

Memorandum 2019-22

**Recodification of Toxic Substance Statutes
(Cumulative Draft of Material Previously Reviewed)**

In this study, the Commission¹ 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.² The Commission decided to proceed with the recodification of Chapter 6.8 first, then move to the recodification of Chapter 6.5.³

Attached is a cumulative draft of the material that the Commission has considered and preliminarily approved for inclusion in a tentative recommendation for the recodification of Chapter 6.8. The attached draft contains Chapter 1 of Part 2 of proposed new Division 45 of the Health and Safety Code. This draft reflects all of the Commission's decisions to date. Boxed "Staff Notes" provide background information, highlight issues where public comment is sought, and draw attention to provisions that have been restated.

Commissioners and other interested persons should review the attached draft and raise any concerns identified. **Comments on any aspect of the draft would be welcome.**⁴

Respectfully submitted,

Kristin Burford
Staff Counsel

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

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

4. Written comments can be in any form. They should be directed to kburford@clrc.ca.gov. Comments may also be made orally at the upcoming Commission meeting (scheduled for April 4, 2019), which will be open to the public. The agenda is available at http://www.clrc.ca.gov/Menu1_meetings/agenda.html.

CUMULATIVE PRELIMINARY DRAFT
FOR DIVISION 45

Staff Note. This is a work in progress. The material shown below may be changed. For a tentative outline of new Part 2 of Division 45 of the Health & Safety Code, see Memorandum 2019-10, pp. 5-6. 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 proposed 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 provision and describe how the provision 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 proposed recodification.

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 proposed recodification.

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 the Commission decides against a staff-proposed restatement and reverts to existing statutory language, the “Staff Note” 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 6.8. 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. As new Division 45 is drafted, these references will be updated to reflect the new numbering scheme.

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 Kristin Burford (kburford@clrc.ca.gov).

Contents

DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE AND REMEDIATION	1
PART 1. GENERAL PROVISIONS [RESERVED]	1
PART 2. HAZARDOUS SUBSTANCE ACCOUNT.....	1
CHAPTER 1. GENERAL PROVISIONS	1
Article 1. Preliminary Provisions.....	1
§ 68000. Short title	1
§ 68005. Legislative intent	2
Article 2. Effect of Recodification	2
§ 68010. Nonsubstantive reform	2

§ 68015. Continuation of existing law 2
§ 68020. Judicial decision interpreting former law 3
§ 68025. Constitutionality 4
§ 68030. Conforming rule change 4
Article 3. Definitions 5
§ 68035. Applicable definitions 5
§ 68040. “Agency” 5
§ 68045. “Contract competitor” 5
§ 68050. “Department” 5
§ 68055. “Director” 6
§ 68060. “Feasibility study” 6
§ 68065. “Federal act” 6
§ 68070. “Federally permitted release” 6
§ 68075. “Hazardous substance” 6
§ 68080. “Operation and maintenance” 7
§ 68085. “Person” 7
§ 68090. “Phase I environmental assessment” 8
§ 68095. “Preliminary endangerment assessment” 8
§ 68100. “Regional board” 9
§ 68105. “Release” 9
§ 68110. “Release authorized or permitted pursuant to state law” 10
§ 68115. “Remedial design” 10
§ 68120. “Remedial investigation” 10
§ 68125. “Remedy” or “remedial action” 11
§ 68130. “Removal action work plan” 11
§ 68135. “Remove” or “removal” 11
§ 68140. “Response,” “respond,” or “response action” 12
§ 68145. “Responsible party” or “liable person” 12
§ 68150. “Secretary” 13
§ 68155. “Site” 13
§ 68160. “Site cleanup evaluation” 13
§ 68165. “State account” 13
§ 68170. “Tier” 14
DISPOSITION OF EXISTING LAW 15
DERIVATION OF NEW LAW 16
SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY 17

DRAFT LEGISLATION

1 **Health & Safety Code §§ 68000-[6XXXX] (added). Hazardous substance response and**
2 **remediation**

3 SEC. _____. Division 45 (commencing with Section 68000) is added to the Health
4 and Safety Code, to read:

5 DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE AND
6 REMEDIATION

7 PART 1. GENERAL PROVISIONS [RESERVED]

8 PART 2. HAZARDOUS SUBSTANCE ACCOUNT

9 **Staff Note.** In drafting proposed legislation for Part 2, the staff assumed that the entirety of
10 Chapter 6.8 (commencing with Section 25300) of Division 20 would be recodified in this part.
11 The provisions contained in this draft, particularly those that cross-reference the part, will require
12 reconsideration and possible adjustment if provisions of Chapter 6.8 of Division 20 are recodified
13 in a different location.

14 CHAPTER 1. GENERAL PROVISIONS

15 Article 1. Preliminary Provisions

16 § 68000. Short title

17 68000. (a) This part shall be known and may be cited as the Carpenter-Presley-
18 Tanner Hazardous Substance Account Act.

19 (b) This part recodifies the provisions of former Chapter 6.8 (commencing with
20 Section 25300) of Division 20. The act that added this part shall be known and
21 may be cited as the “Hazardous Substance Account Recodification Act of 2020.”

22 **Comment.** Subdivision (a) of Section 68000 continues former Section 25300 without
23 substantive change. The Carpenter-Presley-Tanner Hazardous Substance Account Act was
24 formerly codified as Chapter 6.8 (commencing with Section 25300) of Division 20 of this code.

25 Subdivision (b) is new. It provides a convenient means of referring to the recodification of
26 former Chapter 6.8 (commencing with Section 25300) of Division 20. For background, see
27 *Recodification of Hazardous Substance Account Provisions*, __ Cal. L. Revision Comm’n
28 Reports __ (2019).

29 **Staff Note.** In drafting proposed Section 68000(b), the staff assumed that the Commission will
30 approve a final recommendation in this study in 2019 and seek introduction of implementing
31 legislation in 2020. The dates in Section 68000(b) and the accompanying Comment will require
32 adjustment if those assumptions prove incorrect.

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

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

9 **Comment.** Subdivision (a) of Section 68015 is similar to Section 2, which is a standard
10 provision found in many codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2;
11 Penal Code §§ 5, 16010(a); Prob. Code § 2(a); Veh. Code § 2.

12 Subdivision (b) is drawn from Government Code Section 9604 and Penal Code Section
13 16010(b).

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

15 Subdivision (d) is new. It is added to make clear that any delay in updating regulations to
16 reflect the enactment of this part does not have any effect on the validity of the regulation. A
17 regulation continues to be valid even if it refers to a provision of former Chapter 6.8 of Division
18 20.

19 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

20 **§ 68020. Judicial decision interpreting former law**

21 68020. (a) A judicial decision interpreting a previously existing provision is
22 relevant in interpreting any provision of this part that restates and continues that
23 previously existing provision.

24 (b) However, in enacting the Hazardous Substance Account Recodification Act
25 of 2020, the Legislature has not evaluated the correctness of any judicial decision
26 interpreting a provision affected by the act.

27 (c) The Hazardous Substance Account Recodification Act of 2020 is not
28 intended to, and does not, reflect any assessment of any judicial decision
29 interpreting any provision affected by the act.

30 **Comment.** Section 68020 is modeled on Penal Code Section 16020.

31 Subdivision (a) makes clear that case law construing a predecessor provision is relevant in
32 construing its successor in the Hazardous Substance Account Recodification Act of 2020.

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

36 For specific guidance on the impact of a judicial decision assessing the constitutionality of a
37 predecessor of a provision in this division, see Section 68025. For general guidance on the
38 nonsubstantive impact of the Hazardous Substance Account Recodification Act of 2020, see
39 Section 68010.

40 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

41 **Staff Note.** In another ongoing recodification project, the Commission is proposing to include a
42 section similar to proposed Section 68020 that addresses Attorney General opinions, rather than
43 judicial decisions. The staff considered whether such a provision should be included in this
44 project, as well. The staff searched for, but did not find, Attorney General opinions related to
45 Chapter 6.8. For this reason, this draft does not include a provision about the effect of the
46 recodification on Attorney General opinions. **The staff welcomes comment on whether a**

1 **provision regarding the effect of the recodification on Attorney General opinions should be**
2 **included in this proposed legislation.**

3 **§ 68025. Constitutionality**

4 68025. (a) A judicial decision on the constitutionality of a previously existing
5 provision is relevant in determining the constitutionality of any provision of this
6 division that restates and continues that previously existing provision.

7 (b) However, in enacting the Hazardous Substance Account Recodification Act
8 of 2020, the Legislature has not evaluated the constitutionality of any provision
9 affected by the act, or the correctness of any judicial decision on the
10 constitutionality of any provision affected by the act.

11 (c) The Hazardous Substance Account Recodification Act of 2020 is not
12 intended to, and does not, reflect any determination of the constitutionality of any
13 provision affected by the act.

14 **Comment.** Section 68025 is modeled on Penal Code Section 16025.

15 Subdivision (a) makes clear that case law on the constitutionality of a predecessor provision are
16 relevant in determining the constitutionality of its successor in the Hazardous Substance Account
17 Recodification Act of 2020.

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

21 For specific guidance on the impact of a judicial decision interpreting a predecessor of a
22 provision in this division, see Section 68020. For general guidance on the nonsubstantive effect of
23 the Hazardous Substance Account Recodification Act of 2020, see Section 68010.

24 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

25 **§ 68030. Conforming rule change**

26 68030. (a) The department or another state agency may make a conforming rule
27 change without complying with the rulemaking procedure specified in Article 5
28 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2
29 of the Government Code, if the rule change meets all of the requirements of this
30 section.

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

33 (1) A completed and signed form STD 400.

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

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

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

41 (d) For the purposes of this section, a “conforming rule change” means a rule
42 change that deletes a reference to a provision of former Chapter 6.8 (commencing
43 with Section 25300) of Division 20 and replaces it with a reference to the

1 provision of this part that continues or restates the former provision. A “rule
2 change” includes a change to the text of a regulation in the California Code of
3 Regulations, a regulation’s citation of authority, or a regulation’s reference.

4 **Comment.** Section 68030 is new.
5 See Section 68050 (“department” defined).

6 Article 3. Definitions

7 § 68035. Applicable definitions

8 68035. The definitions set forth in this article shall govern the interpretation of
9 this part. Unless the context requires otherwise and except as provided in this
10 article, the definitions contained in Section 101 of the federal act (42 U.S.C. Sec.
11 9601) shall apply to the terms used in this part.

12 **Comment.** Section 68035 continues former Section 25310 without substantive change.
13 See Section 68065 (“federal act” defined).

14 **Staff Note.** The second sentence of Section 25310 provides for the application of definitions
15 contained in Section 101 of the federal act. Section 101 defines over 40 terms. The defined terms
16 in Section 101 include commonly understood words, including “claim,” “damages,”
17 “environment,” “disposal,” “liability,” and “transport.” Section 101 also defines several terms
18 that are also defined in this proposed article, including “hazardous substance,” “person,”
19 “release,” “remove,” “remedy,” and “respond.” Assessing the applicability of the federal act’s
20 definitions for each individual use of the defined terms in this law would be a significant
21 undertaking. And, the benefits of doing such work in this nonsubstantive study are limited. For
22 these reasons, the staff does not plan to exhaustively evaluate the application of federal
23 definitions in this study.

24 In general, the staff is unsure whether this provision provides sufficient clarity as to when the
25 federal definitions apply. **The staff welcomes comment on this issue.**

26 It seems possible that this would be a topic for which future study would be useful. Depending
27 on the comment received, the Commission may want to consider adding this topic to the list of
28 substantive issues for future study in the Commission’s recommendation.

29 § 68040. “Agency”

30 68040. “Agency” means the California Environmental Protection Agency.

31 **Comment.** Section 68040 continues former Section 25310.5 without substantive change.

32 § 68045. “Contract competitor”

33 68045. “Contract competitor” means any person competing for a state contract
34 pursuant to **subdivision (c) of Section 25358.3.**

35 **Comment.** Section 68045 continues former Section 25311 without substantive change.
36 See Section 68085 (“person” defined).

37 § 68050. “Department”

38 68050. “Department” means the Department of Toxic Substances Control.

39 **Comment.** Section 68050 continues former Section 25312 without substantive change.

1 § 68055. “Director”

2 68055. “Director” means the Director of Toxic Substances Control.

3 **Comment.** Section 68055 continues former Section 25313 without substantive change.

4 See Section 68050 (“department” defined).

5 § 68060. “Feasibility study”

6 68060. “Feasibility study” means the identification and evaluation of technically
7 feasible and effective remedial action alternatives to protect public health and the
8 environment, at a hazardous substance release site, or other activities deemed
9 necessary by the department for the development of a remedial action plan.

10 **Comment.** Section 68060 continues former Section 25314 without substantive change.

11 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
12 (“release” defined), 68125 (“remedy” defined), 68155 (“site” defined).

13 § 68065. “Federal act”

14 68065. “Federal act” means the Comprehensive Environmental Response,
15 Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et
16 seq.).

17 **Comment.** Section 68065 continues former Section 25315 without substantive change.

18 § 68070. “Federally permitted release”

19 68070. “Federally permitted release” has the same meaning as defined in
20 Section 101(10) of the federal act (42 U.S.C. Sec. 9601(10)).

21 **Comment.** Section 68070 continues former Section 25325 without substantive change.

22 See Sections 68065 (“federal act” defined), 68105 (“release” defined).

23 § 68075. “Hazardous substance”

24 68075. (a) “Hazardous substance” means:

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

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

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

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

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

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

1 (7) Any hazardous waste or extremely hazardous waste as defined by Sections
2 25117 and 25115, respectively, unless expressly excluded.

3 (b) “Hazardous substance” does not include:

4 (1) Petroleum, including crude oil or any fraction of crude oil that is not
5 otherwise specifically listed or designated as a hazardous substance in paragraphs
6 (1) to (6), inclusive, of subdivision (a).

7 (2) Natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable
8 for fuel (or mixtures of natural gas and synthetic gas usable for fuel).

9 (3) Ash produced by a resource recovery facility utilizing a municipal solid
10 waste stream.

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

13 **Comment.** Subdivision (a) of Section 68075 continues former Section 25316 without
14 substantive change.

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

16 See Section 68065 (“federal act” defined).

17 **Staff Note.** Subdivision (a) of Section 25317 was restated for clarity and to conform to legislative
18 drafting practices. Subdivision (a) has been broken into paragraphs (1), (2), and (3) of subdivision
19 (b) in proposed Section 68075.

20 Section 25317(a) currently reads as follows:

21 (a) Petroleum, including crude oil or any fraction thereof which is not otherwise
22 specifically listed or designated as a hazardous substance in subdivisions (a) to (f), inclusive, of
23 Section 25316, and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable
24 for fuel (or mixtures of natural gas and such synthetic gas), or the ash produced by a resource
25 recovery facility utilizing a municipal solid waste stream.

26 The changes reflected in proposed Section 68075 are intended to be nonsubstantive. **The staff**
27 **welcomes any comment on the proposed restatement of this subdivision.**

28 **§ 68080. “Operation and maintenance”**

29 68080. “Operation and maintenance” means those activities initiated or
30 continued at a hazardous substance release site following completion of a response
31 action that are deemed necessary by the department or regional board in order to
32 protect public health or safety or the environment, to maintain the effectiveness of
33 the response action at the site, or to achieve or maintain the response action
34 standards and objectives established by the final remedial action plan or final
35 removal action work plan applicable to the site.

36 **Comment.** Section 68080 continues former Section 25318.5 without substantive change.

37 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68100
38 (“regional board” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68130
39 (“removal action work plan” defined), 68140 (“response” defined), 68155 (“site” defined).

40 **§ 68085. “Person”**

41 68085. “Person” means an individual, trust, firm, joint stock company, business
42 concern, partnership, limited liability company, association, and corporation,
43 including, but not limited to, a government corporation. “Person” also includes

1 any city, county, city and county, district, commission, the state or any
2 department, agency, or political subdivision thereof, any interstate body, and the
3 United States and its agencies and instrumentalities, to the extent permitted by
4 law.

5 **Comment.** Section 68085 restates former Section 25319 without substantive change.

6 **Staff Notes. (1)** In proposed Section 68085, the order of the phrases in the first sentence in the
7 definition of “person” from Section 25319 were changed to improve clarity. Minor changes to the
8 text were made to conform to legislative drafting practices. The text of Section 25319 is as
9 follows:

10 25319. “Person” means an individual, trust, firm, joint stock company, business concern,
11 corporation, including, but not limited to, a government corporation, partnership, limited liability
12 company, and association. “Person” also includes any city, county, city and county, district,
13 commission, the state or any department, agency, or political subdivision thereof, any interstate
14 body, and the United States and its agencies and instrumentalities, to the extent permitted by law.

15 The changes reflected in proposed Section 68085 are intended to be nonsubstantive. **The staff**
16 **welcomes any comment on the proposed restatement of this definition.**

17 **(2)** The staff had difficulty determining the intended application of the final phrase in the
18 second sentence of the definition of “person.” In particular, it was unclear whether “to the extent
19 permitted by law” was intended to serve as a limitation to all of the listed entities in the second
20 sentence or whether that phrase was only intended to modify the last set of listed entities (“the
21 United States and its agencies and instrumentalities”). If the former application is intended, the
22 staff would propose moving the phrase “to the extent permitted by law” to the front of the
23 sentence (to read “‘Person’ also includes, to the extent permitted by law, ...”). If the latter
24 application is intended, it would seem to be more clear to move “to the extent permitted by law”
25 to precede “the United States ...”. (to read “any interstate body, and, to the extent permitted by
26 law, the United States and its agencies and instrumentalities”) **The staff welcomes comment on**
27 **this issue.**

28 **§ 68090. “Phase I environmental assessment”**

29 68090. “Phase I environmental assessment” means a preliminary assessment of
30 a property to determine whether there has been, or may have been, a release of a
31 hazardous substance based on reasonably available information about the property
32 and general vicinity. A phase I environmental assessment may include, but is not
33 limited to, a review of public and private records, current and historical land uses,
34 prior releases of a hazardous material, database searches, reviews of relevant files
35 of federal, state, and local agencies, visual and other surveys of the property and
36 general vicinity, interviews with current and previous owners and operators, and
37 review of regulatory correspondence and environmental reports. Sampling or
38 testing is not required as part of a phase I environmental assessment.

39 **Comment.** Section 68090 continues former Section 25319.1 without substantive change.
40 See 68075 (“hazardous substance” defined), 68105 (“release” defined).

41 **§ 68095. “Preliminary endangerment assessment”**

42 68095. “Preliminary endangerment assessment” means an activity that is
43 performed to determine whether current or past hazardous substance management
44 practices have resulted in a release or threatened release of a hazardous substance

1 that poses a threat to the public health or the environment and is conducted in a
2 manner that complies with the guidelines published by the department entitled
3 “Preliminary Endangerment Assessment: Guidance Manual,” or as those
4 guidelines may be amended by the department. A preliminary endangerment
5 assessment includes all of the following activities:

6 (a) Sampling and analysis of a site.

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

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

11 **Comment.** Section 68095 continues former Section 25319.5 without substantive change.

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

14 **§ 68100. “Regional board”**

15 68100. “Regional board” means a California regional water quality control
16 board.

17 **Comment.** Section 68100 continues former Section 25319.6 without substantive change.

18 **§ 68105. “Release”**

19 68105. (a) “Release” means any spilling, leaking, pumping, pouring, emitting,
20 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
21 the environment.

22 (b) “Release” does not include any of the following:

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

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

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

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

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

39 **Comment.** Subdivision (a) of Section 68105 continues former Section 25320 without
40 substantive change.

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

1 See Sections 68065 (“federal act” defined), 68085 (“person” defined), 68140 (“response”
2 defined).

3 **Staff Note.** Proposed Section 68105(b) separates the text of Section 25321(c) into two paragraphs
4 ((3) and (4)) for clarity. The proposed language also includes changes to conform to legislative
5 drafting practices and to correct an apparent error (i.e., an omitted comma). Subdivision (c) of
6 Section 25321 reads as follows:

7 (c) Release of source, byproduct, or special nuclear material from a nuclear incident, as
8 those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. Sec. 2011, et seq.), if such
9 release is subject to requirements with respect to financial protection established by the Nuclear
10 Regulatory Commission under Section 2210 of Title 42 of the United States Code or, for the
11 purposes of Section 104 of the federal act (42 U.S.C. Sec. 9604) or any other response action, any
12 release of source byproduct, or special nuclear material from any processing site designated under
13 Section 7912(a)(1) or 7942(a) of Title 42 of the United States Code, which sections are a part of
14 the Uranium Mill Tailings Radiation Control Act of 1978.

15 The changes reflected in proposed Section 68105 are intended to be nonsubstantive. **The staff**
16 **welcomes any comment on the proposed restatement of this subdivision.**

17 **§ 68110. “Release authorized or permitted pursuant to state law”**

18 68110. “A release authorized or permitted pursuant to state law” means any
19 release into the environment that is authorized by statute, ordinance, regulation, or
20 rule of any state, regional, or local agency or government or by any specific
21 permit, license, or similar authorization from such an agency, including one of the
22 foregoing, that recognizes a standard industry practice, including variances
23 obtained from the agency that allow operations for facilities during a period of
24 time when releases from the facilities do not conform with relevant statutes,
25 ordinances, regulations, or rules. The term includes a federally permitted release,
26 as defined by Section 68070, and releases that are in accordance with any court
27 order or consent decree.

28 **Comment.** Section 68110 continues former Section 25326 without substantive change.

29 See Sections 68040 (“agency” defined), 68070 (“federally permitted release” defined), 68105
30 (“release” defined).

31 **§ 68115. “Remedial design”**

32 68115. “Remedial design” means the detailed engineering plan to implement the
33 remedial action alternative or initial remedial measure approved by the
34 department.

35 **Comment.** Section 68115 continues former Section 25322.1 without substantive change.

36 See Sections 68050 (“department” defined), 68125 (“remedy” defined).

37 **§ 68120. “Remedial investigation”**

38 68120. “Remedial investigation” means those actions deemed necessary by the
39 department to determine the full extent of a hazardous substance release at a site,
40 identify the public health and environment threat posed by the release, collect data
41 on possible remedies, and otherwise evaluate the site for purposes of developing a
42 remedial action plan.

1 **Comment.** Section 68120 continues former Section 25322.2 without substantive change.
2 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
3 (“release” defined), 68125 (“remedy” defined), 68155 (“site” defined).

4 **§ 68125. “Remedy” or “remedial action”**

5 68125. “Remedy” or “remedial action” includes all of the following:

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

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

18 (c) Site operation and maintenance.

19 **Comment.** Section 68125 continues former Section 25322 without substantive change.

20 See Sections 68055 (“director” defined), 68065 (“federal act” defined), 68075 (“hazardous
21 substance” defined), 68080 (“operation and maintenance” defined), 68105 (“release” defined),
22 68135 (“remove” defined), 68155 (“site” defined).

23 **§ 68130. “Removal action work plan”**

24 68130. “Removal action work plan” means a work plan prepared or approved by
25 the department or a regional board that is developed to carry out a removal action,
26 in an effective manner, that is protective of the public health and safety and the
27 environment. The removal action work plan shall include a detailed engineering
28 plan for conducting the removal action, a description of the onsite contamination,
29 the goals to be achieved by the removal action, and any alternative removal
30 options that were considered and rejected and the basis for that rejection.

31 **Comment.** Section 68130 continues former Section 25323.1 without substantive change.

32 See Sections 68050 (“department” defined), 68100 (“regional board” defined), 68135
33 (“remove” defined).

34 **Staff Note.** Proposed Section 68130 replaces the phrase “a California regional water quality
35 control board” used in Section 25323.1 with “a regional board.” The term “regional board” is
36 defined in proposed Section 68100, which continues Section 25319.6.

37 **§ 68135. “Remove” or “removal”**

38 68135. “Remove” or “removal” includes the cleanup or removal of released
39 hazardous substances from the environment or the taking of other actions as may
40 be necessary to prevent, minimize, or mitigate damage that may otherwise result

1 from a release or threatened release, as further defined by Section 101(23) of the
2 federal act (42 U.S.C. Sec. 9601(23)).

3 **Comment.** Section 68135 continues former Section 25323 without substantive change.

4 See Sections 68065 (“federal act” defined), 68075 (“hazardous substance” defined), 68105
5 (“release” defined).

6 **§ 68140. “Response,” “respond,” or “response action”**

7 68140. “Response,” “respond,” or “response action” have the same meanings as
8 defined in Section 101(25) of the federal act (42 U.S.C. Sec. 9601(25)). The
9 enforcement and oversight activities of the department and regional board are
10 included within the meaning of “response,” “respond,” or “response action.”

11 **Comment.** Section 68140 continues former Section 25323.3 without substantive change.

12 See Sections 68050 (“department” defined), 68065 (“federal act” defined), 68100 (“regional
13 board” defined).

14 **Staff Note.** Proposed Section 68140 replaces the reference to “Section 9601(25) of the federal
15 act” used in Section 25323.3 with “Section 101(25) of the federal act.” Section 9601 *of the U.S.*
16 *Code* corresponds to Section 101 *of the federal act*. See, e.g., proposed Section 68135. The
17 original reference to Section 9601 of the federal act appears to have been an error.

18 **§ 68145. “Responsible party” or “liable person”**

19 68145. (a)(1) “Responsible party” or “liable person,” for the purposes of this
20 part, means those persons described in Section 107(a) of the federal act (42 U.S.C.
21 Sec. 9607(a)).

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

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

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

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

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

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

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

9 **Comment.** Section 68145 continues former Section 25323.5 without substantive change.

10 See Sections 68050 (“department” defined), 68055 (“director” defined), 68065 (“federal act”
11 defined), 68085 (“person” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68155
12 (“site” defined).

13 **§ 68150. “Secretary”**

14 68150. “Secretary” means the Secretary for Environmental Protection.

15 **Comment.** Section 68150 continues former Section 25326.3 without substantive change.

16 **§ 68155. “Site”**

17 68155. “Site” has the same meaning as the term “facility” is defined by Section
18 101(9) of the federal act (42 U.S.C. Sec. 9601(9)).

19 **Comment.** Section 68155 continues former Section 25323.9 without substantive change.

20 See Section 68065 (“federal act” defined).

21 **§ 68160. “Site cleanup evaluation”**

22 68160. “Site cleanup evaluation” means an evaluation by the department of the
23 effectiveness of a removal or remedial action conducted by a responsible party, to
24 reduce or eliminate actual or potential public health and environmental threats
25 posed by a hazardous substance release site if the action itself is not the subject of
26 oversight by the department.

27 **Comment.** Section 68160 continues former Section 25326.5 without substantive change.

28 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
29 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible
30 party” defined), 68155 (“site” defined).

31 **§ 68165. “State account”**

32 68165. “State account” means the Toxic Substances Control Account
33 established pursuant to Section 25173.6.

34 **Comment.** Section 68165 continues subdivision (a) of former Section 25324 without
35 substantive change.

1 **Staff Note.** Subdivision (b) of Section 25324 states a substantive rule, rather than a definition:

2 (b) Notwithstanding any other provision of this section, any costs incurred and payable
3 from the Hazardous Substance Account, the Hazardous Waste Control Account, or the Site
4 Remediation Account prior to July 1, 2006, to implement this chapter, shall be recoverable from
5 the liable person or persons pursuant to Section 25360 as if the costs were incurred and payable
6 from the state account.

7 This subdivision will be recodified with other related provisions in a future draft.

8 **§ 68170. “Tier”**

9 68170. “Tier” means a grouping of hazardous substance release sites that require
10 removal and remedial actions, that are listed alphabetically, and that are of a
11 roughly equivalent priority for removal and remedial action.

12 **Comment.** Section 68170 continues former Section 25327 without substantive change.

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

Existing Provision	Corresponding New Provision
25300	68000(a)
25301	68005
25310	68035
25310.5	68040
25311	68045
25312	68050
25313	68055
25314	68060
25315	68065
25316	68075(a)
25317	68075(b)
25318.5	68080
25319	68085
25319.1	68090
25319.5	68095
25319.6	68100
25320	68105(a)
25321	68105(b)
25322	68125
25322.1	68115
25322.2	68120
25323	68135
25323.1	68130
25323.3	68140
25323.5	68145
25323.9	68155
25324(a)	68165
25325	68070
25326	68110
25326.3	68150
25326.5	68160
25327	68170

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.

Proposed New Provision	Corresponding Existing Provision
68000(a)	25300
68000(b)	new
68005	25301
68010	new
68015	new
68020	new
68025	new
68030	new
68035	25310
68040	25310.5
68045	25311
68050	25312
68055	25313
68060	25314
68065	25315
68070	25325
68075(a)	25316
68075(b)	25317
68080	25318.5
68085	25319
68090	25319.1
68095	25319.5
68100	25319.6
68105(a)	25320
68105(b)	25321
68110	25326
68115	25322.1
68120	25322.2
68125	25322
68130	25323.1
68135	25323
68140	25323.3
68145	25323.5
68150	25326.3
68155	25323.9
68160	25326.5
68165	25324(a)
68170	25327

SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY

When the Legislature authorized the Commission to study Chapters 6.5 and 6.8 of Division 20 of the Health and Safety Code, the Legislature also directed the Commission to “include a list of substantive issues that the commission identifies in the course of its work, for possible future study.” See 2018 Cal. Stat. res. ch. 158. The Legislature’s grant of authority for this project precludes the Commission from making “any substantive changes to the law.” See *id.*

In the course of the Commission’s study of Chapter 6.8, the Commission identified the issues listed below for possible future study. For the most part, the listed issues are relatively minor, clean-up issues, but the issues could not be addressed without risking the possibility of a substantive change. **If any of the listed issues is likely to involve substantial controversy, please notify the Commission.**

- Should the provision that governs the application of certain definitions (continued in proposed Section 68035) be revised to add an express exception to allow for a different meaning when appropriate (e.g., “unless the context requires otherwise”)?
- Should the definition of “release authorized or permitted pursuant to state law” (continued in proposed Section 68110) be restated for clarity?
- Should the definition of “remedy” (continued in proposed Section 68125) be restated for clarity?