” the
12 proposed legislation would not continue the definition for “state department” and would simply
13 substitute the full agency name in the one spot where “state department” is currently used.

14 Further, as indicated below, the reference to the “state department” appears to be out of date. See
15 Staff Note to proposed Section 60720.

16 **Absent comment, the proposed elimination of the “state department” definition and**
17 **substitution of the full agency name will be presumed correct.**

18 **§ 60720. Laboratory accreditation for analyses**

19 60720. Except as provided in subdivision (a) of Section 60725, the analysis of any
20 material required by this division shall be performed by a laboratory accredited by
21 the State Water Resources Control Board pursuant to Article 3 (commencing with
22 Section 100825) of Chapter 4 of Part 1 of Division 101.

23 **Comment.** Section 60720 restates the first part of subdivision (b) former Section 25198 without
24 substantive change. The reference to the “state department” (defined as the “State Department of
25 Health Services”) in former Section 25198 has been replaced with a reference to the “State Water
26 Resources Control Board.” Formerly, the State Department of Health Services was the state agency
27 authorized to accredit laboratories under Article 3 (commencing with Section 100825) of Chapter
28 4 of Part 1 of Division 101. See former Section 100825(c)(1), (4), (18) as added by 2005 Cal. Stat.
29 ch. 406, § 2. Currently, the State Water Resources Control Board is the agency authorized to
30 accredit laboratories under that article. See Section 100825(c)(1), (4), (11), (12).

31 **Staff Notes.** Subdivision (b) of Section 25198 provides as follows:

32 Except as provided in subdivision (c), the analysis of any material required by this chapter shall
33 be performed by a laboratory certified by the state department pursuant to Article 3 (commencing
34 with Section 100825) of Chapter 4 of Part 1 of Division 101, except that laboratories previously
35 issued a certificate under this section shall be deemed certified until the time that certification under
36 Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 has been either
37 granted or denied, but not beyond the expiration date shown on the certificate previously issued
38 under this section.

1 (1) Proposed Section 60720 would restate the first part of this subdivision to make the
 2 terminology consistent with Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of
 3 Division 101.

4 In addition, proposed Section 60720 would replace a reference to the “state department” (defined
 5 as the “State Department of Health Services”) with a reference to the “State Water Resources
 6 Control Board.” Formerly, the State Department of Health Services had the accreditation authority
 7 under the referenced article. See former Section 100825(c)(1), (4), (18), as added by 2005 Cal. Stat.
 8 ch. 406, § 2 (AB 1317). Currently, the State Water Resources Control Board is the agency granted
 9 the authority to accredit laboratories under that article. See Section 100825(c)(1), (4), (11), (12).

10 **Absent comment, this restatement will be presumed correct.**

11 As in its prior work on Chapter 6.8, the Commission did not simply delete the agency name,
 12 which could prevent future discrepancies from arising if the accrediting agency changes. See
 13 proposed Section 78510 in *Hazardous Substance Account Recodification Act*, __ Cal. L. Revision
 14 Comm’n Reports __ (2021). The Commission concluded that deleting the agency name could
 15 potentially be substantive. The referenced article provides for a second form of accreditation (“TNI
 16 accreditation”), which is conducted by accrediting bodies recognized by a national nonprofit
 17 (“TNI”). See Section 100825(c)(14)-(20). It is unclear whether such accreditation would be
 18 sufficient for the purposes of laboratory analyses conducted under this division. **The Commission
 19 welcomes comment on this issue.**

20 (2) Section 25198(b) includes a rule about the certification of a laboratory previously issued a
 21 certificate under “this section.” This rule is not proposed for continuation as it appears to be long
 22 obsolete.

23 The staff researched prior versions of Section 25198 to determine which prior version of the
 24 statute authorized the issuance of laboratory certificates. Prior to 1988, Section 25198 authorized
 25 the issuance of laboratory certifications under specified conditions, consistent with implementing
 26 regulations. See 1982 Cal. Stat. ch. 1209, § 2.

27 In 1988, the Environmental Laboratory Improvement Act of 1988 was enacted, which
 28 consolidated, reorganized, and revised the laboratory certification functions. See 1988 Cal. Stat.
 29 ch. 894, § 1. At that time, Section 25198 was amended to refer to laboratories that were previously
 30 issued certificates under the section. See 1988 Cal. Stat. ch. 894, § 6. The rule in Section 25198
 31 deems laboratories previously issued a certificate under this section to be certified “until the time
 32 that [the new] certification . . . has been granted or denied, *but not beyond the expiration date shown
 33 on the certificate previously issued under this section*” (emphasis added). It seems almost certain
 34 that a laboratory certification issued over 30 years ago would have expired in the intervening years.
 35 See former Section 25198.3, as enacted by 1982 Cal. Stat. ch. 1209, § 2 (“The department shall
 36 issue a certificate valid for two years from the date of issue to a laboratory when the department
 37 determines that the laboratory is competent and equipped to conduct the type of analysis for which
 38 certification is sought.”).

39 **The staff welcomes comment on whether the rule pertaining to laboratories previously
 40 issued certification under Section 25198 has any ongoing validity.**

41 § 60725. Exceptions to certification requirements

42 60725. (a) The requirements of Section 60720 shall not apply to analyses
 43 performed by a laboratory pursuant to the facility’s waste analysis plan if all of the
 44 following conditions are met:

45 (1) The laboratory is owned or operated by the same person who owns or operates
 46 the facility at which the waste will be managed, and the facility is a hazardous waste
 47 treatment, storage, or disposal facility that is required to obtain a hazardous waste
 48 facilities permit pursuant to **Article 9 (commencing with Section 25200)**.

49 (2) The analysis is conducted for any of the following purposes:

1 (A) To determine whether a facility will accept the hazardous waste for transfer,
2 storage, or treatment, as described in paragraph (3) of subdivision (a) of Section
3 66264.13 of, and paragraph (3) of subdivision (a) of Section 66265.13 of, Title 22
4 of the California Code of Regulations, as those sections read on January 1, 2001.

5 (B) To ensure that the analysis used to determine whether a facility will accept
6 the hazardous waste for transfer, storage, or treatment is accurate and up to date, as
7 described in paragraph (4) of subdivision (a) of Section 66264.13 of, and paragraph
8 (4) of subdivision (a) of Section 66265.13 of, Title 22 of the California Code of
9 Regulations, as those sections read on January 1, 2001.

10 (C) To determine whether the hazardous waste received at the facility for transfer,
11 storage, or treatment matches the identity of the hazardous waste designated on an
12 accompanying manifest or shipping paper, as described in paragraph (5) of
13 subdivision (a) of Section 66264.13 of, and paragraph (5) of subdivision (a) of
14 Section 66265.13 of, the California Code of Regulations, as those sections read on
15 January 1, 2001.

16 (3) The facility's waste analysis plan is prepared in accordance with the
17 regulations adopted by the department pursuant to this division.

18 (b)(1) An analysis performed in accordance with subdivision (a) is not an analysis
19 performed for regulatory purposes within the meaning of paragraph (9) of
20 subdivision (c) of Section 100825.

21 (2) The exemption provided by subdivision (a) does not exempt the analyses of
22 waste for purposes of disposal from the requirements of Section 60720 requiring
23 certified laboratory analyses. The analyses described in subdivision (a) are not
24 exempt from any other requirement of law, regulation, or guideline governing
25 quality assurance and quality control.

26 **Comment.** Section 60725 restates subdivisions (c), (d), and (e) of former Section 25198 without
27 substantive change. An erroneous cross-reference to Section 100825(c)(19) was corrected to refer
28 to Section 100825(c)(9).

29 See Sections 60160 ("department"), 60175 ("disposal"), 60210 ("hazardous waste"), 60215
30 ("hazardous waste facility"), 60250 ("manifest"), 60295 ("person"), 60350 ("storage"), 60365
31 ("treatment"), 60390 ("waste").

32 **Staff Notes. (1)** The introductory clause of Section 25198(c) provides as follows:

33 "The requirements of subdivision (b) shall not apply to analyses performed by a laboratory
34 pursuant to the facility's waste analysis plan, that is prepared in accordance with the regulations
35 adopted by the Department of Toxic Substances Control pursuant to this chapter, if both of the
36 following conditions are met:"

37 This provision was restated for readability and to make clear that the waste analysis plan being
38 prepared in accordance with the regulations is a condition that must be satisfied for this rule to
39 apply. **Absent comment, this proposed restatement will be presumed correct.**

40 In addition, the reference to the "Department of Toxic Substances Control" in Section 25198(c)
41 was replaced with the defined term "department." See proposed Section 60160.

42 **(2)** Section 25198(d) refers to an "analysis performed for regulatory purposes within the meaning
43 of paragraph (19) of subdivision (c) of Section 100825." This reference appears to be erroneous, as
44 the definition of "regulatory purposes" is found in paragraph (9) of Section 100825(c). The

1 reference has been corrected accordingly. **Absent comment, this correction will be presumed**
2 **correct.**

3 **(3)** Section 25198(c)(1) refers to a “hazardous waste treatment, storage, or disposal facility.” This
4 term is similar to the defined term “hazardous waste facility.” See proposed Section 60215; see
5 also proposed Section 60180 (defining another similar term, “disposal site”). A “hazardous waste
6 facility” means “all contiguous land and structures, other appurtenances, and improvements on the
7 land used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous
8 waste.” **The staff welcomes comment on whether the defined term “hazardous waste facility”**
9 **could be substituted here or whether this reference intends a narrower set of facilities (e.g.,**
10 **not hazardous waste recycling facilities).**

11 **§ 60730. Certification required for contracts for laboratory analyses**

12 60730. No person or public entity of the state shall contract with a laboratory for
13 environmental analyses for which certification is required pursuant to this division,
14 unless the laboratory holds a valid certificate.

15 **Comment.** Section 60730 continues subdivision (f) of former Section 25198 without substantive
16 change.

17 See Section 60295 (“person”).

18 **Staff Note.** Section 25198(f) refers to a “person or public entity of the state.” “Person” is a defined
19 term, which seems to include public entities of the state. Specifically, proposed Section 60295
20 provides that “person” includes “the state or any department, agency, or political subdivision
21 thereof.” It is unclear what the “or public entity of the state” adds to this provision. It appears to be
22 redundant. **The staff welcomes comment on this issue.**

23 . . .

24 **PART 2. BOARD OF ENVIRONMENTAL SAFETY**

25 **CHAPTER 1. PRELIMINARY PROVISIONS**

26 **Article 1. Establishment of Board**

27 **§ 61000. Appointment of board members**

28 61000. (a) The Board of Environmental Safety is hereby established in the
29 department consisting of five voting members as follows:

30 (1) Three members shall be appointed by the Governor subject to confirmation by
31 the Senate.

32 (2) One member shall be appointed by the Senate Committee on Rules.

33 (3) One member shall be appointed by the Speaker of the Assembly.

34 (b) The members of the board shall be appointed on the basis of their
35 demonstrated interest in the fields of hazardous waste management, site
36 remediation, or pollution prevention and reduction, shall possess understanding of
37 the needs of the general public in connection with the risks posed by hazardous

1 materials and the management of hazardous waste, and shall possess experience in
2 at least one of the following:

3 (1) Environmental law.

4 (2) Environmental science, including toxicology, chemistry, geology, industrial
5 hygiene, or engineering.

6 (3) Public health.

7 (4) Cumulative impact assessment and management.

8 (5) Regulatory permitting.

9 (c) No more than two members of the board may represent a single category of
10 qualification described in paragraphs (1) to (5), inclusive, of subdivision (b) at any
11 one time.

12 **Comment.** Section 61000 continues subdivisions (a) through (c) of former Section 25125
13 without substantive change.

14 See Sections 60088 (“board”), 60160 (“department”), 60210 (“hazardous waste”), 60220
15 (“hazardous waste management”).

16 **§ 61005. Role of board members**

17 61005. The board members shall represent the general public interest and act to
18 protect public health and reduce risks of toxic exposure with a particular focus on
19 disproportionately burdened and vulnerable communities.

20 **Comment.** Section 61005 continues subdivision (d) of former Section 25125 without substantive
21 change.

22 See Section 60088 (“board”).

23 **§ 61010. Terms**

24 61010. (a) Except as provided in subdivision (c), a board member shall be
25 appointed for a term of four years.

26 (b) A vacancy in the board shall be immediately filled by the appointing authority
27 for the unexpired portion of the term in which the vacancy occurs.

28 (c) The terms of the board members shall be staggered, as follows:

29 (1) One of the initial members appointed by the Governor and the initial member
30 appointed by the Speaker of the Assembly shall serve a two-year term and the
31 remaining three initial members shall serve a four-year term.

32 (2) The chairperson of the board, appointed by the Governor pursuant to Section
33 61015, shall serve a four-year term.

34 (3) The Governor shall determine which of the initial members appointed by the
35 Governor shall serve a two-year term and which shall serve a four-year term.

36 **Comment.** Section 61010 restates subdivision (f) of former Section 25125 without substantive
37 change.

38 See Section 60088 (“board”).

39 **Staff Note.** Proposed Section 61010 would restate Section 25125(f), which presently reads as
40 follows, to improve readability:

1 (f)(1) Except as provided in paragraph (2), a board member shall be appointed for a term of four
2 years. A vacancy in the board shall be immediately filled by the appointing authority for the
3 unexpired portion of the term in which the vacancy occurs.

4 (2) The terms of the board members shall be staggered. One of the initial members appointed by
5 the Governor and the initial member appointed by the Speaker of the Assembly shall serve a two-
6 year term and the remaining three initial members shall serve a four-year term. The chairperson of
7 the board, appointed by the Governor pursuant to subdivision (m), shall serve a four-year term. The
8 Governor shall determine which of the initial members appointed by the Governor shall serve a
9 two-year term and which shall serve a four-year term.

10 **Absent comment, the proposed restatement will be presumed correct.**

11 **§ 61015. Appointment of chair, workload and compensation of members**

12 61015. (a) The chairperson of the board, who is appointed by the Governor, shall
13 serve full time and shall receive the salary provided for in Section 11553 of the
14 Government Code.

15 (b) All other members of the board shall serve half time and shall receive one-half
16 of the salary provided for in Section 11553.5 of the Government Code.

17 **Comment.** Section 61015 continues subdivision (m) of former Section 25125 without
18 substantive change.

19 See Section 60088 (“board”).

20 **§ 61025. Liaison with United States Department of Defense**

21 61025. Due to the unique nature of permitting federal facilities, the chairperson
22 of the board shall designate one board member to serve as the liaison between the
23 board and the United States Department of Defense.

24 **Comment.** Section 61025 continues subdivision (o) of former Section 25125 without substantive
25 change.

26 See Section 60088 (“board”).

27 **§ 61030. Litigation counsel**

28 61030. (a) The Attorney General shall represent the board in litigation concerning
29 the affairs of the board unless the Attorney General represents another state agency
30 that is a party to the action, in which case, the Attorney General may represent the
31 board with the written consent of the board and the other state agency.

32 (b) If the Attorney General is not representing the board, the board may contract
33 for the service of outside counsel to represent the board or in-house counsel of the
34 board may represent the board, subject to Section 11040 of the Government Code.

35 **Comment.** Section 61030 continues subdivision (l) of former Section 25125 without substantive
36 change.

37 See Section 60088 (“board”).

38 **Article 2. Conducting of Business**

39 **§ 61060. Voting and quorum requirements**

40 61060. (a) Three board members constitute a quorum for the transaction of
41 business of the board.

1 (b) An affirmative vote of a majority of board members present at a meeting of
2 the board shall be required for the board to take any action or pass any motion.

3 **Comment.** Section 61060 continues subdivision (e) of former Section 25125 without substantive
4 change.

5 See Sections 60088 (“board”), 60095 (“business”).

6 **§ 61065. Compliance with other acts**

7 61065. (a) The board shall conduct its business, including adjourning to, or
8 meeting solely in, closed session, pursuant to the Bagley-Keene Open Meeting Act
9 (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of
10 Title 2 of the Government Code).

11 (b) The board shall conduct administrative adjudications, including, but not
12 limited to, permit appeals pursuant to Section 61205, in accordance with the
13 Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of
14 Part 1 of Division 3 of Title 2 of the Government Code), including the prohibition
15 against ex parte communications.

16 **Comment.** Subdivision (a) of Section 61065 continues subdivision (i) of former Section 25125
17 without substantive change.

18 Subdivision (b) continues subdivision (k) of former Section 25125 without substantive change.

19 See Sections 60088 (“board”), 60095 (“business”).

20 **§ 61070. Adoption of rules relating to conduct**

21 61070. (a) The board shall adopt rules for the conduct of its affairs.

22 (b) The rules for conduct adopted by the board shall require, at a minimum, that a
23 board member adhere to all of the following principles:

24 (1) A board member shall faithfully discharge the duties, responsibilities, and
25 quasi-judicial actions of the board.

26 (2) A board member shall conduct their affairs in the public’s best interest,
27 following principles of fundamental fairness and due process of law.

28 (3) A board member shall conduct their affairs in an open, objective, and impartial
29 manner, free of undue influence and the abuse of power and authority.

30 (4) A board member shall understand that the programs implemented by the
31 department require public awareness, understanding, and support of, and
32 participation and confidence in, the board and its practices and procedures.

33 (5) A board member shall preserve the public’s welfare and the integrity of the
34 board, and act to maintain the public’s trust in the board and the implementation of
35 its regulations and policies.

36 (6) A board member shall not conduct themselves in a manner that reflects discredit
37 upon state laws, policies, or regulations, or principles of the board.

38 (c) The rules adopted pursuant to this section are exempt from the requirements
39 of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2
40 of the Government Code.

41 **Comment.** Section 61070 continues subdivision (j) of former Section 25125 without substantive
42 change.

1 See Section 60088 (“board”).

2 **§ 61075. External interactions relating to board matters**

3 61075. (a) Members of the board, or representatives authorized by the board to do
4 so, may hold, attend, or otherwise participate in conferences or hearings, official or
5 unofficial, within or out of the state, with interested persons, agencies, or officers,
6 of this or any other state, or with Congress, congressional committees, or officers of
7 the federal government, concerning any matter within the scope of the power and
8 duties of the board.

9 (b) This section does not create an exception to the Bagley-Keene Open Meeting
10 Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division
11 3 of Title 2 of the Government Code).

12 **Comment.** Section 61075 continues subdivision (n) of former Section 25125 without substantive
13 change.

14 See Sections 60088 (“board”), 60295 (“person”).

15 **§ 61080. Conflict of interest**

16 61080. A board member shall not make, participate in making, or in any way
17 attempt to use the board member’s official position to influence a board decision in
18 which the board member knows or has reason to know they have a financial interest
19 within the meaning of Section 87103 of the Government Code.

20 **Comment.** Section 61080 continues subdivision (h) of former Section 25125 without substantive
21 change.

22 See Section 60088 (“board”).

23 **§ 61085. Removal of board member**

24 61085. (a) A board member appointed by the Governor may be removed by the
25 Governor for neglect of duty, misconduct, or malfeasance in office. Before removal
26 from office, a member shall be provided with a written statement of the charges and
27 an opportunity to be heard.

28 (b) A board member appointed by the Governor or the Legislature may be
29 removed after trial for knowingly violating a provision of this chapter based on a
30 complaint filed in a county superior court by the Attorney General alleging that the
31 board member knowingly violated a provision of this chapter and asking that the
32 board member be removed from the board. Further proceedings shall be in
33 accordance as near as may be with rules governing civil actions.

34 (c) A board member shall not miss three consecutive meetings as unexcused
35 absences. Missing three consecutive meetings as unexcused absences shall
36 constitute grounds for removal under subdivision (a) or (b).

37 **Comment.** Section 61085 continues subdivision (g) of former Section 25125 without substantive
38 change.

39 See Section 60088 (“board”).

CHAPTER 2. MEETING PROCESS

§ 61130. Number and location of meetings

61130. (a) Beginning January 1, 2022, the board shall conduct no fewer than six public meetings per year, at least three of which shall be held outside the greater Sacramento area.

(b) For those meetings held outside the greater Sacramento area, the board shall meet in different geographic areas within the state to facilitate the participation by the businesses and sites regulated by the department, as well as members of the communities impacted by the businesses and sites regulated by the department.

Comment. Section 61130 continues subdivision (a) of former Section 25125.2 without substantive change.

See Sections 60088 (“board”), 60095 (“business”), 60160 (“department”).

Staff Note. A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat. ch. 258. Proposed Section 61130 would continue existing language that will not be changed by the new version.

§ 61135. Use of advisory subcommittees

61135. (a) The board may form advisory subcommittees of its membership to work on any topic within the board’s jurisdiction, including, but not limited to, environmental justice and fee structure.

(b) Subcommittees formed pursuant to this section are authorized to do both of the following:

(1) Seek information and feedback from any stakeholder or constituencies subject to the authorities implemented by the department or impacted by the department’s implementation of its authorities.

(2) Present recommendations of the subcommittee to the full board for its consideration and action.

(c) The full board is not required to act on any recommendation presented by a subcommittee of the board.

Comment. Section 61135 continues former Section 25125.3 without substantive change.

See Sections 60088 (“board”), 60160 (“department”).

§ 61140. Director participation

61140. The director, or a designee, shall present and respond to the board, if requested by the board, on any issue or item brought forward by a member of the public, the ombudsperson, or a board member.

Comment. Section 61140 continues former Section 25125.6 without substantive change.

See Sections 60088 (“board”), 60165 (“director”).

CHAPTER 3. BOARD RESPONSIBILITIES

§ 61200. Setting of fees

61200. The board shall set fees pursuant to Sections 25205.2.1, 25205.5.01, and 25205.6.1.

Comment. Section 61200 continues paragraph (1) of subdivision (b) of former Section 25125.2 without substantive change.

See Section 60088 (“board”).

Staff Note. A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat. ch. 258. Proposed Section 61200 would continue existing language that will not be changed by the new version.

§ 61205. Hazardous waste facility permit appeals

61205. The board shall hear and decide appeals of hazardous waste facility permit decisions.

Comment. Section 61205 continues paragraph (2) of subdivision (b) of former Section 25125.2 without substantive change.

See Sections 60088 (“board”), 60215 (“hazardous waste facility”).

Staff Note. A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat. ch. 258. Proposed Section 61205 would continue existing language that will not be changed by the new version.

§ 61210. Public hearings

61210. The board shall provide opportunities for public hearings on individual permitted or remediation sites.

Comment. Section 61210 continues paragraph (3) of subdivision (b) of former Section 25125.2 without substantive change.

See Section 60088 (“board”).

Staff Note. A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat. ch. 258. Proposed Section 61210 would continue existing language that will not be changed by the new version.

§ 61215. Evaluation of director priorities and adoption of performance metrics

61215. (a) The board shall review and consider for approval the director’s annual priorities for each program under the department and, after consulting with the director, adopt clear performance metrics for the department and each of the department’s programs.

(b) The board’s responsibilities under this section shall be conducted at a public hearing.

(c) The director shall provide annual updates on progress toward meeting the priorities and performance metrics.

Comment. Section 61215 continues paragraph (4) of subdivision (b) of former Section 25125.2 without substantive change.

See Sections 60088 (“board”), 60160 (“department”), 60165 (“director”).

1 **Staff Note.** A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat.
2 ch. 258. Proposed Section 61215 would continue existing language that will not be changed by the
3 new version.

4 **§ 61220. Analysis of department activity fee structure**

5 61220. The board shall conduct an analysis of the fee structure supporting the
6 department’s activities funded by the Hazardous Waste Control Account, the
7 Hazardous Waste Facilities Account, and the Toxic Substances Control Account
8 and, to the extent necessary, develop recommendations for funding the department’s
9 activities that accomplish all of the following:

10 (1) Provides for protection for public health and safety and the environment.

11 (2) Provides adequate funding to ensure the timely remediation of contaminated
12 sites, including the remediation of orphan sites.

13 (3) Provides adequate funding for the enforcement of this division and Part 2
14 (commencing with Section 78000) of Division 45.

15 (4) Provides adequate funding for the programs and regulatory efforts that protect
16 consumers from potentially harmful chemicals in products or workplaces.

17 (5) Provides for a reasonable distribution of costs among the businesses that
18 contribute to the need for management of hazardous waste in the state.

19 (6) Provides a level of funding that will enable the department and the board to
20 implement and carry out their duties and responsibilities, including the department’s
21 performance metrics approved by the board pursuant to this section.

22 (7) Considers increasing fee rates, decreasing fee rates, consolidating fees,
23 eliminating fees, or creating new fees, as appropriate, as well as the option to
24 identify any other funding sources that may be appropriate for use by the department
25 in performing its duties and responsibilities. The board may consider where tiered
26 rates may be appropriate to align the department’s regulatory costs with different
27 volumes or types of hazardous waste.

28 (8) Considers the creation of graduated fee rates that could be used to encourage
29 or discourage waste generation or specific higher risk or hazard waste management
30 activities.

31 (9) Considers additional funding amounts that may be needed for the department
32 to implement the responsibilities identified in **Article 11.8 (commencing with**
33 **Section 25244) and Article 11.9 (commencing with Section 25244.12)**, in whole
34 or in part.

35 (10) Considers additional funding amounts that may be needed for the department
36 to implement programs that further support the collection and appropriate
37 management of hazardous wastes that may pose a higher risk of being illegally
38 disposed.

39 **Comment.** Section 61220 continues paragraph (5) of subdivision (b) of former Section 25125.2
40 without substantive change.

41 See Sections 60088 (“board”), 60160 (“department”), 60210 (“hazardous waste”), 60390
42 (“waste”).

1 **Staff Note.** A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat.
2 ch. 258. Proposed Section 61220 would continue that new version.

3 **§ 61225. Evaluation of department programs and development of recommendations**

4 61225. The board shall conduct an analysis of the department’s programs, the
5 relationship between those programs and related programs in other regulatory
6 agencies, including, but not limited to, the State Water Resources Control Board,
7 the California regional water quality control boards, and the Department of
8 Resources Recycling and Recovery, and, to the extent necessary, develop
9 recommendations to improve coordination between programs, and to reduce or
10 eliminate duplication or overlap.

11 **Comment.** Section 61225 continues paragraph (6) of subdivision (b) of former Section 25125.2
12 without substantive change.

13 See Sections 60088 (“board”), 60160 (“department”).

14 **Staff Note.** A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat.
15 ch. 258. Proposed Section 61225 would continue existing language that will not be changed by the
16 new version.

17 **§ 61230. Development of long-term goals for departmental activities**

18 61230. The board shall develop, in consultation with the director and with
19 consideration of available resources, a multiyear schedule for the discussion of long-
20 term goals for the following departmental activities:

21 (1) The department’s processing of hazardous waste facility permits and
22 proposals to improve the efficiency of the permitting process, the relationship
23 between the efficiency of the process and the time needed to review permit
24 applications and reach permit decisions, and the amount of reimbursement required
25 of permit applicants in the course of the permitting process.

26 (2) The department’s duties and responsibilities in law and proposals to improve
27 the department’s ability to meet those duties and responsibilities.

28 (3) The site mitigation program and proposals for the prioritization of the cleanup
29 of contaminated properties.

30 (4) The department’s implementation of its enforcement activities.

31 **Comment.** Section 61230 continues paragraph (7) of subdivision (b) of former Section 25125.2
32 without substantive change.

33 See Sections 60085 (“applicant”), 60088 (“board”), 60160 (“department”), 60165 (“director”),
34 60215 (hazardous waste facility”), 60300 (“processing”).

35 **Staff Note.** A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat.
36 ch. 258. Proposed Section 61230 would continue existing language that will not be changed by the
37 new version.

38 **§ 61235. Annual review of department and director performance**

39 61235. The board shall annually prepare and transmit to the secretary an annual
40 review of the department’s performance as compared to its objectives, including,
41 but not limited to, the performance of the director.

1 **§ 61355. Appointment**

2 61355. The board shall appoint an ombudsperson who shall serve full time at the
3 pleasure of the board.

4 **Comment.** Section 61355 continues the second sentence of subdivision (a) of former Section
5 25125.8 without substantive change.

6 See Section 60088 (“board”).

7 **§ 61360. Responsibilities**

8 61360. The office of the ombudsperson shall serve as an impartial resource to the
9 public, including stakeholders, by doing the following:

10 (a) Receive complaints and suggestions from the public.

11 (b) Evaluate complaints.

12 (c) Report findings and make recommendations to the director and the board.

13 (d) Render assistance to the public, when appropriate.

14 **Comment.** Section 61360 continues subdivision (b) of former Section 25125.8 without
15 substantive change.

16 See Sections 60088 (“board”), 60165 (“director”).

17 **§ 61365. Determination of responsibilities**

18 61365. The board, in consultation with the director, may determine the activities,
19 in addition to those specified in Section 61360, the ombudsperson can undertake.

20 **Comment.** Section 61365 continues subdivision (c) of former Section 25125.8 without
21 substantive change.

22 See Sections 60088 (“board”), 60165 (“director”).

23 **§ 61370. Establishment of procedures**

24 61370. The board shall establish procedures governing the exercise of the
25 ombudsperson’s duties, including all of the following:

26 (1) Methods to encourage the submission of complaints or suggestions and
27 safeguards to ensure confidentiality.

28 (2) Forms to submit complaints and suggestions to the ombudsperson.

29 (3) Criteria for prioritization of complaints and suggestions submitted to the
30 ombudsperson.

31 (4) Access to information and resources to improve understanding of the
32 department’s activities and opportunities for involvement in the department’s
33 regulatory processes.

34 **Comment.** Section 61370 continues subdivision (d) of former Section 25125.8 without
35 substantive change.

36 See Sections 60088 (“board”), 60160 (“department”).

37 **§ 61375. Submission of complaint or suggestion**

38 61375. Any person may submit a complaint or make a suggestion to the
39 ombudsperson regarding any action, program, or policy of the department.

40 **Comment.** Section 61375 continues subdivision (e) of former Section 25125.8 without
41 substantive change.

1 See Sections 60160 (“department”), 60295 (“person”).

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition, as reflected in this staff draft, of provisions in Chapter 6.5 of Division 20 of the Health and Safety Code (§§ 25100-25259), as the law existed on January 1, 2023. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Existing Provision	Corresponding New Provision
25125(a), (b), (c)	61000
25125(d).....	61005
25125(e).....	61060
25125(f).....	61010
25125(g).....	61085
25125(h).....	61080
25125(i).....	61065(a)
25125(j).....	61070
25125(k).....	61065(b)
25125(l).....	61030
25125(m), 1 st sent	61015
25125(m), 2 nd sent.....	61020
25125(n).....	61075
25125(o).....	61025
25125.2(a).....	61130
25125(b)(1).....	61200
25125(b)(2).....	61205
25125(b)(3).....	61210
25125(b)(4).....	61215
25125(b)(5).....	61220
25125(b)(6).....	61225
25125(b)(7).....	61230
25125.3.....	61135
25125.4.....	61300
25125.5.....	61000
25125.6.....	61140
25125.7.....	61235
25125.8(a), 1 st sent.....	61350
25125.8(a), 2 nd sent.....	61355
25125.8(b).....	61360
25125.8(c).....	61365
25125.8(d).....	61370
25125.8(e).....	61375
25125.9.....	61240
25198(a).....	not cont'd
25198(b), 1st part.....	60720
25198(b), 2nd part.....	not cont'd
25198(c)-(e).....	60725
25198(f).....	60730

DERIVATION OF NEW LAW

Note. This table shows the derivation of each provision in proposed Division 44 reflected in this staff draft. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Proposed New Provision	Corresponding Existing Provision
60720	25198(b),1 st part
60725	25198(c), (d), (e)
60730	25198(f)
61000	25125(a), (b), (c)
61005	25125(d)
61010	25125(f)
61015	25125(m), 1 st sent
61020	25125(m), 2 nd sent
61025	25125(o)
61030	25125(l)
61060	25125(e)
61065(a).....	25125(i)
61065(b).....	25125(k)
61070	25125(j)
61075	25125(n)
61080	25125(h)
61085	25125(g)
61130	25125.2(a)
61135	25125.3
61140	25125.6
61200	25125.2(b)(1)
61205	25125.2(b)(2)
61210	25125.2(b)(3)
61215	25125.2(b)(4)
61220	25125.2(b)(5)
61225	25125.2(b)(6)
61230	25125.2(b)(7)
61235	25125.7
61240	25125.9
61300	25125.4
61350	25125.8(a), 1 st sent
61355	25125.8(a), 2 nd sent
61360	25125.8(b)
61365	25125.8(c)
61370	25125.8(d)
61375	25125.8(e)

