

California and Federal Environmental
Legislative and Regulatory Update 2007/2008



Port of Oakland
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BEYOND COMPLIANCE
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2008/2009 Environmental Legislative Topics

- Air Quality and Climate Change
- Energy
- Hazardous Waste/Hazardous Materials
- Water Quality and Water Supply
- Hazardous Substances Clean up/Brownfields
- Land Use
- Solid Waste
- Sustainability
- Keeping Track and Staying Focused



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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.
- Not a lobbyist!



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Accessing Legislative Text

- www.leginfo.ca.gov



The Bill Number is “Year-specific”

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



California Air Quality and Global Climate Change



Retreating Glaciers



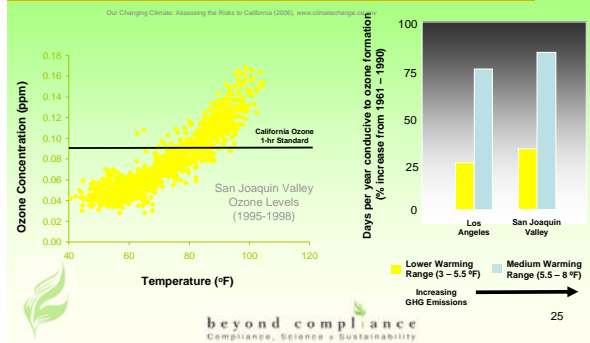


Endangered Species Act Modified to Prevent Climate Change Regulation

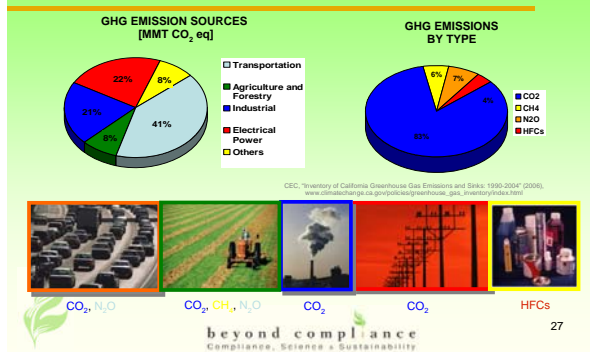
- In November 2008, the Department of Interior (DOI) announced a rule that has largely freed federal agencies from consulting independent wildlife biologists before large construction projects
- According to the DOI, the rule is meant to prevent the ESA from being used as a “back door” means of regulating climate change



Increased Risk of Poor Air Quality



California Greenhouse Gas Emissions



Notable California Green Innovative Index Findings

- The amount of GHGs produced for every California has dropped since 1990.
 - Could reflect changing nature of economy – i.e. relying less on manufacturing
- CA emits less GHG per person than any other state except Rhode Island
- CA's economy produces fewer GHG emissions for every dollar of GDP than Germany, Japan or the UK
- About 22,000 Californians were directly employed by green-tech companies in 2006.
- Although California's overall demand for petroleum has increased since 1970, the amount consumed per person has fallen.

Mandatory Greenhouse Gas Emission Reporting

- Approx. 800 facilities will have to report by 2009
 - Any facility emitting > 25,000 tons of CO₂ 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 CO₂
 - Electric generating facilities > 1 megawatt
 - Cogeneration facilities >1 megawatt



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AB 32 Plan Formally Adopted by the ARB Cont'd

- ARB and the governor expects the plan to boost the CA economy
- Critics of the plan say that AB 32 will cost the economy money at a time of financial crisis
- May lead to more fuel efficient cars, better public transport, new housing near schools and businesses, and utility rebates



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Landmark SEC Petition to Require Full Corporate Climate Risk Disclosure

- *September 18, 2007*: State Treasurer Bill Lockyer, investors, state officials, and environmental groups petitioned the SEC
 - Asked SEC to clarify that, under existing law, companies must disclose material information related to climate change
 - Climate change can materially affect corporate performance:
 - physical damage to facilities
 - increased costs of GHG regulatory compliance
 - Legal proceedings relating to climate change
 - opportunities in global markets for climate-friendly products
 - or services that emit little or no global warming pollution



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Three US Banks Develop Guidelines For Funding Power Plants

- Citigroup, JPMorgan-Chase, and Morgan Stanley established The Carbon Principles.
 - Includes an agreement called Enhanced Diligence, which banks agree to ask companies looking for power plant funding a specified set of questions aimed at determining companies commitment to new, cleaner power technologies and what other sources of energy are available in the area of the proposed plant in order to calculate the environmental and financial risk of funding the plant.
- Energy companies and environmental groups, including Environmental Defense, advised the banks on the formation of the principles.
- Principles followed a scolding to the banks letter by Environmental Defense, Ceres, and other groups for the banks financing of 11 coal-fired power plants.

<http://www.citibank.com/citigroup/press/2008/data/080204a.htm>





Shareholder Activism for Climate Change Action Increasing

- Support for shareholder resolutions aimed at forcing U.S. companies to address climate change grew significantly in 2008.
 - To offer a resolution, a shareholder needs to have owned \$2,000 of stock or 1% of the voting shares for at least a year
- Many of the resolutions were withdrawn after the company took action.
 - Difficult to determine whether company's action was linked to the resolution
- Resolutions spanned a range of actions, including
 - Requests for corporate reports on GHG emissions and plans to reduce them
 - Requests for reports assessing the impact of climate change on company operations
 - Disclosures of readiness for upcoming climate change legislation etc.



Early Action Measures

- **ARB regulatory requirements**
 - “Discrete early action measures” (can adopt by 1/1/10, begin implementation before 2012)
 - Low Carbon Fuel Standard
 - Landfill Methane Capture
 - Reductions from Mobile AC
 - Semiconductor Reduction
 - SF6 Reductions
 - High GWP Consumer Products
 - Heavy-Duty Measure
 - Tire Pressure Program
 - Shore Power



Early Action Measures

- **ARB regulatory requirements**
 - “early action measures” (can adopt and begin implementation before 2012) – 35 additional measures
 - ARB projects that discrete/early action measures will reduce emissions by at least 42 MMTCO₂e



Early Action Measures

- ARB assumes **other existing ARB regulations** will reduce emissions by at least 30 MMTCO₂e (includes AB 1493 auto standards)
- Other agencies’ regulatory requirements:
 - ARB assumes these will achieve at least 68 MMTCO₂e, including:
 - Energy efficiency in buildings, solar hot water, increase combined heat and power (26.4)
 - Renewables portfolio standard – 33% by 2020 (21.2)



Early Action Measures

- Total savings projected from all ARB and non-ARB measures leaves about 35 MMTCO₂e to be achieved from “other” measures, including “market-based compliance mechanism”
[note: same document attributes 400 MMTCO₂e to these sources, which suggests 9% reductions through cap-and-trade]



California Sets World's First Low Carbon Standard for Fuel

- **Governor Schwarzenegger signed Executive Order S-01-07 establishing Low Carbon Fuel Standard (LCFS) for fuel sold in California**
 - Must reduce carbon intensity of passenger vehicle fuels at least 10% by 2020
 - Supports AB 32 emission targets
 - Equivalent to ~ 13 metric tons of GHG emissions
- **April 2007:** California and the **UK** are interested in partnering to develop a low-carbon standard for transportation fuels.
 - **Goal:** to develop a single GHG emissions calculation methodology that can be used by all fuel suppliers all over the world.



Bay Area Businesses Must Pay Fee for Emissions

- BAAQMD levies fee = 4.4 ¢ per ton of carbon dioxide emitted.
- First time in the country that any government body will charge industries directly for emissions that contribute to climate change.
- The 850 facilities that are affected range from large petroleum refineries and cement plants to small gasoline stations and industrial bakeries.
 - Shell oil refinery in Martinez would have to pay almost \$200,000 based on 2005 emissions of 4.4 million metric tons. The largest gas station might be charged \$1/year.



SB 375 (Steinberg) – Transportation, Land Use Planning & CEQA

- **Objective:** Align planning for housing, land use, transportation, & GHG emissions for the 17 MPOs
- Assigning each MPO a GHG emission reduction target
- Requires each region to adopt regional growth strategies to achieve targets
- MPOs will assign housing needs to cities/counties under housing element that is consistent with the growth strategy to ensure regional transportation spending plans are consistent with strategy
- Growth strategy to be implemented by rezoning to accommodate housing needs
- Facilitates infill development by granting CEQA relief to housing developments consistent with growth strategy



SB 375 (Steinberg) – Transportation, Land Use Planning & CEQA (cont.)

- ARB must provide each region (with Metropolitan planning organization) with GHG emission reduction targets (by 9/30/10) for autos (2020) & light trucks (2035)
- Development of regional transportation plan (RTP) to include a Sustainable Communities Strategy to achieve GHG emission reductions:
 - Seeking balanced regional transportation system including:
 - Mass transportation,
 - High way
 - Railroad,
 - Maritime,
 - Bicycle
 - Pedestrian
 - Goods movement
 - Aviation facilities & services
- CA Transportation Commission (CTC) must maintain guidelines for travel demand models that forecast potential outcomes of transportation & land use policy options and account for:
 - Relationship between land use density & household vehicle ownership & VMT
 - Impact of enhanced transit service levels on household vehicles ownership & VMT
 - Changes in travel & land development likely to result from highway or passenger rail expansion
 - Mode splitting that allocates trips between auto, transit, carpool, & bicycle & pedestrian trips



SB 375 (Steinberg) – Transportation, Land Use Planning & CEQA (cont.)

- Local government must revise housing elements every 8 years (instead of every 5) in conjunction with regional transportation plan and rezone to accommodate regional housing needs assessment
- Relaxes CEQA requirement for housing developments that are consistent with a Sustainable Communities Strategy and Alternative Planning Strategy
 - A “Transit Priority Project” may be reviewed via a “Sustainable Communities Environmental Assessment” if:
 - It incorporated all feasible mitigation measures & performance standards required by prior EIRS



Final Plan for Western Climate Initiative Cap and Trade Program ISSUED

- A group of seven Western states and four Canadian provinces released a plan for a comprehensive, multi-sector carbon emissions cap and trade program
- The program recommended design principles for a regional market that would help reduce emissions to 15% below 2005 levels by 2020
 - First trading program to cap emissions from all major sources of GHG gases.
- The scope of the program was applauded by environmentalists



Western Climate Initiative

- Collaboration launched in February 2007 to address climate change. Partners include: Arizona, British Columbia, California, Manitoba, Montana, New Mexico, Oregon, Utah, and Washington. Other US and Mexican states and Canadian provinces have joined as observers.
- Partners set an overall regional goal for reducing greenhouse gas emissions of an aggregate reduction of 15% below 2005 levels by 2020.
- Reporting requirements: Each partner will update the other WCI partners on their climate action plan and GHG emissions inventories every two years to ensure that actions are underway at levels consistent with full achievement of the 2020 goal.
- By August 2008 the Partners will also complete the design of a market-based mechanism (likely cap and trade) to help achieve that reduction goal



<http://www.westernclimateinitiative.org/>

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Energy Independence and Security Act of 2007

- *One Key Provision included in the EISA of 2007 is Corporate Average Fuel Economy (CAFE)*

- The law sets a target of 35 miles per gallon for the combined fleet of cars and light trucks by model year 2020. This includes sport utility vehicles (SUVs), vans, and pickup trucks.
- Interim standards will be set, beginning model year 2011.
- Manufacturers will be required to come within 92% of the standard for a given model year.
- Manufacturers can earn credits for exceeding the standards in one vehicle class that can be applied to boost, within limitations, the CAFE of a different vehicle class that is falling short of compliance.
- Credits may be sold and bought between manufacturers.
- The law requires the development of standards for "work trucks" and commercial medium- and heavy-duty on-highway vehicles.
- Federal agencies are prohibited from acquiring any light-duty motor vehicle or medium-duty passenger vehicle that is not "a low greenhouse gas emitting vehicle."



- The President signed the bill into law on December 19, 2007.



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Massachusetts v EPA Update

- Attorney General of CA has joined the attorney general of seventeen other states and eleven nat'l envtl groups in a court action to force U.S. EPA to issue a formal decision that GHG gases should be regulated under the CAA
 - Evidence indicates that EPA has decided that GHG emissions do cause global warming but it has not formally issued a formal "endangerment determination"
 - EPA initially agreed to make the determination by late 2007.
- EPA argues for more time because:
 - The new energy act establishes new fuel economy standards for vehicles
 - The agency has decided to take an overall approach to regulation GHG emissions



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Federal Climate Bill May Take Some Time

- The Chairman of the Senate Energy Committee predicted that Congress will not act until 2010 on a comprehensive climate bill
 - This prediction is despite Obama’s declaration to move swiftly on climate change
 - The economic crisis, the transition to a new administration, and the complexity of a proposed carbon market will prevent action in 2009
- Obama could regulate GHG emissions w/out Congress
 - Can give California permission to regulate GHGs from motor vehicles or could order regulations be issued under the CAA



Business Group Says CO2 regulation under CAA would Affect 1.2 Million Sources

- The U.S. Chamber of Commerce reported that regulation of CO2 would increase the number of stationary sources regulated under the CAA to 1.2 million.
 - The report highlighted that only 150,000 are currently regulated
- The report found that companies would lack the infrastructure to comply
- The report came while EPA asked for comment on how it could regulate GHG gases under the CAA
 - The Supreme Court found that it had the authority to do so
- Critics, such as President of Clean Air Watch argued that the Chamber was trying to “whip up hysteria” with its report





Report: Rise in Emissions, Slight decrease in GHG intensity

- The latest annual Energy Information Admin. report indicated that:
 - Total GHG emissions from energy and industry increased by 1.4% from 2006
 - GHG intensity decreased by .6% from 2006
 - GHG intensity is a measure of how much GHG is used per million dollars of domestic product
 - GHG intensity has decreased an average of 2.1% per year since 2002.
 - Bush had set a goal of reducing GHG intensity 18% by 2012





Federal Courts Can Use CAA to Order Power Plant Mitigation

- A Federal Court of Appeal found that the CAA new source review provisions gives courts the power to order companies to:
 - Get into compliance and
 - Pay for mitigation projects
- No other court has ruled on whether retroactive relief is available
- The federal govt has filed numerous CAA lawsuits seeking such relief over the last 10 yrs
- The court relied heavily on a Supreme Court ruling from the 1940's in deciding whether the courts had power



EPA Rule Excluded Some Industries from Mandate to Count Fugitive Emissions

- The fugitive emissions are counted when industries must install new pollution controls under the new source review provisions of the CAA
 - Fugitive emissions are emissions that could not reasonably pass through a stack, chimney, vent or other opening.
 - Examples include windblown dust from surface mines and volatile organic compounds from leaking pipes are refineries
 - An EPA rule excluded some industries from having to count these emissions
- The head of NRDC predicted that the rule would be challenged in court or overturned by the Obama administration



Ozone Standards Tightened – But Not as Stringent as Recommended

- March 12, 2008: New standard is 0.075 ppm, replacing the old standard of 0.08 ppm
- Clean Air Scientific Advisory Committee recommended a level between 0.060 and 0.070 ppm
- EPA proposed a standard between 0.070 and 0.075 ppm in July 2007.
- In 2004, 474 counties were out of attainment with the 0.08 ppm standard. New standard could throw more counties into non-attainment.
- New standard will not be enforced for years.
 - Under the CAA, states will be required to submit recommendations for nonattainment areas by June 2009.
 - EPA will make nonattainment designations in June 2010.
 - State must have approved state implementation plans in 2013
 - Areas will be required to meet new standard between 2013 and 2020.



Plan to redesignate San Joaquin Valley Air Basin to Attainment “Approved”

- US E.P.A. redesignated San Joaquin Valley (SJV) Air Basin to attainment for national ambient air quality standards for PM-10
 - PM-10 are particularly fine particles that generally pass through the throat and nose to enter the lungs
- The SJV has been divided into 2 areas
 - 1) The SJV Air Basin PM-10 area
 - 2) The East Kern PM-10 area
 - East Kern will remain designated as non-attainment



San Joaquin Air District “Indirect Source” Fee Found Legal

- Fresno County Superior Court ruled that SJV Air District’s “indirect source” rule was legally adopted.
- Rule applies to new residential projects with 50 units or more and new commercial projects meeting various size thresholds.
 - Must pay mitigation fee based on the extra traffic generated by the development as calculated by a model used by the District.
 - Proceeds from fund used to fund projects that reduce emissions elsewhere within District.
 - Fees can be reduced if elements incorporated into design that reduce vehicle trips to and from project or reduce total project emissions in some other manner.
- Other local air districts are rumored to be considering similar indirect source rules



AB 3034 (Galgiani) High-Speed Passenger Train Bond Act for the 21st Century

- Legislative initiative to be voted on as Proposition 1A on November 4, 2008.
- Would:
 - Provide \$9.95 BB for new high-speed railroad between San Francisco and Los Angeles (Phase 1)
 - 800 mile route for maximum nonstop service
 - 2 hours, 40 minutes
 - Fund rail expansion to other locations if money becomes available
 - Provide \$950 MM:
 - For connections to high-speed railroad:
 - Intercity, commuter rail lines & urban rail systems
 - Repairing, modernizing and improving passenger rail service
 - Total funding provided is \$9 billion from general obligation bonds.
- The CA High-Speed Rail Authority must pursue other private and public funds:
 - including federal funds, funds from revenue bonds, and local funds.





Landmark Rules to Clean up Big Rigs Passed by the ARB

- On December 12, 2008 the ARB formally accepted critical regulations requiring the update and replacement of diesel and other heavy duty vehicles
 - Will affect over 400,000 vehicles
- Makes changes to quiet criticism
 - Requires trucks to install diesel particulate traps beginning January 1, 2011 with virtually all vehicles equipped by 2014
 - A one time engine upgrade to the equivalent of a 2010 model year beginning in 2012 with all upgrades completed by 2022
- One billion dollars in loan and grant programs will be available to help truckers and business owners comply



ARB Anti-Idling Regulation

- **Effective January 1, 2008: Idling for more than five (5) minutes is prohibited within California's borders.**
- Applies to all diesel-fueled commercial vehicles that operate within the state with a gross vehicular weight rating of greater than 10,000 pounds
- Fines start at \$300 and can be as much as \$1000 per day. Violators may also face criminal charges
- Some exceptions: stuck in traffic, when necessary for inspecting/servicing, cannot move due to weather or mechanical failure, queuing beyond 100 feet from residential area, operating a power take-off device.
- See: www.arb.ca.gov/noidle



California Energy Legislation



AB 2404 (Salas)
Water Conservation Projects Report Required by PUC

- PUC must recommend whether electric and gas utilities could achieve cost-effective energy efficiency improvements via water conservation projects, based on the outcome of pilot programs previously approved by PUC.
 - Report due to Legislature due by 3-31-10
- A December 2007 order required pilot water conservation programs within the energy utilities' energy efficiency programs.
 - PUC directed the utilities to contribute \$6.4 million from their unspent energy efficiency fund to implement the pilot projects
 - The one-year pilot projects commenced July 1, 2008.
- In a 2005 report titled "*California's Water-Energy Relationship*," State Energy Resources Conservation and Development Commission concluded that water-related energy use consumes:
 - 19% of the state's electricity
 - 30% of the state's natural gas
 - 88 billion gallons of diesel fuel each year.



AB 2791 (Blakeslee)
Waste Heat and Carbon Emissions Reduction Act

- Expands eligibility under pay-as-you-save program of Waste Heat and Carbon Emissions Reduction Act (WHCERA) to include *federal, state or local agencies* (in addition to nonprofits)
- WHCERA obligates IOU utilities to purchase power generated from combined heat and power systems (with a generating capacity of up to 20 MW) that meets specified emissions and efficiency standards.
- Pilot program allows eligible combined heat and power system customers to finance up-front costs to purchase and install combined heat and power systems



California Hazardous
Waste Legislation



AB 2347 (Ruskin) Mercury Thermostat Collection Act of 2008

- Requires thermostat manufacturers to establish a mercury-added thermostat collection and recycling program.
 - Manufacturer defined as business concern that owns or owned a name brand of mercury-added thermostats sold in this state before 1-1-06.
 - Manufacturers must:
 - On and after 7-1-09 provide:
 - collection bins to wholesalers (at a cost not to exceed \$25).
 - government agencies with collection bin that requests one for use at household HW collection facilities or household HW events.
 - Manufacturers must arrange for pickup of the collection bins or pay for cost of shipping collection bins.
 - From 7-1-09 to 12-31-11, undertake education and outreach efforts including:
 - public service announcements,
 - website,
 - strategies to work with California utilities (may include inserts in utility bills),
 - contacting wholesalers encouraging their support,
 - working with HVAC contractors to encourage and facilitate recycling.
 - Provide incentives and education to contractors
 - Encourage purchase of programmable thermostats that comply with California Building Standards Code and that qualify for Energy Star program.
 - On or before 4-1-10, and annually thereafter, submit report to DTSC providing data on collection, effectiveness of program, costs, outreach strategies, etc.



AB 2347 (Ruskin) Mercury Thermostat Collection Act of 2008 (cont)

- Manufacturers may establish collection and recycling center individually or collectively with other manufacturers.
- Manufacturers, or groups of manufacturers may contract with a retailer for in-store or out-of-store collection.
- DTSC will adopt regulations regarding Program implementation, including performance requirements.
- HVAC contractors must handle any removed mercury-added thermostats in accordance with this law.
- Person who demolishes a building must remove mercury-added thermostats from the building and take to collection center
- Prohibits the sale or offer for sale of a thermostat produced by a manufacturer not in compliance with this act. Prohibition will take effect 120 days after manufacturer is listed on DTSC site, which will be required to be updated twice yearly and will begin listing on July 1, 2009.



RCRA Creates “Continuing Obligation of Compliance”

- January 4, 2008: U.S. District Court for the Eastern District of Tennessee held that UST-related violations can be pursued for actions that occurred more than five years ago under RCRA in spite of five-year statute of limitation because of a “continuing obligation of compliance.”
- Court found that because of the ongoing compliance requirements of RCRA, a property owner’s failure to report existence of USTs and failure to monitor releases from those tanks constituted a series of separate, discreet violations until tanks properly closed.
- Court’s finding keep in line with the overarching goal of RCRA to protect human health and the environment and prevents rewarding attempts at concealing violations.



California Hazardous Materials Legislation



AB 38 (Nava) California Emergency Management Agency Created

- Concerns that current structure is inefficient in protecting against disasters:
 - Spending federal grant funding has been slow
 - Local agencies often unclear which agency to work with
- Merges Office of Emergency Services (OES) and the Office of Homeland Security (OHS) to create the California Emergency Management Agency (CEMA) which is:
 - responsible for overseeing and coordinating emergency preparedness, response, recovery, and homeland security activities.
 - vested with the duties, powers, purposes, responsibilities, and jurisdiction vested with the OHS and OES.
 - under the supervision of the Secretary of the Department of Emergency Services and Homeland Security, appointed by the governor.



AB 1879 (Feuer) Consumer Product Chemicals of Concern

- DTSC must adopt regulations to establish a process, by 1-1-11:
 - to identify which chemicals or chemical ingredients in products may be identified and prioritized for consideration as chemicals of concern (COC) considering:
 - Volume of the chemical in commerce in the state
 - Potential for exposure in consumer products
 - Potential effects on sensitive subpopulations
 - by which COCs in products, and their potential alternatives, are evaluated to determine how best to limit exposure or to reduce the level of hazards posed.
- When developing regulations DTSC must:
 - Develop criteria to evaluate chemicals and alternatives
 - Prepare multimedia life cycle evaluation (consumer product oriented)
 - Use available information from other nations and governments
- DTSC must establish a Green Ribbon Science Panel to advise DTSC and CA Environmental Policy Council
 - 15 scientific disciplines must be represented on the panel
- Establishes procedure to protect trade secrets.



SB 509 (Simitian) Toxics Information Clearinghouse

- DTSC must establish a Toxics Information Clearinghouse
 - Decentralized, web-based system to collect, maintain and distribute specific chemical hazard traits and environmental and toxicological end-point data.
 - On or before 1-1-11, OEHHA must evaluate and specify hazard traits and environmental and toxicological end-point for the clearinghouse.
- Defines terms for the Green Chemistry Program including “consumer products:”
 - “product or part of the product that is used, brought, or leased for use by a person for any purposes.”
 - Consumer products definition does not include dental restorative materials, certain dangerous drugs and medical devices, food, related packaging and pesticides, and mercury-containing lights.
 - Mercury-containing lights exempted from definition until 12-31-11.



Underground Storage Tank Regulations



SB 1161 (Lowenthal) UST Cleanup Fund Revisions

- This bill extends the authorization of the Underground Storage Tank Cleanup Fund from January 1, 2011 to January 1, 2016.
- Reinstates Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund and transfers \$10 million for each of three fiscal years starting 2008-2008 f/y for the purpose of remediating harm caused by petroleum contamination of a brownfield site.
- Revises definition of UST to include components directly or indirectly connected to the tank itself: i.e. :
 - spill containment structures
 - portions of vent lines,
 - vapor recovery lines, and
 - fill pipes beneath the surface of the ground.
- Authorizes SWRCB to expend moneys from the fund, under appropriation, for:
 - Payment of claims for the costs of corrective action
 - Corrective actions undertaken by the board, a regional board or local agency
 - Cleanup and oversight of unauthorized releases at abandoned tank sites.
 - The board is required to waive the permitting requirement for a claim filed on or after 1-1-08, under certain circumstances



Biodiesel Storage in Underground Storage Tanks

- Advisory issued by State Water Board concludes the following:
 - Regulatory agencies should assume that even 100% biodiesel is a hazardous substance and therefore should be regulated unless particular batch has been analyzed.
 - There is no de minimis exemption from UST regulations for storing 100% biodiesel.
 - Switching from petroleum diesel to a biodiesel blend is considered a *change of a stored substance* for purposes of informing local regulatory agencies of change in original information supplied.
 - Owners or operators of a UST must demonstrate material compatibility prior to storing biodiesel or biodiesel blends.



California Water Quality/Supply Legislation



Storm Water Permits

- SWRCB concluded that BMPs alone were insufficient to regulate storm water
- In response, SWRCB issued a revised draft of a new general permit for storm water discharges from construction sites
 - Once finalized, it will replace the Board's existing permit issued in 2004
- New permit requires BMPs and sets numerical effluent limits to storm water discharges and sets site specific numeric action levels
 - The requirements differ depending on the "risk" caused by a specific construction site
 - There are numerous exceptions to the applicability of the permit



Oil Spill Response Package

- Response to November 7, 2007 Cosco Busan cargo ship collision with Bay Bridge
- Initial response hampered by:
 - Underreporting of spill volume, weather conditions, poor communications, & lack of ready resources
- 54,000 gallons of bunker fuel spilled into San Francisco Bay



AB 2911(Wolk)-- Inland Spills Added / Increased Penalties

- Expands the Lempert-Kecene-Seastrand Oil Spill Prevention Act by giving the Administrator OSPR authority to:
 - Serve as a State Incident Commander and
 - Direct the removal, abatement, response, containment and cleanup efforts of petroleum in the waters of the state, including inland waters.
 - NOTE: Inland spill = release of at least one barrel (42 gallons) of oil into inland waters that is not authorized by any federal, state or local entity
 - Inland waters = waters of the state other than marine waters, but not including groundwater
 - Contingency Plan: Administrator must submit to the Governor and Legislature an amended CA oil spill contingency plan that includes inland and marine waters by 1-1-10. Revised plans will be due every three years thereafter.
- Penalties:
 - Intentional or negligent spills:
 - Double the maximum civil and criminal penalties:
 - Inland spills: \$50,000 - \$1 million for a marine oil spill
 - Inland spills: not more than \$100,000
 - OSPR has civil administrative authority for inland spills:
 - Inland spills: maximum administrative civil penalty up to \$50,000
 - Marine spills: increases the max. civil penalty from \$100k to not to exceed \$200k.
 - Without regard to intent or negligence:
 - Inland spills: not more than \$10 per gallon of oil released
 - Marine spills: not to exceed \$20 for a marine spill (increased from \$10)
 - Gross negligence or reckless conduct:
 - Inland spills: not more than \$30 per gallon of oil released
 - Marine spills: an amount not to exceed \$40 (increased from \$30)
- Expands the Oiled Wildlife Care Network (OWCN) to improve search and rescue efforts.
- Increases funding to \$2.0 million from interest earned and fees collected from person owning crude oil or petroleum products at a marine terminal must be available to cover costs incurred by OWCN.



AB 1960 (Nava)-- Production Facilities Added / Drills

- Twice as many inland oil spills than marine spills and state responds to less than 1/3 of all reported inland spills
- The Division of Oil, Gas, and Geothermal Resources to prescribe minimum facility maintenance standards for **production facilities**.
- Any person proposing to construct, acquire, maintain, or alter a production facility must comply with these standards.
 - Production facility is oil and gas production or injection operations (e.g., tanks, flowlines, headers, gathering, lines, wellheads, heater treaters, pumps, valves, compressors, injection equipment, and pipelines)
- Division must inspect production facilities to ensure compliance with standards
- Knowingly making a false or misleading marine oil spill report to OES (now CEMA) is now punishable by imprisonment and/or fine under the Lempert-Kecene-Seastrand Oil Spill Prevention Act.
 - Failing to provide the required report or knowingly making a false or misleading report on an oil spill in waters of the state is now punishable by a fine of not more than \$50,000
- Increase in the maximum civil penalty for a violation of laws and regulations related to oil and gas wells to \$25,000 (up from \$5,000)



AB 3025 (Lieber) Expanded Polystyrene Packaging Material

- Prohibits wholesaler or manufacturer from selling or offering for sale in CA, expanded polystyrene (EPS) loosefill packaging material beginning 1-1-12, unless it is comprised of:
 - On and after 1-1-12 – 60% recycled material
 - On and after 1-1-14 – 80% recycled material
 - On and after 1-1-17 – 100% recycled material
- Violations are considered an infraction and shall be punished by a fine not exceeding \$1,000.



CEQA Legislation



Supreme Court CEQA Decision Programmatic EIRs – Delta Smelt

- Overturned a lower court decision invalidating a programmatic EIS/EIR (PEIR) for Delta water plans
 - Lower court found that PEIR did not provide enough detail about sources of water to support program
- Court held that the level of detail must only be consistent with the projects programmatic nature
 - Rare CEQA ruling from the high court and sets precedent for what must be in a PEIR



SB 97 (Dutton) – CEQA and AB 32

- 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 1510 (Plescia) Solar and Biogas Exemption from SMA

- The Subdivision Map Act (SMA) governs how cities and counties approve the division of larger properties into smaller lots.
- This bill exempts leases and easements involving solar and biogas projects from the requirements of the SMA:
 - Solar electrical generation devices and biogas projects (using agricultural wastes or byproducts) subject:
 - to review under local ordinances regulating design and improvement or
 - pursuant to a discretionary action by the advisory agency or legislative body.
 - Currently, wind powered electrical generation devices are exempt for SMA (as are mineral, oil, or gas leases, among others).



California Coastal, Natural Resources, & Species Legislation



No Surprise Clauses California Endangered Species Act (CESA)

- A recent Court ruling has called into question the use of Federal “no surprise” clauses.
 - These clauses are designed to encourage land owners to sign on to complex Habitat Conservation Plans to comply with CESA
 - They guarantee that once a project proponent has submitted an approved plan to mitigate the take of endangered species, no additional mitigation measures can be required.
- The Court found that these clauses do not meet the CESA requirement that an incidental take permit be fully mitigated



SB 1436 (Ducheny) Accidental Killing Under ESA

- Existing law exempt from CA ESA, prohibitions against the accidental killing of candidate, threatened or endangered species that occurs on a farm or ranch in the course of routine and ongoing agricultural activities.
- Extends, by two years to 1-1-11, the sunset date



Sustainability



AB 3018 (Nunez) Green Collar Jobs Act

- Establishes California Green Collar Jobs Act of 2008
- Designed to develop a comprehensive administrative infrastructure to coordinate and facilitate advancement of the Green Collar movement.
- Requires:
 - California Workforce Investment Board (CWIB) to establish the Green Collar Jobs Council (CGJC/special committee):
 - Council will be comprised of CWIB existing membership including the K-12 rep, the CA Community Colleges rep, the Business, Transportation and Housing Agency rep, the EDD rep, and other appropriate members. The CWIB may call on others to serve as consultants to the CGJC in development of initiative.



AB 3018 (Nunez) Green Collar Jobs Act (cont)

- GCJC must:
 - Assist in identifying and linking green collar job opportunities with workforce development training opportunities in local workforce investment areas
 - Develop partnerships to build and expand the state's workforce development programs, network and infrastructure
 - Provide policy guidance for job training guidance in the clean and green technology sectors to assist and prepare specific populations – at-risk youth, displaced workers, veterans, etc.
 - Develop, collect interpret, and distribute statewide and regional labor market data on CA's new and emerging green industries workforce needs, trends and job growth.
 - Identify funding resources and make recommendations on how to expand and leverage these funds
 - Foster collaboratives in the green economic sector
- On or before April 1, 2009 and each April 1 yearly, the CWIB must report to the Legislature on the status of GCJC activities.



SB 1473 (Calderon) Green Building Standards

- Designed to Requires the California Building Standards Commission to adopt, approve, codify, update and publish green building standards for occupancy
- Requires each city, county or city and county to collect a fee from any applicant for a building permit, assessed at the rate of \$4.00 per \$100,000 in valuation.
 - Fees to implement building standards, with emphasis placed on green building standards.
- Does not affect ability of local government to adopt changes, modifications, amendments, additions, or deletions to the California Building Standards, Code, including the green building standards.



Keeping Track and Staying Focused



TRI Reporting Changes

- US EPA Toxics Release Inventory amendments (12/06) 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*

- 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.



AB 1130 (Laird) - ASTs

- 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.



Questions?

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