

# California and Federal Environmental Legislative and Regulatory Update 2007/2008

**Manufacturing Council of the Central Valley  
January 16, 2008**

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- This presentation is intended for informational purposes only
- Before acting on legislation addressed in this presentation, the implications of the law should be independently evaluated considering the unique factual circumstances of the potentially affected facility, party, or entity.



# 2007/2008 Environmental Legislative Topics


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- **Air Quality and Global Warming**
- **Energy**
- **Hazardous Waste/Hazardous Materials**
- **Water Quality and Water Supply**
- **Hazardous Substances Clean up/Brownfields**
- **CEQA**
- **Land Use**
- **Solid Waste**
- **Sustainability**



# Accessing Legislative Text

- [www.leginfo.ca.gov](http://www.leginfo.ca.gov)



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INFORMATION**   **CALIFORNIA  
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PUBLICATIONS**



# The Bill Number is “Year-specific”

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- Legislative Proposal: SB 14 (Roberti)
- The Hazardous Waste Source Reduction and Management Review Act of 1989



# California Air Quality and Global Warming Legislation



# Retreating Glaciers





# Lake Tahoe Waters Warming

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- Increase in water temperature has been observed since 1978
  - Surface water has increased by nearly 5 degrees
  - Impacting the entire ecosystem around the Lake
  - Temperature rise favors invasive plants and fish
    - Bass & carp increasingly common
  - Clarity of Lake is impacted



# Study Shows Global Warming to After 2009

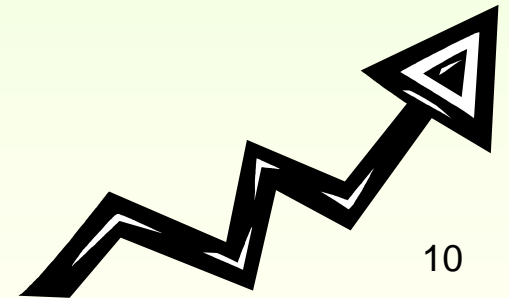
New climate model accounts for both natural phenomena and human activities

– *Initially*: Climate change will be driven by natural forces (El Nino, ocean currents) that will offset warming caused by human activities

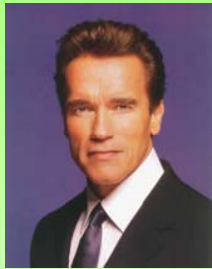


• *Result*: Little warming in the next few years

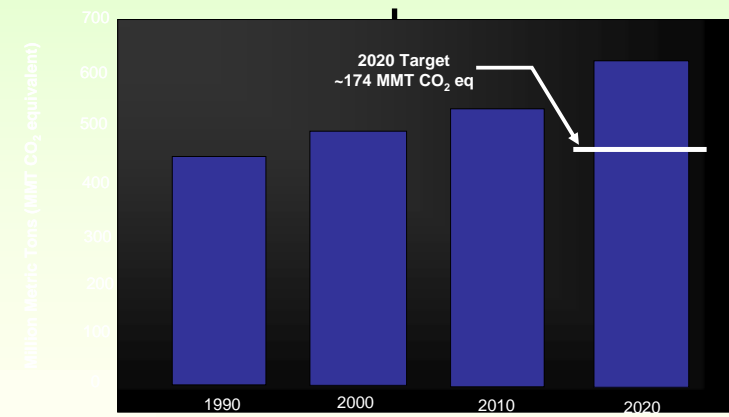
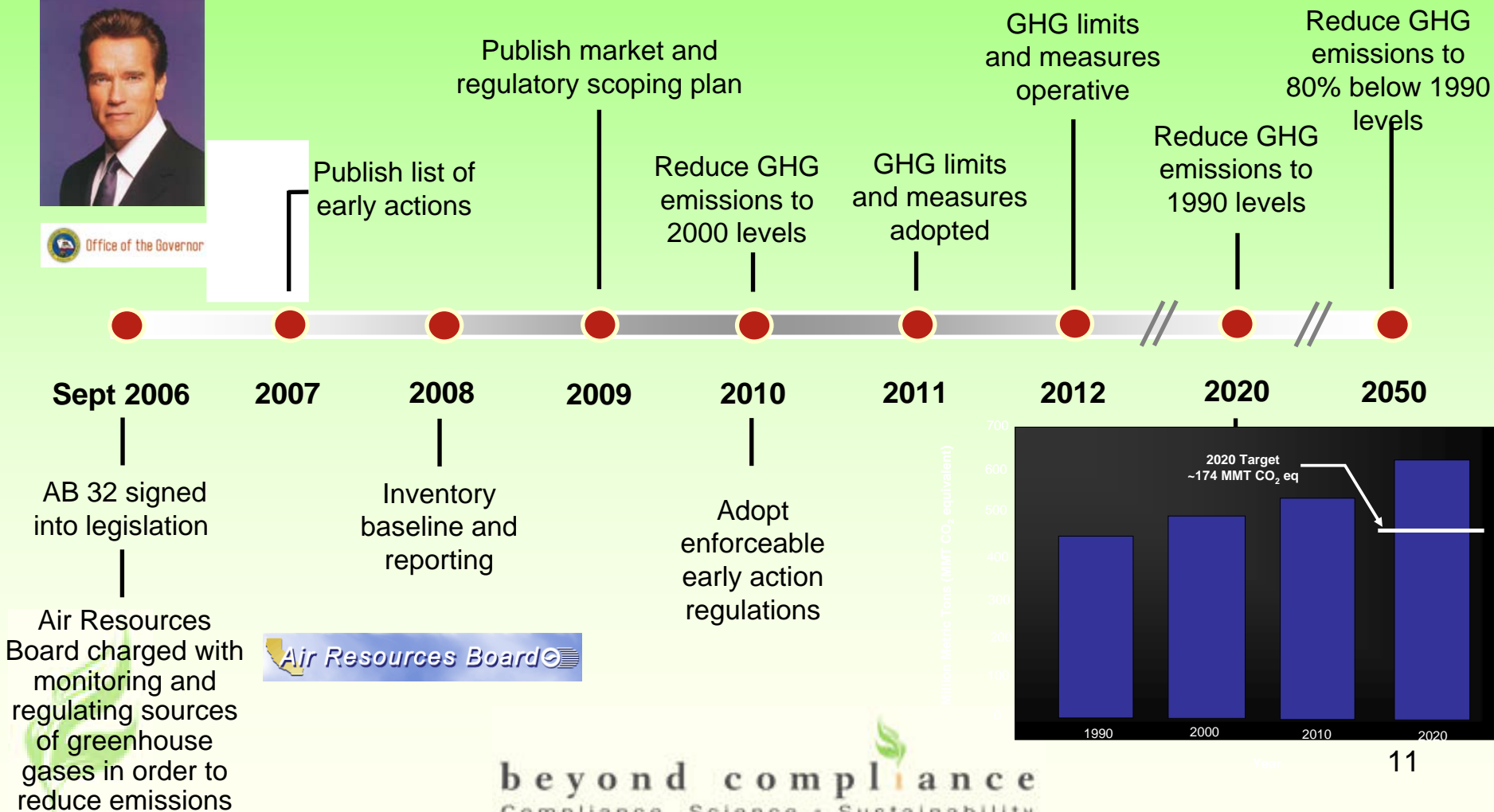
– *After 2009*: Definite **long-term warming** trend will occur over the next century



# California Global Warming Solutions Act of 2006 (AB 32)



Office of the Governor



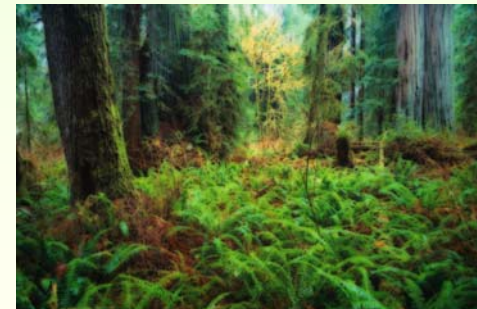
# 44 Early Action Measures Recommended by ARB

- June 21, 2007: ARB approved 37 early action measures to limit emissions of GHGs in CA
- 44 early action measures recommended
  - Cumulative potential to reduce 42 million metric tons of CO2 equivalents by 2020
  - ARB Board approval for all 44 measures to occur late October 2007
  - The proposed measures include:
    1. **Governor's Low Carbon Fuel Standard**
    2. **Restriction of High Global Warming Potential Refrigerants**
    3. **Landfill Methane Capture**
    4. **Reduction of High-GWP GHGs in Consumer Products**
    5. **SmartWay Truck Efficiency-** retrofitting trucks with SmartWay Transport
    6. **Tire inflation program**
    7. **Reduction of PFCs from the semiconductor Industry**



# Forest Service Advocates Doubling of Forests by 2020

- Currently, forests offset approx. 10% of US carbon emissions
- Chief Kimbell proposes a national effort to:
  1. Strengthen the role of America's forests as a net carbon sink to double by 2020.
  2. Increase the amount of America's energy that comes from forests by utilizing ethanol from wood that is not being used --and is being burned in some cases



# Mandatory Greenhouse Gas Emission Reporting

- Approx. 800 facilities will have to report by 2009
  - Any facility emitting  $> 25,000$  tons of  $\text{CO}_2$  per year
    - Hospitals, backup generators, and primary and secondary schools are exempt
  - Electric retail providers
  - Cement plants
  - Petroleum refineries
  - Hydrogen production facilities  $> 25,000$  tons of  $\text{CO}_2$
  - Electric generating facilities  $> 1$  megawatt
  - Cogeneration facilities  $> 1$  megawatt



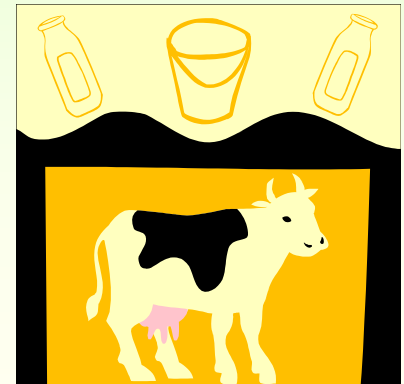
# Mandatory Greenhouse Gas Emission Reporting (Con't)

- Any facility emitting  $> 25,000$  tons of CO<sub>2</sub> annually will need to:
  1. Inventory their emissions in 2008
  2. Report in 2009
    - Reporting is Subject to 3rd party verification in 2010
- Key Businesses Affected
  - Food processing
  - Oil production
  - Natural gas transmission
  - Glass manufacturers
  - Steel foundries



# Climate Action Registry: Protocol

- Manure Management Project Reporting Protocol
  - Allows quantification of methane and CO2 reductions from manure digesters
    - Operators can then claim a GHG reduction credit
  - Applies to existing livestock operations in the U.S. that join the CCAR
    - Does not apply to international operations



# *Massachusetts v. EPA*

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- US Supreme Court decision (April 2, 2007)
- 12 states and several cities brought suit against the USEPA to force the agency to regulate CO<sub>2</sub> as a GHG pollutant.
- Petitioner's argument:
  1. § 202(a)(1) of the CAA requires USEPA to set emission standards for "**any air pollutant**" from motor vehicles or motor vehicle engines "*which...cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare.*"
  2. EPA does have authority over global warming and GHGs because of the **broad wording** of the statute
  3. EPA's decision not to regulate GHGs **exceeded the scope** of its discretion under the law.



# *Massachusetts v. EPA (Cont.)*

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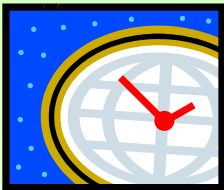
- Ruling:
  - ✓ Petitioners were found to have standing
    - ✓ States have special standing, pro-states' rights → this portion of the opinion may have the most precedential value
  - ✓ The CAA does give USEPA authority to regulate tailpipe emissions of GHGs
  - ✓ USEPA is required to review its contention that it has discretion in regulating carbon dioxide emissions.
    - ✓ Generally takes 2 years to promulgate new rules.
    - ✓ Speculated that the Bush Administration will sit on the decision and not issue new regulations in its remaining term of office



# Judge Orders White House to Produce Guidance on Global Warming

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- Under the Global Change Research Act of 1990, two documents are overdue & must be produced:



1. A research plan by the U.S. Climate Change Science Program
  - Now Due March 1, 2008
2. A climate change assessment plan by White House Office of Science and Technology
  - Now Due May 31, 2008

- Administration is considering an appeal



# AB 32 & Global Warming Assessments in EIRs

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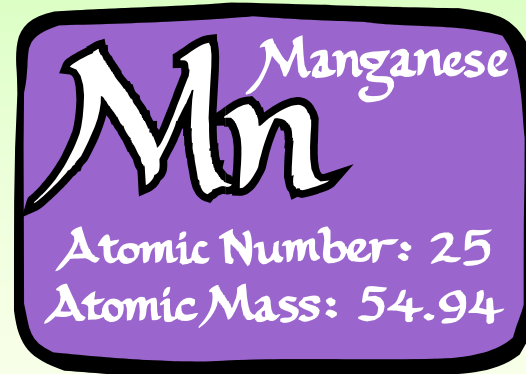
- Two EIRs challenged for failure to assess and mitigate against their greenhouse gas emissions prior to the projects' approval
  1. San Bernardino County General Plan
    - Amendment to General Plan to allow for population increase
      - One of the fastest growing counties in CA
    - AG sued: Settlement attained August 21, 2007
  2. ConocoPhilips refinery in Rodeo, California
    - Project to construct a new hydrogen plant to make cleaner burning gasoline
    - AG sued: Settlement attained September 11, 2007



# AB 294 (Adams) - Manganese Study

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- Requires ARB to conduct a study of ambient air concentrations of manganese.
- Through this study, ARB will discover if there are areas in the state with unhealthy concentrations.



# Clean Air Fine Particle Implementation Rule

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- *March 2007:* EPA released final rule setting out procedures states must use to control emissions of fine particles.
- Provides a road map for states to meet the air quality standards for fine particles ( $\leq 2.5$  microns in diameter).
  - 15 micrograms per cubic meter of air (averaged over 1 year)
  - 65 micrograms per cubic meter of air (averaged over 24 hrs)
- Fine particles include:
  - Carbon particles - from combustion activities, such as burning coal or running diesel engines
  - Sulfate and nitrate particles – resulting from sulfur dioxide and nitrogen oxide emissions.
- *Does not address the stricter fine particle standards adopted by EPA in 2006. Implementation of those standards is “years away.”*



# “Exceptional Event” Violations

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- *March 2007*: violations of air quality standards for major air pollutants due to “exceptional events” will be excused.
- Exceptional events are “unusual or naturally occurring events that can affect air quality but are not reasonably controllable.”
- Exceptional events include:
  - Natural events (*i.e.*, forest fires, natural disasters)
  - Human-induced events (*i.e.*, chemical spills)
- Whether an exceedance is caused by an exceptional event will be subject to full public disclosure and review.
- While some see this as a loophole for more air pollution, others argue that it will allow local air districts to focus their efforts on air pollution emissions that can be controlled.



# Strengthening State's SIP: San Joaquin Valley Ozone Plan

- Ozone SIP plan adopted April 30, 2007
- San Joaquin Valley air district elected to extend their deadline to meet the 8-hour standard to 2024.
- *June 27*: Staff proposed actions for mobile sources (September 27, 2007 hearing):

• Enhanced Heavy-Duty Truck Measure	• Mobile Agricultural Equipment
• SOON Program Opt-in for Construction Equipment	• Stationary Sources

<http://www.arb.ca.gov/planning/sip/2007sip/revcasip2007.pdf>



# Strengthening State's SIP: South Coast Air Quality Management Plan → Ozone & PM2.5

- Plan adopted June 1, 2007
- Actions identified to meet PM2.5 target by 2014
- *September 14, 2007*: Staff proposed actions:

• Enhanced Heavy-Duty Truck Measure	• Co-Benefits from Greenhouse Gas Reduction Measures	• SOON program Opt-in for Construction Equipment
• Residential Wood Burning and Commercial Cooking Rule	• Additional incentive funds for Port-Related & other sources	• Funding for Selective Catalytic Reduction on Metrolink Trains
• DMV Registration Fees Used for SIP-Creditable Projects	• Federal Funding to Mitigate Locomotive Emissions in 2014 Pending Implementation of Proposed New Locomotive Standards	• SIP Credit for Moyer Program Projects Already Funded

# New Emissions Standard for Industrial Diesel Equipment

- *July 26, 2007:* ARB adopted final rule requiring the replacement and/or retrofit of existing diesel equipment used in construction, mining, and other industry over a 15 yr period, beginning in 2010.
  - The rule is expected to reduce diesel emissions (state-wide) by 74% and cut NOx emissions 32% by 2020.
  - Applies to both public and private fleets (some rural counties and cities exempt)
- Phased-in effective dates:
  - 2010: large fleets (5,000HP (combined) or more)
  - 2013: medium size fleets (2,501-5,000 HP)
  - 2015: small fleets (up to 2,500HP)
- Local air districts can adopt stricter requirements!
- How to comply?
  - Replace equipment with newer, low-emitting equipment,
  - Rebuild engines, OR
  - Install diesel soot filters
- *To download a copy of the rule:*  
<http://www.arb.ca.gov/regact/2007/ordiesl07/ordiesl07.htm>.

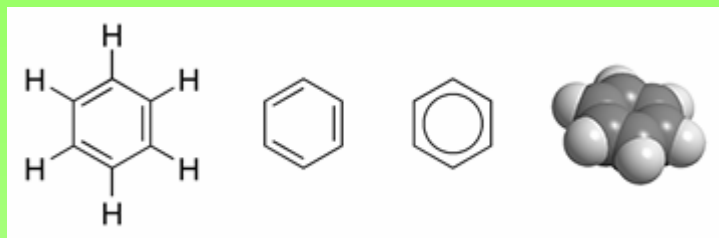


# AB 118 (Nunez) - Clean Fuels

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- California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007
- Creates a funding source for research, development, and deployment of clean fuels and innovative technologies to help meet the state's aggressive climate change initiatives.
- Creates 2 programs:
  - The Alternative Fund: administered by the CEC
  - Air Quality Improvement Program: administered by the ARB
- July 1, 2008: Fees increase
  - Vehicle registration fees: from \$31 to \$34
  - Smog abatement fees ↑ by \$8





# Benzene

- February 2007: EPA announced a final rule that will cut the average level of benzene in gasoline by 1/3 by 2011.
  - Benzene is a known carcinogen and most of the nation's benzene emissions come from autos and other mobile sources.
  - Requires refiners to meet an average benzene standard for gasoline of **0.62%**.
  - The rule includes a ***refinery benzene cap*** (1.3% maximum average annual cap) to avoid the accumulation of credits rather than a reduction in benzene levels.
- EPA is also acting to reduce other non-methane hydrocarbon (NMHC) emissions from vehicles by requiring manufacturers to achieve a sales-weighted average of:
  - 0.3 grams per mile for vehicles < 6,000 lbs (by 2013)
  - 0.5 grams per mile for vehicles > 6,000 lbs (by 2015)
- The rule also includes standards for evaporative air toxic emissions from vehicles equivalent to those in place in CA.
  - Rule will tighten existing federal standards by 20% to 50%, depending on vehicle size
  - No new requirements on most manufacturers



# New Low Sulfur Diesel Requirement For Non-Road Diesel

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- Applies to non-road diesel powered equipment including marine engines, locomotives, and agriculture and construction industries
- **Phase 1:** Low-sulfur diesel fuel must meet a 500 parts per million (ppm) sulfur maximum
- **Phase 2:** An eventual goal of reducing the sulfur level of fuel for these engines to meet an ultra-low standard (15 ppm) to enable new advanced emission-control technologies



# More ethanol in California fuel

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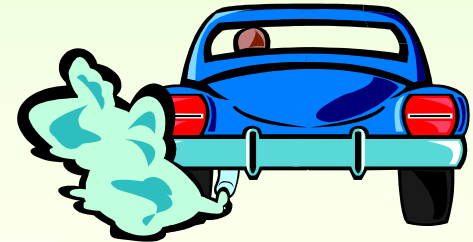
- Currently gasoline can contain 6% ethanol
- New maximum is 10%
- Estimated \$36/yr for gasoline
- CARB estimates new blends will generate more NO<sub>x</sub> and VOCs which are ozone precursors
- Increased ozone precursors must be offset by either adjusting fuel formulations or by reducing emissions from another source



# AB 1488 (Mendoza) - Smog Check

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- Existing state smog check program: diesel-powered vehicles are generally exempt.
- Exemption is now narrowed:
  - Biennial smog check program for diesel-powered vehicles manufactured after the 1997 model-year must have a gross vehicle weight rating of less than 8,501 pounds to be exempt



# In-Use Off-Road Diesel Vehicle Regulation



July 26, 2007: New regulation to reduce diesel PM and NOx emissions

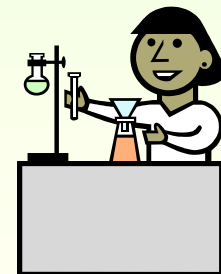
Applies to: Anyone that owns or operates diesel-powered off-road vehicles in California with engines with maximum power of > 25 horsepower.

- Exemptions for agricultural or personal use, or for use at ports or intermodal railyards
- Does not apply to stationary equipment or portable equipment such as generators
- Affected vehicles include: Backhoes, forklifts, loaders, airport ground equipment
- Requires: Application of exhaust retrofits that capture pollutants and acceleration of fleet turnover to newer, cleaner engines



# SB 719 (Machado) – SJVUAPCD Board

- Bill increases SJVUAPCD Board from 11 to 15 members.
- Adds urban representation, and expertise to the Board.
- Two of the members must be Governor-appointed, with expertise in the health effects of air pollution on vulnerable populations:
  - one is a practicing physician
  - other is a scientist



# Portable Equipment Regulation

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- Effective April 27, 2007
- Portable engines on alternative fuels exempt
- New provisions require operators:
  - Designate a home district
  - Establish new inspection requirements for local air districts
  - Require operators to pay new fees for the local inspection program



# Portable Equipment Program (PERP)

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- Registration of older engines now allowed (based on December 2006 emergency regulations)
- Final approval of regulations set for September 2007
  - Tier 0 engines: may be permitted by the local air district, at their discretion
  - Registrants of older engines must pay back registration fees
  - Placards are not required on military tactical support equipment
  - Rental equipment: No 1 hour meter requirement
  - May register older engines until January 1, 2010

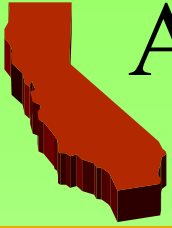


# Formaldehyde Standard in Wood Products

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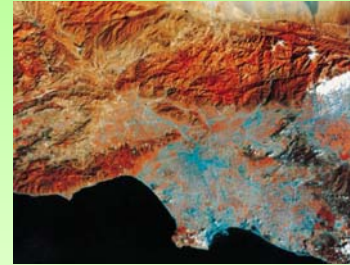
- CARB sets standards for furniture, cabinets, shelving, flooring and countertops
- Most formaldehyde found in glues to bond wood together
- Phase 1: Limit formaldehyde in wood products to bring in line with Japanese and European standards
- Phase 2: Integrate formaldehyde-free glue into products to become 'a world leader'

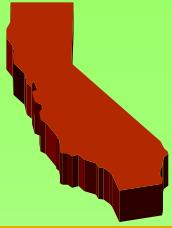




# ARB Adopts 2007 Strategy for the State Implementation Plan

- 2007 SIP shows how CA expects to attain clean air
  - South Coast & San Joaquin Valley have until 2023 to meet federal ozone std
    - Reduce South Coast NO<sub>x</sub> by **74 tons/day** by 2014
    - Reduce San Joaquin NO<sub>x</sub> by **26-31 tons/day** by 2017
- Combination of innovative and cost-effective measures:
  - Clean-up of In-Use Heavy Duty Trucks ~27 tons of NO<sub>x</sub>
  - Targeting Off-Road Sources ~ 12 tons of NO<sub>x</sub>
  - Residential Wood Burning Rules ~11 tons of NO<sub>x</sub>





# ARB Adopts 2007 Strategy for the State Implementation Plan (con't)

- Financial Incentives to help reduce NOx to 76 tons/day

Carl Moyer funds to be used for mobile source equipment	~3 tons/day
Fed/state funding for SCR controls and diesel PM filters on Metrolink trains	~3 tons/day
Incentive Funds for Port-Related sources	~3 tons/day
SIP Credit for Moyer Program Projects Already Funded	~3 tons/day
DMV registration fees to fund SIP-creditable projects	~4 tons/day
Fed funding to mitigate locomotive emissions	~10 tons/day

# California Energy Legislation



# AB 809 (Blakeslee) – Renewable Energy

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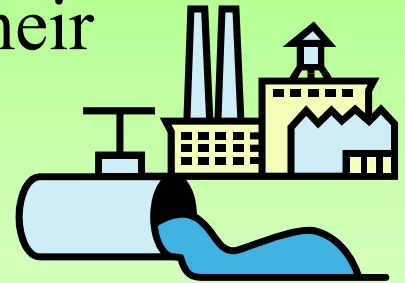
- Under existing law, hydroelectric facilities that generate less than 30 megawatts (MW) meet the definition of an “*eligible renewable energy resource*.”
- This bill **revises the definition** of an “eligible renewable energy resource” to include conduit hydroelectric facilities of 30 MW or less and **larger hydroelectric plants** that implement “*energy improvements*.”
- The revised definition allows incremental electricity increases in hydroelectric power generated from small and large facilities to qualify as an eligible renewable energy resource and, ultimately, count towards the Renewables Portfolio Standard (RPS).



# AB 946 (Krekorian) - Electricity

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- Existing law: allows public water and wastewater agencies to generate renewable energy at their facilities.
- However, these agencies were **limited geographically** in the sense that the energy had to be generated on or adjacent to the water or wastewater facility.
- This bill allows a public agency to generate renewable energy on any land it owns or controls.



# AB 1470 (Huffman) – Solar Hot Water

- In an effort to diversify the state's solar market, this bill creates the *Solar Water Heating and Efficiency Act of 2007*.
- Requires the California Public Utilities Commission (PUC) to fund the program (up to \$250 million in rebates over the next 10 years) and to provide incentives toward reaching a goal of installing **200,000 solar hot water systems** in California homes and businesses by **2017**.



# AB 1103 (Saldana) – Energy Consumption

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- *Effective January 1, 2009*: requires certain electric and gas utilities to **keep records** of the **energy use** of **nonresidential buildings** to which they provide service.
- Data must be maintained in a format that is compatible with the **Energy Star Portfolio Manager**
- Upon authorization from the building owner or operator, the data must be **uploaded** to the Energy Star system in a way that preserves confidentiality.
- Designed to provide a **benchmark** to assess a building's overall energy efficiency.



# AB 1109 (Huffman) – Hazardous Lighting



- The California Lighting Efficiency and Toxic Reductions Act is intended to phase out current inefficient incandescent lighting with more efficient bulbs.
- ***Effective January 1, 2010:*** prohibits the sale or manufacturing of certain general purpose lights that contain “hazardous substances” that would result in the prohibition of those general purpose lights being sold or offered for sale in the European Union pursuant to the RoHS Directive.
- **General purpose lights:** lamps, bulbs, tubes, or other electric devices that provide functional illumination for indoor residential, indoor commercial, and outdoor use.
- Also requires the CEC to adopt energy efficiency standards for these lights.



# AB 1613 (Blakeslee) – Waste Heat

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- Combined heat and power (CHP), or cogeneration, is a method to generate power and thermal energy from a single fuel source.
- These systems recover heat that would otherwise be wasted which can result in operational efficiency, decreased costs, and a reduction in GHG emissions.
- This bill establishes the Waste Heat and Carbon Emissions Reduction Act.
- Under the Act, the PUC may require an electrical corporation to purchase eligible excess CHP-generated electricity and provide a market for this type of electricity.



# Cellulosic Refineries

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- DoE will provide up to \$200MM in research funds over the next 5 yrs to support the development of small-scale ethanol and cellulosic biofuel refineries.
- Aimed to meet President Bush's goal of making cellulosic ethanol cost-competitive with gasoline by 2012 and reduce US consumption of gasoline by 20% in 10yrs.
- Ethanol produced from switchgrass and other plants
  - Contains more net energy
  - Results in less GHG emissions than corn-based ethanol
  - But requires a more complex and \$\$ refining process.





# Energy Biosciences Initiative

- *February 2007*: BP announced a 10-year, \$500 million research effort to develop biofuels and other alternative energy technologies.
- BP will partner with:
  - UC Berkeley
  - University of Illinois
  - Lawrence Berkeley National Laboratory
- Multi-disciplinary teams will explore total-system approaches to problems that include the sustainable production of cellulosic biofuels, enhanced biological carbon sequestration, bioprocessing of fossil fuels and biologically-enhanced petroleum recovery.
- Will serve as a model for large-scale academic-industry collaborations.



# Energy Efficiency Committee

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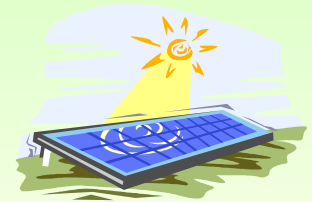
- *June 2007*: certain federal agencies must designate senior officials for a **steering committee** to implement E.O. 13423.
  - Members will include officials from EPA, Dept of Energy, Dept of Ag, and the Office of the Federal Environmental Executive.
  - The committee will meet twice per year
  - An **advisory group** must also be formed to assist and support this new steering committee.
- **E.O. 13423**: requires federal agencies to:
  - Reduce oil consumption and GHG emissions; and
  - Increase the use more alternative fuels and renewable sources of energy
- E.O. 13423 also directs federal agencies to use **EMSs** “*as the framework in which to manage and continually improve these sustainable practices.*”



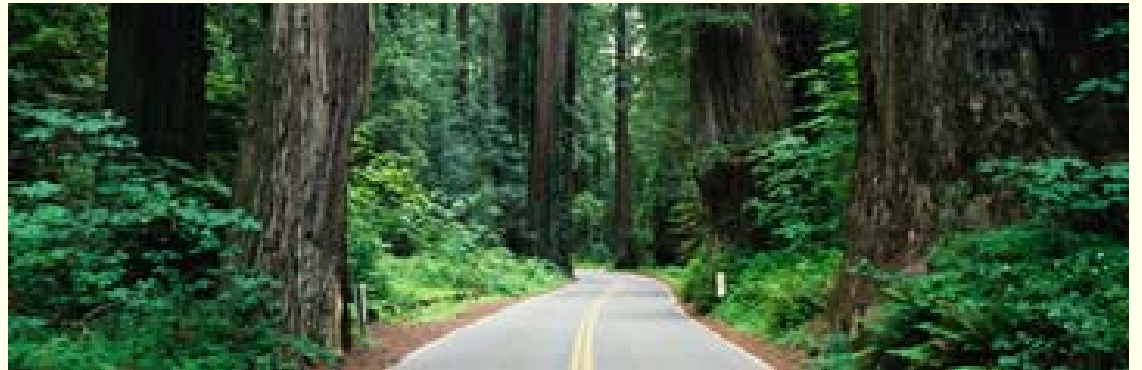
# DOE Launches Initiative to Increase Use of Renewables



- **Executive Order No. 13423:** directed agencies to cut oil consumption, increase reliance on alternative fuels, and reduce GHG emissions
- DOE to increase renewable fuel use to exceed the Executive Order
  - Install on-site renewable energy
  - Increased purchase of renewable electricity
  - Expand use of alternative-fuel cars in its fleet



# California Hazardous Waste Legislation



# AB 1359 (Parra) – Dielectric Mineral Oil

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- Existing law: dielectric oil must undergo a **two-part test** to prove that it meets purity and toxicity standards before it is transported from the point of generation.
- Due to the oil's low toxicity to aquatic species, this bill removes the *toxicity test* requirement so long as the generator provides a **certification statement**.



# SB 966 (Simitian) – Pharmaceutical Waste

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- Requires the IWMB to develop **pilot programs** for the **collection and safe disposal of pharmaceutical drug waste**.
- The model programs must be made available to eligible participants by December 1, 2008
- Must consider factors such as:
  - Safety
  - Oversight
  - Diversion prevention
  - Usability
- This law **sunset**s on January 1, 2013.



# AB 800 (Lieu) – Sewage and Waste Discharges

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- Requires any person, regardless of intent or negligence, who permits or causes the discharge of sewage or waste in or on any waters of the state to notify the local health officer (LHO) or director of environmental health (DEH) as soon as the person knows of the discharge.
- Requires the OES to immediately notify the appropriate LHO or DEH.
- Upon receiving notification of the discharge, the LHO or the DEH must determine whether public notification is necessary.



# AB 1371 (Ruskin) – HW Penalties

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- This bill authorizes the DTSC to pursue civil and administrative enforcement cases against violators who intentionally or negligently store or treat hazardous wastes at unauthorized facilities or locations they do not own or operate.



- Previously, in this situation, DTSC's only statutory option was to pursue a criminal enforcement action which generally requires a higher burden of proof.



# AB 422 (Hancock) – VOC Assessments

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- Requires exposure assessments for health or ecological risk prepared as part of a Superfund cleanup to include exposure estimates for VOCs.
- Specifies that cleanups conducted under the Porter-Cologne Act (and overseen by a regional water board or a local agency) must conform to cleanup standards used by DTSC under the state Superfund law.
- Unless site-specific circumstances require the need for further assessment, this bill only applies to cleanup orders entered into after January 1, 2008.



# California Hazardous Materials Legislation



# Green Chemistry Program

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- **May 2007** - State launched Green Chemistry Initiative
  - Goals: Develop safer alternatives to toxic chemicals
    - eliminate toxic chemical hazards before they reach consumer goods or hazardous waste dumps
- AB 289 (Chan) requires manufacturer or others introducing specific chemicals to provide testing methodology to evaluate their safety at the request of any Cal/EPA agency.
- SB 1379 (Perata) establishes statewide biomonitoring program to measure the type and amounts of chemicals in the bodies of Californians who volunteer for the program
- Representatives from several chemical industries vow to work with the state in any green chemistry efforts.



# Green Chemistry Program (continued)

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- DTSC is lead agency in policy development
  - Create a “baseline assessment” of existing programs & approaches → collaborative approach with industry
  - List of options developed by January 2008
  - July 1, 2008: Expected final policy
  - California aims to be the catalyst for a national green-chemistry program.
    - [www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/index.cfm](http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/index.cfm)



# Prop 65 Phthalate Listing

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- Effective April 20, 2007: DIDP listed
  - Five phthalates now listed as reproductive toxicants under Prop 65 and require warning labels
    - DIDP (2007)    • DEHP (2003)    • DBP (2005)
    - BBP (2005)    • DnHP (2005)
  - One listed as a carcinogen (DEHP, 1987)
  - Other members of the phthalate family will possibly be listed
    - DINP and DNOP are 1<sup>st</sup> on OEHHA's prior level for evaluation as reproductive toxicants



# AB 1108 (Ma) - Phthalates

- Phthalates are chemicals that soften PVC plastic and used in many children's toys and baby products.
- Nearly all humans carry some level of these chemicals in their body.
- ***January 1, 2009***: this bill prohibits the use of phthalates in certain toys and childcare products designed for **children under the age of three**.
- Requires manufacturers to use the **least toxic alternative** available when replacing phthalates in their products.



# TRI Reporting Changes

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- Recent Toxics Release Inventory amendments raise the threshold at which companies have to use a more detailed form for reporting chemical releases.
  - ↑ threshold from 500 lbs to 2,000 lbs for a chemical release
  - ↑ threshold from 500 lbs to 5,000 lbs for the management of chemical waste
  - Reduced the paperwork burden on small businesses
  - Affects reporting on < 1% of the total chemical releases reported to the TRI annually.
- The GAO announced that these changes will reduce the amount of information available to the public about toxic chemicals in communities.
- Detailed information from > 22,000 Form R reports may not longer be included in the TRI if all eligible facilities begin using the shorter Form A.



# AB 833 (Ruskin) - California TRI *CA Toxic Release Inventory Program of 2007*

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- Effective January 1, 2009, this bill requires facilities, as defined, to submit a detailed toxic chemical release form to the Department of Toxic Substances Control (DTSC) equivalent to the release form required under federal EPCRA regulations as of January 1, 2006, if the facility is not required to submit a toxic chemical release form containing the same information under current federal regulations.
- This bill is in direct response to USEPA's December 2006 raising of the threshold for detailed TRI reporting to 2,000 pounds of covered chemicals annually from the previous 500 pounds.
- Effect: requires reporting to DTSC by those businesses whose releases are b/t 500 and 2000 pounds.



# SB 774 (Ridley-Thomas) - Packaging

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- Glass bottles made outside the US and sold in California are often garnished with paint containing high levels of lead.
- *Result:* lead exposure to anyone who handles the glass bottles.
- Requires the paint or dried paint film decorating a glass bottle imported into the state to contain no more than 0.06% by weight of lead or lead compounds.



# AB 1717 (Committee on Agriculture) – Misbranded Pesticides

- This bill increases the statute of limitations (2 → *4 yrs*) for the DPR to prosecute and collect civil penalties for violations of misbranded or adulterated pesticides.
- It also requires pest control operators to *register* with the county agricultural commissioner before operating a structural pest control business.



# Underground Storage Tank Regulations



# AB 1437 (Aghazarian) - USTs

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- Revises several eligibility requirements for applicants of the UST Cleanup Trust Fund Act of 1989.
  - The Fund provides reimbursement for unexpected and catastrophic costs associated with the cleanup of leaks from petroleum USTs.
- Allows the SWRCB to pay claims to aid eligible owners and operators of petroleum USTs if the Board determines that the claimant was unaware of the existence of the UST on his or her property.
- To be considered, the claimant must have:
  1. Obtained a permit within 1 year from the date the claimant should have been aware of the existence of the UST; or
  2. Obtained a permit when an applicable agency began issuing UST permits, *whichever occurs later*.
- The bill is a response to a recent Court of Appeals decision giving UST tank owners greater access to the Fund. The final version of the bill limits the impact of this decision at the request of the State Board.



# UST Grant Guidelines

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- *April 2007*: EPA issued final grant guidelines for state UST programs to comply with new inspection and compliance reporting requirements.
- If a UST has not been inspected since December 22, 1998 it must have undergone an on-site inspection before August 8, 2007.
- Once these initial inspections are conducted, state programs must complete on-site inspections of all regulated tanks by ***August 8, 2010***; and then on a triennial basis thereafter.
- EPA may extend the 2010 deadline by 1 year.
- For a copy of the guidelines:  
[http://www.epa.gov/oust/fedlaws/epact\\_05.htm#Final](http://www.epa.gov/oust/fedlaws/epact_05.htm#Final).



# California Water Quality/Supply Legislation



# SB 1029 (Ducheny) – Drinking Water Standards

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- The Calderon-Sher Safe Drinking Water Act requires the DPH to adopt regulations relating to the primary and secondary drinking water standards for contaminants in drinking water.
- This bill expedites the process by requiring these regulations to become enforceable and take effect *no later than 90 days from the date of adoption.*



# SB 220 (Corbett) – Vended Water



- Bottled water:
  - Currently regulated by the federal FDA.
  - Considered a food product and, therefore, is not subject to federal drinking water requirements.
- SB 220 imposes ***additional, more stringent state requirements*** for bottled water products.
  1. Requires ***annual inspections*** to be performed by the DPH;
  2. Increases the annual water-vending ***machine license fee***;
  3. Requires bottled water ***labels*** to include the ***name and contact information*** for the bottler or brand owner and the source of the bottled water; and
  4. Requires water-bottling plants to prepare an ***annual bottled water report***. The report must be made available to customers upon request and it must be prepared in English and Spanish.



# AB 1130 (Laird) - ASTs

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- Transfers the responsibility for the inspection of above-ground petroleum storage tanks (AST) and fee collection from the State and Regional Water Boards to the local CUPAs.
- CUPAs must inspect each petroleum-containing AST with a storage capacity of 10,000 gallons or more once every three years.
- SWRCB and regional water boards are still authorized to oversee cleanup or abatement efforts.



# AB 258 (Krekorian) - Nurdles

- Preproduction plastic pellets, also called “nurdles”, are the basis for all plastic products.
  - Make their way to the state’s oceans and beaches through stormdrains.
  - Can be mistaken as food by marine life and seagulls.
- Requires the SWRCB and the regional water boards to develop and implement a *monitoring program* to control discharges of nurdles.
- SWRCB must establish a fee schedule to pay for the program.



# AB 1481 (De La Torre) – Landscape Irrigation

- Requires the SWRCB to adopt a *general permit* for *landscape irrigation uses of recycled water* such as
  - Golf courses;
  - Parks;
  - Playgrounds; and
  - Highway landscaped areas.
- Applicants may obtain coverage for a landscape irrigation use of recycled water by filing a **notice of intent** and submitting a **fee** that the SWRCB will establish.
- Designed to help the state meet its **annual goal** of using *1 million acre feet of recycled water by 2010.*



# AB 1560 (Huffman) – Building Standards

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- The CEC recently published a report estimating that 19% of California's *electricity use* is related to the *movement of water*.
- Intended to promote water conservation and water use efficiency in the construction arena, this bill requires the CEC to incorporate standards for water efficiency and conservation into existing building standards governing energy efficiency for new residential and new nonresidential buildings.



# AB 715 (Laird) – Low-Flush Toilets

- Through a phased-in approach, this bill requires all toilets and urinals sold in California to be *low-flush by 2014*.
- All water closets installed or sold in California must not use more than 1.6 gallons per flush and all urinals, except blow-out urinals, must use not more than 1 gallon per flush by **2014**.
- Manufacturers selling urinals or toilets in California must adhere to the following low-flush schedule:
  - **50% by 2010**
  - **67% by 2011**
  - **75% by 2012**
  - **85% by 2013, and**
  - **100% by 2014.**
- From 2010 to 2013, manufacturers must notify CEC of the percentage of models that meet this high-efficiency standard.



# AB 1406 (Huffman) - Condos

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- This bill adds *condominiums* to the list of "structures" where the use of potable water for toilet and urinal flushing is "*unreasonable*" if recycled water is available.



# AB 566 (Plescia) – Water Conservation

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- The California Irrigation Management Information System (CIMIS) was developed by the DWR and the University of California at Davis in 1982 to assist the state's farmers and irrigators to manage their water resources in an efficient manner.
- CIMIS helps estimate crop water use for purposes of irrigation scheduling.
- To enhance CIMIS, this bill requires DWR to develop a state-wide uniform evapotranspiration protocol.



# Case-by-Case Wetland Decisions

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- *June 2007*: EPA and Corps issued a joint memorandum that interprets the *Rapanos* decision.
- EPA and Corps will analyze wetlands and streams that occasionally flow or are indirectly connected to traditional navigable waters on a case-by-case basis to determine CWA jurisdiction.
- Goal: for agencies to make clear, consistent, and predictable jurisdictional determinations.
- For a copy of the guidance:  
<http://www.epa.gov/owow/wetlands/pdf/RapanosGuidance6507.pdf>.



# California Flood Legislation



# AB 70 (Jones) – Flood Liability

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- Effective *January 1, 2008*, this bill provides that a city or county may be liable for property damage caused by a flood.
- Requires the city or county to pay its “*fair and reasonable share*” of the damage caused if the city or county has increased the state’s exposure to liability by unreasonably approving new development in a previously undeveloped area that is protected by a state flood control project.
  - The bill does not release the state from liability.



# AB 5 (Wolk) – Comprehensive Flood Management

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- This bill is a compilation of provisions from three other flood bills
  - SB 5 (Machado)
  - SB 17 (Florez)
  - AB 156 (Laird).
- AB 5 is designed to coordinate all of the flood bills so that the bills do not inadvertently cancel provisions of one another.



# SB 5 (Machado) – Flood Management

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- Clarifies the flood management roles and responsibilities of the local flood agencies, cities and counties, and developers and other property owners.
- Requires cities and counties within the Sacramento-San Joaquin Valley to amend their general plans to include flood plan data, policies, and implementation measures.
- Requires the DWR and the Central Valley Flood Protection Board to prepare and adopt a Central Valley Flood Protection Plan by 2012.



# SB 17 (Florez) – Reclamation Board

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- This bill changes the name of the State Reclamation Board to the Central Valley Flood Protection Board. The Board will act independently of the DWR and its membership will increase from seven to nine.
  - Two of the members will be chosen by the Legislature
  - The others will be appointed by the Governor
- The bill establishes (1) four-year term limits, (2) conflict-of-interest requirements, and (3) expertise qualifications.
- Requires the board to develop a strategic flood protection plan and review local land-use plans.



# AB 156 (Laird) – Flood Control

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- Signed as part of the flood bill package, this bill authorizes the DWR to provide meals and other necessary support to those engaged in emergency flood fighting.
- Also requires DWR to prepare a schedule for mapping certain flood-prone areas and to provide written notice to each landowner whose property is within a levee flood protection zone.

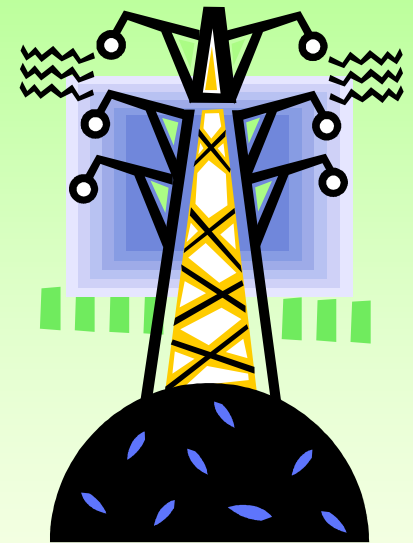


# California Hazardous Substances/ Cleanup Legislation



# Electrical Transformers

- Federal court (E.D. Mo.) held that 2 power companies that sold used electrical transformers are not liable under CERCLA as “arrangers” for the disposal of hazardous substances.
- Transformers are considered a “*useful product*” and a thriving market existed at the time of sale.
- Under the useful product defense, one cannot be liable when the party sells a useful product to another party who incorporates it into another product.
- Even though they had to be repaired, they are still useful.



# *US vs. Atlantic Research Corp.*

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- US Supreme Court ruled that a company that voluntarily cleaned up a Superfund site could sue other companies responsible for the pollution to help pay for the cleanup.
  - Decision restores law to pre-2004
    - However, a party may be still the subject of suit following a government settlement.
  - There may be more clarification coming



# CEQA Legislation



# SB 97 (Dutton) – CEQA and AB 32

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- Requires the OPR to prepare, develop, and eventually update CEQA guidelines that address the feasible mitigation of GHG emissions, including the effects associated with transportation or energy consumption.
- These guidelines must be certified and adopted by the Resources Agency by *January 1, 2010*.
- EIRs or negative declarations that do not adequately analyze effects of GHG emissions for *highway and flood protection projects* do not create a cause of action under CEQA.

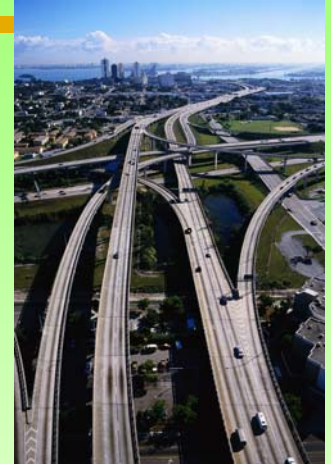


# California Land Use Legislation



# AB 162 (Wolk) – General Plans

- Existing law: Cities and counties are required to adopt a general plan that must include **seven mandatory elements** including housing and land use.
- This bill requires the **land use element** to incorporate *flood management considerations*.
  - Must eventually update the **conservation element** to identify rivers, creeks, streams, flood corridors, riparian habitat and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management.
  - Must eventually update the **safety element** to identify information regarding flood hazards and establish goals and policies to protect communities from unreasonable risks of flooding.



# Conservation Banking

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- *April 2007*: federal and state regulators signed an agreement to improve programs that preserve endangered species habitat through the trading of conservation credits.
- *November 2007*: FWS seeks public comment on a similar habitat protection credit trading system.
- The system would give federal agencies flexibility to offset the impact of their actions on threatened and endangered species found on federal lands by undertaking conservation actions on non-federal lands.
- The affected species receive a net conservation benefit.
- Market-based approach gives landowners an incentive to preserve and enhance the habitat too.



# Supreme Court Reconciles ESA-CWA Conflict *5:4 decision*

Question presented: whether EPA is required to consider whether a construction project would jeopardize an endangered species before transferring permitting authority to a state

- Section 402(b) of the CWA requires EPA to delegate NPDES permitting authority to a state to meet 9 criteria
- However: Section 7(a)(2) of the ESA requires “consultation” in connection with any action by a federal agency

Ruling: EPA does not need to consult prior to transferring permitting authority

- Justice Stevens’ dissent: Court ignored Congress’s conscious decision to give endangered species priority over the primary missions of federal agencies in *TVA v. Hill*



# Sustainability



# 500 Companies in EPA's Environmental Performance Track Program

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- Program Goal: To achieve environmental results by offering incentives to companies who voluntarily exceed minimum federal requirements
  - Incentives include:
    - Expedited permitting
    - Enhanced flexibility in apply environmental rules
    - Reduced inspection of facilities
  - Qualifying companies sign up for a 3-year term



# Questions?

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