

California and Federal Environmental Legislative and Regulatory Update 2006/2007

CMANC
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- 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.



2006 Environmental Legislative Topics

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



Accessing Legislative Text

- www.leginfo.ca.gov



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The Bill Number is “Year-specific”

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



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California Air Quality and Global Warming Legislation



AB 32 (Nunez)--California Global Warming Solutions Act of 2006

- Landmark bill enacted by the 12th largest global greenhouse gas GHG emitter
- Creates a statewide GHG emission limit that would reduce emissions to 1990 levels (i.e., 25% reduction from projected 2006 emissions) by 2020
 - Kyoto Comparison: 5.2% below 1990 by 2012,
- Sets the stage for cap and trade reduction program
- GHG sources or categories that contribute the most must monitor and annually report GHG emissions
- Sources must achieve the maximum technologically feasible and cost-effect GHG reductions



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AB 32 ARB Implementation Timeline

- **July 1, 2007:** List discrete “early action” emission reduction measures that can be achieved prior to the adoption of market-based compliance mechanisms
- **January 1, 2008:**
 - Adopt regulations requiring GHG emission sources for monitoring/reporting
 - Adopt a statewide GHG emissions cap
- **January 1, 2009:** Adopt a rulemaking scoping plan on achieving reductions from significant GHG sources using market mechanisms and other strategies (plan must be updated every 5 years)
 - must include carbon sequestration and best management practices
- **January 1, 2010:**
 - Early action measures take effect
 - Adopt and enforce rules to achieve the maximum technologically feasible and cost-effective reductions of greenhouse gases;
- **January 1, 2011:** ARB adopts GHG emission limits and measures to achieve the maximum feasible and cost-effective reductions in GHG emissions
- **December 31, 2020:** Deadline to achieve 2020 GHG emissions cap



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GHG Executive Order (S-17-06)

- **October 2006:** the Governor signed a controversial executive order (EO), paving the way for the use of market-based mechanisms to achieve the GHG emission reduction goals imposed by AB 32.
- Under the EO, the Cal/EPA Secretary must convene a “Market Advisory Committee” comprised of national and international experts to make recommendations on the design of a **market-based compliance program** by **June 30, 2007**.
- ARB must consider the recommendations and collaborate with the Secretary and Cal/EPA’s Climate Action Team to develop the market-based program.
- Sets an express “goal” of creating a market-based program that will allow trading, not only among CA companies, but also with the EU and seven Eastern states.



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Other Global Warming Efforts

California Climate Action Registry

- Establishes an inventory of GHG emissions in CA.
- Participants (voluntary) use protocols to measure their baseline GHG emissions and calculate the extent to which those emissions are reduced in the following years.

Membership (88 participants – private + government entities)

- UC Davis, UC San Diego, UC Santa Barbara
- The state's 3 large investor-owned utilities
- Forest product companies
- Several local governments

Incentives:

- a) Publicity
- b) Emission reductions are counted in any state, federal, or international GHG registration scheme.



AB 1407 (Lieber); AB 2600 (Lieu)--HOV Lanes

- AB 2600:
 - Extends use of HOV lanes on state highways to 2011 for:
 - Single-occupant drivers of
 - Low-emission and hybrid vehicles
 - Expands DMV-issued Clean Air decals to 85,000
- AB 1407: Extends HOV lane access privileges to HOV lanes on city/county roads in SF Bay Area



AB 1430 (Goldberg)--Air Contaminants

- Previous law required ARB to develop and adopt a methodology to calculate the value of credits issued for emission reductions from stationary, mobile, indirect, and area-wide sources
 - Includes credits issued under market-based incentive programs
- New law requires ARB Advisory Committee on Environmental Justice to update methodology
 - To ensure air emission reduction credits (ERCs) are used fairly and do not unduly burden low-income, minority communities



AB 679 (Calderon)--Diesel Fuel

- Goal: to test the emissions benefits of California's low sulfur diesel fuel formulation
- ARB is restricted from excluding importation of compliant diesel fuel from non-California refineries.
 - "Compliant diesel fuel" means a diesel fuel that complies with the designated aromatic hydrocarbon limits in 22 CCR 2282
- ARB may designate a fuel as a compliant diesel fuel if an importer demonstrates that the relevant properties of the diesel fuel are equivalent to the properties of certified ARB diesel fuel sold in California.



AB 2843 (Saldana)--Air Pollution

- Previous law stated that
 - Districts with 1 million or more residents
 - Must ensure that not less than 50% of funds set aside for the specific programs including:
 - The Carl Moyer Air Quality Standard Attainment Program,
 - Programs for the purchase of reduced-emissions school buses
 - Diesel mitigation programs
 - Use the funds to reduce air contaminants or public health risks associated with air contaminants by January 1, 2007.
- New law removes sunset date



SB 225 (Soto)--Carl Moyer Program

- Previous law
 - Allows grants to offset the incremental cost of projects that reduce oxides of nitrogen emissions from mobile specific sources.
- New law
 - Allows ARB to calculate a greater value to include the state consumer price index adjustments
 - Allows higher cost effectiveness threshold (\$/ton of NOx)
 - Set different limits based on the whether a districts has less than 1,000,000 (10% administrative fee cap) or has 1,000,000 or more residents (5% administrative fee cap)



AB 1870 (Lieber)--Motor Vehicle Inspection and Maintenance

- Existing law allows smoking vehicles to pass the Smog Check
- The Department of Consumer Affairs must incorporate a visible smoke test into the motor vehicle inspection and maintenance program by January 1, 2008
 - Any visible smoke from the tailpipe or crankcase of a vehicle results in test failure
 - No issuance of repair cost waivers for visible smoke test failure unless an exception applies.
 - Owners or operators of failed smog check inspections may retire the vehicle from operation and receive up to \$1,500 (or more depending on department's determination) from the Bureau of Automotive Repair.



SB 1505 (Lowenthal)--Hydrogen Alternative Fuel

- Requires ARB to adopt regulations by January 1, 2008 establishing environmental performance standards for the production and use of hydrogen fuel for transportation purposes.
 - Goal is to reduce dependency on petroleum and lower GHG emissions, criteria air pollutants, and toxic air contaminants
- Regulations must ensure availability of state funding for the production and use of hydrogen fuel, as described in the California Hydrogen Highway Blueprint Plan.



SB 1266 (Perata)/Proposition 1A--Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006

- The Act authorizes \$19.925 billion of state general obligation bonds for specified purposes, including:
 - High-priority transportation corridor improvements,
 - State Route 99 corridor enhancements,
 - Trade infrastructure and port security projects,
 - School bus retrofit and replacement purposes,
 - State transportation improvement program,
 - Local bridge seismic retrofit projects, etc.



SB 1266 (Perata)/Proposition 1B—Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006

- Obligates \$20 BB for:
- Transportation projects to:
 - Relieve congestion,
 - Improve the movement of goods
 - Improve air quality
 - Enhance safety and security of transportation system
 - Promote public transportation



***California Air Quality Regulations and Judicial Developments**

*All regulations are final unless stated otherwise



New 8-Hour Ground-level Ozone Standard

- On April 28, 2006 the Air Resources Board adopted a new 8-hour ozone standard of **0.070 ppm**
- Requires air districts throughout California to adopt new attainment plans aimed at meeting this standard
- This new standard is lower than U.S. EPA's 8-hour standard of 0.08 ppm, which most of the state has trouble meeting
- Retained:
 - The 1-hour ozone average standard at 0.09 ppm
 - The current monitoring method for ozone.



Most of the State Out of Attainment for 8 Hour Ozone

- ARB recently announced that it will designate “nearly all of California’s rural areas” as out of attainment of the new 8-hour ozone standard (.007 ppm)
- The state standard is more stringent than the federal .008 ppm 8-hour ozone standard.
- The change to nonattainment will require many districts to develop attainment plans.
- For more information: www.arb.ca.gov/desig/desig.htm.



Truck Chip Reflash Regulation

- Sacramento Superior Court judge threw out 2004 Air Resources Board (ARB) regulation requiring manufacturers of diesel trucks to pay for the installation of “chip reflash” software on 1993-1998 model year trucks to ensure the trucks meet applicable emission control limits.
- History:
 - 1998 agreement between ARB and EPA and manufacturers that manufacturers would pay for installation of the chip reflash software on certain model year trucks.
 - ARB assumed majority of trucks would be rebuilt at the 350,000 to 400,000 mile level. Not normally rebuilt until the 750,000th mile.
 - ARB proposed regulation requiring manufacturers to pay immediate installation.
- Court held the ARB regulation breached the 1998 settlement agreement



TAC: Second Hand Smoke

- ARB voted unanimously to identify Environmental Tobacco Smoke (ETS) as a toxic air contaminant (TAC) under state law.
- Studies conducted by OEHHA and the ARB showed that exposure to ETS causes breast cancer among women who have never smoked and adverse health effects in children.
- Next steps: ARB will identify the major sources of exposure and evaluate the feasibility of adopting Air Toxic Control Measures (ATCM) to limit exposure.



Portable Equipment Emissions

- In June 2006, the California ARB amended its regulations for portable equipment used throughout the state. The program gives owners of equipment used in temporary construction, oil and water drilling, and other work projects a “one stop” registration process.
- Affects large diesel generators responsible for 4 tons of PM and 56-67 tons of NOx per year.
- 2006 amendments include:
 - ↑ in annual inspection fees for engines (@ \$40 each);
 - Each engine must be equipped with hour meters;
 - Additional recordkeeping and reporting requirements; and
 - The use of placards to identify complying equipment



Portable Equipment Program (PERP)

- ARB's PERP allows owners or operators of cranes, generators, pile drivers, and other equipment moved from place to place to register with the ARB, to avoid individual permitting in each local air district
- Public hearing held on December 7, 2006
- ARB adopted emergency revisions to accept "resident" Tier 1 and Tier 2 engines that do not meet the current emission standard in effect at the time of registration.
- PERP is currently accepting applications for **all Tier 1 engines** and also **Tier 2 engines rated between 175 BHP and 750 BHP** if documentation of operating in California at any time between March 1, 2004, and October 1, 2006, is submitted with the application.
- These Tier 1 and Tier 2 engines that do not meet the current emission standard must also pay an increased fee for registration that includes back registration fees, back inspection fees, and current registration fees.



Portable Equipment Program (PERP) (Cont.)

- Emergency Amendments of 12/7/06
- Proposed amendments to: (1) Definitions, (2) Engine Eligibility, and (3) Fees
- **Engine Eligibility**
 - Based on Emergency Amendments of 12/7/06
 - Effective for 120 days from 12/27/06
 - Tier 0 engines (non-certified)
 - ATCM allows permits by districts only, at their discretion
 - Previous Tier Engines (Tier 1 and some Tier 2)
 - Resident in CA between 3/1/04 and 10/1/06
 - Either ARB or districts can accept
 - Compliance flexibility
 - 6 months for previous tier after standard change
 - Allows previous tier if current tier is unavailable
- Proposed changes expected to become effective **Spring 2007**



ARB: Household and Auto Care Products

- *November 2006*: New ARB regulations curb air pollutant emissions from consumer products, diesel stationary engines, and oceangoing ships.
- **Consumer Products**
 - New VOC limits for 15 categories of consumer products (2nd largest source of VOC emissions in the SCAQMD).
 - 2012: new limits will cut statewide emissions of VOCs by 11.7 tons/day.
- **Oceangoing ships**:
 - ARB also expanded existing regulation that prohibits on-board incineration of waste on cruise ships w/in 3 nautical miles of the coast.
 - New rule: requires oceangoing ships to keep records of any incineration done up to 24 nautical miles offshore (Exemption: military vessels).
- **Diesel-Fueled Stationary Engines**:
 - > 50 HP must either upgrade the engines or purchase lower-emitting engines, beginning in 2011.

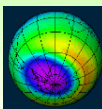


Federal Air Quality Legislation Regulations, & Other Developments



Ozone Hole

- *October 19, 2006*
- NASA reported largest ozone hole on record.
- Stretches 10.6 million square miles.
- Due to colder temperatures in stratosphere.
- *Trend*: colder temps expand the hole while warmer temps close it.
- Ozone hole expected to close in small increments (0.1% to 0.2% over the next 5-10 years), interrupted by large year-to-year variations caused by fluctuations in stratospheric weather.



US EPA's 8hr Ozone Standard Invalid

- South Coast Air Quality Management District v. EPA
 - Federal Court of Appeal for the District of Columbia struck down an attempt by EPA to weaken national rules limiting smog.
 - In a unanimous ruling, the court held that EPA violated the CAA in relaxing limits on smog-forming pollution from large power plants, factories, and other sources in cities violating health standards.
 - Decided December 22, 2006
- Background
 - The 1990 CAA required stronger anti-smog measures in cities violating ozone standards. In 1997, EPA found that the then-existing "1 hour" ozone health standard wasn't strong enough so it adopted a new "8 hour" standard to provide greater protection.
 - EPA then adopted rules in 2004 that weakened pollution control requirements for areas violating both the old and the new standard.



USEPA's 8hr Ozone Standard Invalid (Cont.)

- Effect of the ruling:
 - The decision **vacates the agency's 2004 rulemaking/classification scheme and remands it to EPA.**
 - The court also rejected EPA's decision to exempt many cities from violating the new standard from the law's most protective requirements. EPA argued it should have discretion to apply weaker protections to these areas but the court held that Congress required a stronger approach.
 - EPA has not announced whether it will appeal the decision or not.
 - Several areas in California could be directly affected by EPA's decision:
 - San Francisco Bay Area
 - Imperial County
 - Ventura County
 - San Joaquin Valley
 - Western Mojave Desert
 - South Coast Air Basin
 - Sacramento Metro Area
 - + many other areas



Revised Limits for Boilers

- February 2006: EPA finalized revised emissions limits for new boilers used in electric power plants and industrial and commercial facilities, and for combustion turbines used to generate electricity.
- CAA Section 111 requires EPA to revise new source performance standards every 8 yrs; 1st time to review utility and industrial boilers since 1979.
- New standards include:
 - Nitrogen oxide: 1 lb per mw/hour (38% ↓)
 - Sulfur dioxide: 1.4 lbs per mw/hour (75% ↓)
 - PM: 0.015 pound per million BTUs (50% ↓)



Final Particulate Rule

- US EPA finalized review of ambient standards for fine (PM_{2.5}) and coarse (PM₁₀) particulates.
 - Strengthens 24 hour fine particulate standard by reducing it from 65 to 35 $\mu\text{g}/\text{m}^3$.
 - Keeps the annual PM_{2.5} standard at 15 $\mu\text{g}/\text{m}^3$
 - Keeps the current 24-hour PM₁₀ standard of 150 $\mu\text{g}/\text{m}^3$
 - Revokes annual PM₁₀ standard of 50 $\mu\text{g}/\text{m}^3$ based on lack of evidence linking health problems to long-term exposure to inhalable coarse particulates.
 - Establishes criteria for out-of-attainment areas for remaining standards.



Final Particulate Rule (cont.)

- Timeline for new 24 Hour PM 2.5 standard:
 - States will make recommendations by **November 2007** for areas to be designated attainment or non-attainment.
 - EPA makes designation by **November 2009** with final designations by **April 2010**
 - States must submit state implementation plans (SIPs) by **April 2013** and meet standard by **April 2015**.
- USEPA also established new **monitoring requirements** for air pollution which will replace > 5,000 monitors, including some that monitor for PM 2.5. Instead, the rule establishes 75 multi-pollutant monitoring sites in the most polluted areas of the country.
 - 55 in urban areas, 20 in rural areas
 - Monitors will be capable of real-time air quality measurements.



Diesel Engines and PM

- Auto industry trade groups claim that diesel engines equipped with the latest emission controls emit lower levels of deadly fine particles than gasoline engines.
- Association of Emissions Control by Catalyst study:
 - Diesel engines w/ particle filters: **0.3 mg** of PM per km
 - Gasoline engines: **0.4 mg** of PM per km
 - Diesel engines w/o particle filters: **23 mg** of PM per km
- May help pave the way for more diesel passenger cars on the market in the future.



Federal Oxygenate Requirement Removed

- Reformulated gasoline (RFG) is gasoline blended to burn cleaner and reduce smog-forming and toxic pollutants in the air we breathe.
- The Clean Air Act requires that RFG be used in cities with the worst smog pollution to reduce harmful emissions of ozone.
- The Act also specified that RFG contain oxygen - 2% by weight. MTBE and ethanol are the two most commonly used substances that add oxygen to gasoline. Oil companies decide which substance to use to meet the law's requirements.
- **February 2006:** USEPA removed the 2% oxygen content requirement for RFG nationwide.
- 2 separate rules:
 - National rule: removes oxygen requirement for RFG nationwide (except CA); effective May 5, 2006.
 - CA rule: removes RFG oxygen requirement for CA gasoline; effective April 24, 2006.



Federal Oxygenate Requirement Removed (Cont.)

- These rules also revise a current prohibition against commingling ethanol-blended VOC-controlled RFG with VOC-controlled RFG produced using other oxygenates.
- The revision is to prohibit commingling *ethanol-blended* VOC-controlled RFG with *non-oxygenated* VOC-controlled RFG, except under certain limited circumstances.
- **Effect of the new rule(s):**
 - Removes the burden on industry of having to comply with the oxygen requirement for RFG and associated compliance requirements; and
 - Allows retailers and wholesale purchaser-consumers to combine ethanol-blended VOC-controlled RFG with non-ethanol-blended VOC-controlled RFG under certain conditions and limitations.



California Energy Legislation



SB 1 (Murray)--Million Solar Roofs

- Goal: install 3000 MW of solar generating capacity and install PV systems on 50% of new homes in 13 years
- Complements the California Solar Initiative (CSI) established by the PUC by helping to move California toward the goal of building one million solar roofs by 2018.
- CEC will establish eligibility criteria for receiving monetary incentives
- Reallocates the \$3.350 BB to other programs
- Increases the net metering cap from 0.5% of a utility's aggregate customer peak demand to 2.5% to accommodate net solar energy generated
- Requires all local publicly owned electrical utilities that sell electricity at retail to adopt, implement, and finance a solar initiative program by January 1, 2008.
- Beginning January 1, 2011, sellers of production homes, as defined, must offer the option of a solar energy system to all customers negotiating to purchase a new production home constructed on land meeting certain criteria



SB 107 (Simitian)--Public Interest Energy Research, Demonstration, and Development Program

- Existing Renewable Portfolio Standard (RPS) requires investor-owned utilities to achieve a 20% renewable electricity portfolio no later than December 21, 2017.
- New legislation:
 - Accelerates existing law by requiring that the 20% goal be reached by 2010.
 - Changes definition of “eligible renewable resource” to allow certain renewable power produced outside the state to count towards a retail seller’s RPS if the associated electricity is delivered to an in-state location, and complies with CA’s environmental quality standards.



AB 2021 (Levine)--Public Utilities: Energy Efficiency

- Goal: Creating cost-effective energy efficiency measures to reduce electrical consumption by 10% over the next 10 years
- On or before November 1, 2007, and by November 1 of every third year, CEC and local public utilities to develop and report a statewide and local estimate of all potentially achievable cost-effective electricity and natural gas efficiency savings and set statewide reductions for the next 10 years.
- CEC and local public utilities must investigate and develop a plan to improve the energy efficiency of, and reduce electricity demand of air-conditioners
 - By January 1, 2008 submit report on the designed plan



SB 1059 (Escutia)--Electric Transmission Corridors

- Goal: To identify and reserve future land suitable for high-voltage transmission lines
- CEC authorized to designate electric transmission corridor zones, according to a specified process, in which high-voltage electric transmission lines may be built in the future.
 - “Transmission corridor zones” means the geographic area necessary to accommodate the construction and operation of one or more high-voltage electric transmission lines. Area cannot exceed 1,500 feet in width with some exceptions
 - Subject to CEQA
 - Designates CEC as the lead agency for CEQA purposes.
- CEC must regularly revise designated transmission corridor zones as necessary, but at least every 10 years



SB 1359 (Torlakson) – Natural Gas Pipelines

- Establishes obligations for subsurface excavations affecting high pressure natural-gas pipelines:
 - Requires the operator, if the excavation is w/in 10ft of a **high priority subsurface installation** (defined below), to **notify** the excavator of the installation and to hold an **onsite meeting** w/ the operator verify the location of the installation;
 - Specifies **who can determine** the location of a high priority subsurface installation; and
 - Assigns **liability** for damages resulting from an excavator’s and operator’s failure to comply.
- Defines “**high priority subsurface installation**” as “high pressure natural-gas pipelines with a specified operating pressure or diameter, petroleum pipelines, pressurized sewage pipelines, high-voltage electric lines, conductors or cables, and hazardous materials pipelines.”



California Energy Regulations



Federal Energy Legislation, Regulations, & Other Developments



Western Governors Resolution on Cleaner Energy

- Resolution 06-10 seeks to promote the development of “substantially more clean and diversified energy resource.”
- Adopted by Western Governors Association (WGA) and based on the recommendations of WGA members and stakeholders.
- The goal is to protect the region from energy shortages and price spikes, encourage more energy-efficient practices, and mitigate the environmental impact of power generation.



California Hazardous Waste Legislation and Regulations



New California Hazardous Waste Manifest

- On *September 5, 2006* changes to the federal and state hazardous waste manifest regulations took effect.
- States are no longer allowed to modify the form or the instructions.
- Necessary step in converting the paper system to an electronic one.
- Waste generated in or shipped to California must contain a CA state waste code



New California Hazardous Waste Manifest (cont.)

More stringent California requirements include:

- Conditionally exempt small quantity generators must submit manifests
 - Regulates more waste as hazardous waste
 - DTSC uses the submitted generator and facility manifest copies for cradle-to-grave tracking of waste
 - Definition of "empty" container is more stringent
 - Non-empty containers must be manifested, whether the waste is federal RCRA or non-RCRA.
 - Waste generated in California that is received out of state, facilities must submit copies of manifest to DTSC
- Not using the new EPA manifest is a violation of federal law, but whether a HW handler would face penalties is up to the discretion of state enforcement personnel.





New DTSC Permitting Procedures

- **Fact Sheet**
 - Fact sheet outlining streamlined permitting and permit modification procedures now available to some CA hazardous waste facilities
- **Expedited Permit Renewals**
 - TSD facilities whose permits are expiring are required to submit a permit renewal request at least 180 days prior to permit application.
 - Submission of the permit application request extends the permit beyond its termination date, even if DTSC has not approved the renewal prior to that date.
 - Allows an applicant to submit Part A of the application solely for the purpose of extending the term of its permit pending DTSC review of the permit renewal. Once DTSC is ready to review the permit, it will then call for Part B.
- **Applicability**
 - The new procedures are available to **non-RCRA** treatment, storage and disposal facilities
 - N/A to facilities authorized pursuant to a DTSC Permit-by-Rule, conditional authorization, or conditional exemption.



Reporting Requirements for “Wastes of Concern” to Generators

- Legislation adopted in 2002 (SB 489- Romero) required the Department to place further restrictions on “wastes of concern”
- DTSC finalized rules for hazardous waste generators report missing “wastes of concern.” DTSC originally made this proposal in March 2005 but never finalized it.
- Wastes of concern include:
 - Various **explosive and poisonous materials and gas**
 - Considered missing if lost, stolen, or disappeared if the amount equals to a “reportable quantity”, or some other waste has been substituted for them.
 - www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/hwm_list_sb489_explosives.pdf
- Regulations require that actions must be taken by generators if they discover missing waste in a reportable quantity or discover a “difference in type.”
- Requirements apply to pure generators, those operating under a permit by rule, conditional authorization, or conditional exemption.
- Regulations became effective 1/26/06



Household Hazardous Wastes

- 2000: DTSC adopted new regulations governing universal waste; created a 4 year exemption for households and small businesses (≤ 50 employees).
- **February 8, 2006: exemption expired**
- Today: households and small businesses must recycle or properly dispose of household hazardous wastes including:
 - Common batteries (AA, AAA, C and D cells)
 - Mercury-containing fluorescent lights/lamps
 - Thermostats and thermometers
 - Small electronics
 - Stoves, ovens, water heaters, etc.
- Improperly disposed of these items can result in groundwater contamination from mercury, lead, acid, zinc, cadmium and other toxins.
- CIWMB recently proposed the allocation of \$4.5 million in grant money available to ease the transition; awaiting approval.



California Hazardous Materials Legislation



Green Chemistry Program

- California Legislature will consider establishing “green chemistry” program
 - Purpose is to encourage the development of safer alternatives to toxic chemicals
- 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.



AB 2335 (Saldana)--Medical Waste

- Technical revisions made to existing Medical Waste Management Act regulating the management of medical waste.
- Expands definition of “infectious agent” to include organisms classified as Biosafety Level II, III, or IV by the federal Center for Disease Control and Prevention
- Medical waste stored in an area prior to transfer must now be stored in an area that is either: (1) locked, or (2) under direct supervision/surveillance.
- Requires certain small quantity generators of medical waste to keep records for at least 2 years (old law: maintain records for not more than 2 yrs)
- Revises requirements for specific handling, containment, and storage.



California Hazardous Materials Regulations



Proposition 65 List

OEHHA added **1-bromopropane** (used primarily as a solvent) to the list of Proposition 65 reproductive toxicants

- The Development and Reproductive Toxicant (DART) Committee also recently added “**environmental tobacco smoke**” (ETS) to the list of Proposition 65 reproductive toxicants.
- This listing will not require new warnings on tobacco products themselves.
- Both OEHHA and the ARB hope that the listing, coupled with the earlier listing of ETS as a TAC, will send a message to avoid exposing pregnant women to 2nd hand smoke.



Priorities for Safe Harbor Limits

- The Office of Environmental Health Hazard Assessment (OEHHA) published a “status report” regarding “*safe harbor levels*” for Prop 65 listed chemicals.
- Since the June 2004 report, several “No Significant Risk Level” (NSRLs) and “Maximum Allowable Does Level” (MADLs) have been added, including:
 - NSRLs
 - 1,2-Dichloropropane (9.7 micrograms/day)
 - MADLs
 - 1,2-Dibromo-3-chloropropane (3.1 micrograms/day)
 - Disodium cyanodithio-midcarbonate (56 micrograms/day)
 - Ethyl dipropylthiocarbamate 56 micrograms/day)
 - Ethylene glycol monomethyl ether (63 micrograms/day)
 - Ethylene glycol monomethyl ether acetate (98 micrograms/day)
 - Methyl bromide as a structural fumigant (810 micrograms/day)
 - Thiophanate-methyl (600 micrograms/day)



California Water Quality Legislation



SB 729 (Simitian)--Water Quality

- Authorizes the SWRCB to investigate and enforce water quality laws after consulting with the appropriate regional board, the state board determines that it will not duplicate the efforts of the regional board.
- Requires the state and regional water boards to inform the public on their specific enforcement activities, and to identify rates of compliance.



AB 1881 (Laird)--Water Conservation

- Increases water conservation in California through new landscape irrigation requirements.
- Reduces water use by prohibiting common interest developments from restricting the use of low water-using plants
- The California Energy Commission must adopt performance standards and labeling requirements for landscape irrigation equipment
- Requires the Department of Water Resources to develop an updated landscape water conservation ordinance.



SB 1070 (Kehoe)--Water Quality Information

- Establishes the California Water Quality Monitoring Council (Council).
- The Council must review existing water quality monitoring, assessment, and reporting efforts and recommend actions and funding needs to coordinate those efforts.
- Increase government transparency by requiring the SWRCB to implement a public information program on matters involving water quality.
 - SWRCB's web site must have an information file on water quality monitoring, assessment, research, standards, regulations, enforcement, and other pertinent matters.



AB 140 (Nunez)--Disaster Preparedness and Flood Prevention Bond Act of 2006

- Creates the Disaster Preparedness and Flood Prevention Bond Act of 2006,
 - Authorizes the issuance and sale of general obligation (G.O.) bonds in the amount of more than \$4 BB for the purposes of financing certain disaster preparedness and flood prevention projects.
 - Urgency legislation meaning this bill would become effective immediately following Election Day



SB 497 (Simitian)--Coastal Ecosystems Protection Act

- Regulates ballast water discharges of invasive species in state waters
- Requires ships entering California ports to treat ballast water.
- The California State Lands Commission (SLC) must adopt ballast water treatment and performance standards by January 1, 2008.
- Routinely, SLC must submit to the Legislature to review the availability and environmental impact of current technologies for ballast water treatment systems
- Increases civil penalties
 - Intentionally or negligently failing to comply can result in a fine of up to \$27,500 per violation per day.
- By 2020, the discharge of invasive species will be prohibited from all ships



Proposition 84--Safe Drinking Water,
Water Quality & Supply, Flood Control,
River & Coastal Bond of 2006

- Funds \$5.4 BB for:
 - Safe drinking water
 - Water quality
 - Water supply
 - Flood control
 - Natural resources protection
 - Park improvements



California Water Quality
Regulations



Rapanos and Carabell

- On June 19, 2006, the Roberts Court issued its first environmental decision in the wetlands cases of *Rapanos* and *Carabell*.
- The 4-1-4 decision involved two Michigan cases.
- **Facts:**
 - One landowner filled 50 acres of wetlands for development. The land is 20 miles from Saginaw Bay but linked by ditches and streams.
 - The other case involved two developers who were prevented from building a condo complex on land that includes 16 acres of wetlands. A berm, or earthen mound, separated the land from a drainage ditch leading to a creek and a lake.



Rapanos and Carabell (cont.)

• Opinion

- Justice Kennedy, acting alone, issued the pivotal opinion, articulating a new, more restrictive standard for determining when the federal government can regulate wetlands development.
- Under Kennedy’s opinion, only those wetlands with a “**significant nexus**” to navigable waters fall within federal purview.

• Result

- This new standard limits the Army Corps’ claim of authority to regulate all wetlands with any connection to navigable waters.
- The decisions will likely lead to more litigation, leaving judges to determine future wetlands issues on a case-by-case basis.



Wastewater Permit Trend

- Water Code §13385(o) requires State Board to update data on its enforcement of NPDES and storm water violations every January 1st.
- Five conclusions from latest report:
 1. Nine regional boards have cumulatively accessed over \$50 million in civil penalties over the last few years.
 2. There has been a fluctuation in the number of NPDES permit violations
 3. Low percentage of violations linked to completed enforcement actions.
 4. There is a backlog of minimum mandatory penalties (MMPs)
 5. Data quality and completeness problems continue due to dependency on manual review of discharger self-monitoring reports, manual data entry, and implementation of a new data system
- **California Integrated Water Quality System (CIWQS)**
 - New database used to track violations and the resulting enforcement actions
 - Electronic submittal and analysis of monitoring reports and automated generation and tracking of violation information
- Report concludes with six planned actions to improve future enforcement.



Clean Water Permits

- *November 6, 2006*: state appellate court held that regional water quality officials do not have to conduct environmental reviews when issuing clean water permits.
- CEQA Amendments adopted in 1972 exempt the federally required NPDES permits from environmental review.
- Decision consistent with other state appellate court decisions.



Federal Water Quality Regulatory & Judicial Developments



SPCC Deadline Extended

- Facilities handling or storing up to 10,000 gallons of oil now have until **October 31, 2007** to develop and implement SPCC Plans.
- The rule finalizes one of 2 amendments proposed by the EPA to streamline the SPCC rule.
- Extending the deadline gives EPA more time to make “substantial changes” to a 2nd amendment to the SPCC rule before requiring owners and operators of affected entities to develop and implement SPCC plans.



California Hazardous Substances/ Cleanup Legislation



SB 354 (Escutia) California Land Environmental Restoration and Reuse Act

- California Land Environmental Restoration and Reuse Act (CLERRA) establishes procedures for selecting an oversight agency for brownfields properties subject to DTSC and SWRCB oversight
- CLERRA defines the term “property” as meaning real property, but excludes the following:
 - A site that is or becomes subject to a specified enforcement action or order issued by a RWQCB or a specified enforcement action by DTSC;
 - A site that is or becomes subject to a corrective action requirement or for which a no-further-action determination has been issued by a RWQCB or a local oversight agency;
 - A site that is or becomes subject to a corrective action order; OR
 - A site that is or becomes authorized or permitted as specified for the treatment, storage, or disposal of hazardous waste.
- This bill **deletes these exclusions** from the definition of “property” under CLERRA.



SB 989 (Committee on Environmental Quality) Bona Fide Ground Tenant

- The California Land Reuse and Revitalization Act (CLERRA) provides that an innocent landowner, a bona fide purchaser, or a contiguous property owner, as defined, qualifies for immunity from liability from certain state laws for pollution conditions caused by a release or threatened release of a hazardous material if certain conditions are first satisfied.
- SB 989 provides that a certified “**bona fide ground tenant**” (as defined) is also immune from liability under those state laws.



AB 2144 (Montanez)—Clean up and Public Participation

- Harmonizes public participation processes for the cleanup of contaminated sites and deletes separate public participation processes of DTSC and RWQCB
- Defines “agency” to mean DTSC, the SWRCB, or a RWQCB.
- 30 days before taking action on the response plan, the agency must notify all other appropriate governmental entities and local agencies, including, but not limited to, DTSC, RWQCB, or a redevelopment agency, which is not party to the response plan regarding the proposed response action.
- The agency must consider the issue of environmental justice for communities most impacted, and to place a notice in a newspaper of general circulation, as specified, and post notice of the proposed response plan on the site.



AB 2861 (Ridley-Thomas)--Lead Abatement

- Increases the penalties for persons failing to abate a lead hazard after receiving an order from the Department of Health Service (DHS) or a local enforcement agency.
 - 2nd or subsequent violation is a misdemeanor punishable by a fine of up to \$5,000, and/or up to 6 months imprisonment in the county jail
- No reimbursement to local agencies and school districts for certain costs mandated by the state.



Federal Hazardous Substances/Cleanup Legislation and Regulations



“All Appropriate Inquiries”

- US EPA recently finalized a rule establishing when a prospective purchaser or existing landowner has conducted “all appropriate inquiries” about the condition of property for purposes of CERCLA.
- Applies to landowners or potential landowners claiming 1 of the 3 CERCLA defenses:
 - “Innocent Landowner”
 - “Bona Fide Prospective Purchaser”
 - “Contiguous Property”
- Also applies to those obtaining Brownfield grants from EPA under section 104(k)(2)(B)



“All Appropriate Inquiries” (cont.)

- The investigation **must** include:
 - Interviews with past/present owners, operators and occupants
 - Reviews of historical sources of information
 - Visual inspection of facility
 - Review of government records
 - Search for environmental cleanup liens
 - Assessment of any specialized knowledge of the prospective owner
 - Assessment of the relationship of the purchase price to the FMV of the property if it was not contaminated
 - Commonly known or reasonably ascertainable information
- Effective November 1, 2006



California Land Use Legislation



SB 841 (Hollingsworth)--Fire Protection: Firebreaks

- State or local fire officials may authorize a property owner to build a firebreak or design vegetation management techniques to protect areas such
 - Hospitals, adult residential care facilities, schools, aboveground storage tanks, hazardous materials facilities, or similar properties
- Firebreak maybe up to a 300 feet radius from the facility, or the property line, whichever distance is shorter.



AB 2140 (Hancock)--Safety Elements

- The state must not exceed 75% of total eligibility cost unless:
 - Local agency is within city, county, or city and county with adopted local hazard mitigation plan (HMP) in accordance with Federal Disaster Mitigation Act of 2000.
- City and/or county may adopt a local HMP with its safety element.
- HMP must include specific elements required under the federal act:
 - Inventory of potentially hazardous private facilities
 - Earthquake performance evaluations of public facilities
 - Disaster plans
- Local jurisdictions without HMPs are given assistance in developing and adopting a plan.



AB 2751 (Wyland)--Development Project Fees

- **Mitigation Fee Act of 1987**: allows a local agency to charge a variety of fees, dedications, reservations, or other exactions in connection with the approval of certain development projects.
- Permit development project fees may include the costs attributable to **increased demand on public facilities** reasonably related to the development project.
- AB 2751 prohibits these fees from including the costs attributable to **existing deficiencies in public facilities**.



AB 2867 (Torrico) - Land Use Notifications

- Additional notice requirements for local governments prior to public hearings
 - Any owner of mineral rights who is intent on preserving those rights must receive notification
 - Owner mailing addresses can be obtained using other, more recent address information
 - A state mandated local program
 - No additional funding



SB 1206 (Kehoe)- Redevelopment of Blighted Areas

- Amends statutory elements necessary to establish that land is blighted for the purpose of redevelopment
 - Narrows descriptions of conditions underlying blight
 - A performance standard to justify a finding of blight
 - Clarifies antiquated conditions to establish blight



SB 1650 (Kehoe)--Eminent Domain

- *Kelo v. City of New London (545 US 469)*
 - A landmark case decided by the US Supreme Court in 2005
 - Involved the use of eminent domain to transfer land to further economic development.
 - Allowed a public development corporation to take private homes for a hotel, conference center, and other commercial uses as part of a comprehensive redevelopment plan.
 - In its 5-4 decision, the Court held that the general benefits a community enjoyed from economic growth qualified such redevelopment plans as a permissible "public use" under the Takings Clause of the 5th Amend.
- Public entities must use property for the reason stated in the resolution of necessity
- Public property not used for the public good in the resolution within 10 years must be sold or undergo a new resolution
- Original owner has right of first refusal if 10 year limit is exceeded

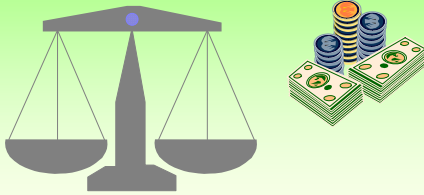


SB 53 (Kehoe)—Redevelopment and Eminent Domain

- A Redevelopment agency must make new findings of blight before it can extend the time limits on its authorization for eminent domain actions.
- Requires a redevelopment agency, in its redevelopment plan, to describe in detail the agency's program for acquiring the real property by eminent domain.



Enforcement



DTSC's New Enforcement Initiative

- DTSC implementing a new Risk Based Enforcement Initiative
- Based on risk to public health and safety due to nature or volume of waste
- Targeting offenders operating “completely outside the regulatory system”
- Wal Mart among first targets
 - Illegal transport of returned/damaged and expired products to unauthorized storage site in Nevada



New DTSC Enforcement Structure

- *January 2007*: DTSC's enforcement and emergency response functions will merge into one unit headed by a new Deputy Director of Enforcement.
- **Responsibilities will include:**
 - Department-wide enforcement actions
 - Task force support
 - Criminal investigations
 - Emergency response
 - Targeted compliance assistance for business sectors with high levels of noncompliance
 - Enforcement training for the regulated industry + CUPAs.
- **Shift:** away from traditional TSDf enforcement towards those who transport or treat HW without a permit.



New SWRCB Office of Enforcement

- Headed by former Deputy AG Reed Sato
- A desire to emphasize enforcement in a fair, consistent and efficient manner
- Will work to assist Regional Boards with court cases and will hold regular meetings to ensure good communication.
- Will occasionally initiate actions where problems transcend regional boundaries



2006 ARB Priorities

- Preventing the sale of illegal products (i.e. non ARB certified equipment)
- Heavy duty diesel truck emissions and vehicle fleets
- Asbestos NESHAPs
- Off-Highway Vehicle regulations
- Transportation Refrigerant regulations



Crackdown on Developers

- Over the last few years, the Central Valley Regional Water Board has imposed several large fines on land developers for failing to control storm water runoff.
- 2 Examples:
 - **Roseville** project (\$900,000 fine)
 - **Shasta Lake** project (\$600,000 fine)
 - Both failed to properly maintain and operate storm water BMPs.
 - Both failed to provide an effective combination of erosion and sediment control and for their discharges of sediment.



Self-Reporting Waiver

- Region 9 EPA allowed 6 companies to self-report violations of Toxic Release Inventory (TRI) reporting obligations.
- Self-auditing policy waives up to 100% of potential penalty for an environmental violations if there is prompt disclosure of the violation, quick correction of the problem, and satisfaction of other conditions in the policy.



EPA Criminal Investigations Down in 2005, Larger Companies Targeted

- 2005 Criminal Enforcement Actions
 - 372 environmental criminal investigations
 - 21.5% decrease from 2004
 - \$100 million in penalties and restitution (up from \$47 million in 2004)
- Fewer investigations; focus on larger, more significant ones



US PIRG Study

- According to a study released in March by the US Public Interest Research Group (US PIRG), approx. 62% of all US major industrial and municipal facilities violated the CWA at least once during an 18 month period.
- The average facility in violation discharged pollution in excess of its permit limit by almost 4x the legal limit.
- The 3,700 major facilities exceeding their permit limits reported more than 29,000 exceedances of their NPDES permits.
- The report recommends more funding for EPA for enforcement initiatives.
- EPA, in response, contends that strong enforcement of the CWA continues to be one of the agency's top priorities.



Fewer Civil and Criminal Prosecutions

- Fewer case referrals for violations of environmental laws under Bush administration → fewer civil/criminal prosecutions.
- Requests by federal agencies for prosecution of environmental violations:
 - Criminal: ↓ by more than ½ since 2000
 - Civil: ↓ by more than 1/3 since 2000
- USEPA: focus is on larger, more significant cases. Holding polluters accountable through an enforcement strategy that measures the amount of pollution prevented.
 - Commitments from industry, governments, and other regulated parties in 2006 to reduce pollution by ~ 900 million pounds.



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California Environmental Scorecard

- CA League of Conservation Voters' Annual Scorecard
- Includes environmental scores of all the California Senators, Assemblymembers, and the Governor
- Full version to be released in print in March 2007.
- Available online:
<http://www.ecovote.org/scorecards/2006/2006scores.pdf>



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Questions?

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