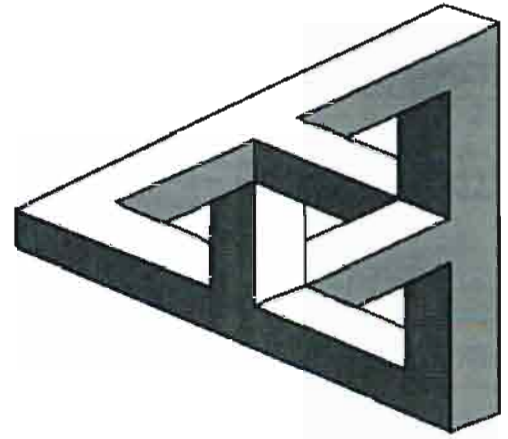


# Enviro

# Source



## 2010 CALIFORNIA ENVIRONMENTAL LEGISLATIVE YEAR IN REVIEW

by Gary A. Lucks, JD, CPEA

*Gary A. Lucks JD CPEA is a Principal at BEYOND COMPLIANCE, LLC in Oakland, California, where he advises clients on multimedia environmental regulatory compliance, auditing, and sustainability. He is a certified professional environmental auditor and regular instructor at the University of California (U.C.) Berkeley and U.C. Davis Extension Program where he teaches courses on environmental law, legislation, auditing, compliance, and sustainability. He currently serves as an advisor to the Bay Area Air Quality Management District and on the California State Bar Environmental Legislation Committee. He also chairs the West Coast Auditing Roundtable. Mr. Lucks has published numerous articles and newsletters addressing environmental legislation and policy. He is the co-author of a book entitled California Environmental Law and Policy: A Practical Guide and is co-founder of the Sustainable Earth Initiative (SEI), a non-profit organization dedicated to helping businesses and government become more sustainable through local actions.*

Preoccupied by another financial crisis and election year politics, the Legislature and the outgoing Governor concluded one of the most lackluster legislative sessions in decades. Despite the dearth of earth-shattering legislation, last year was noted for significant ballot initiatives that may have far reaching implications in California and on the national stage.

This year was marked by the passage of Proposition 26, which changes the state Constitution by recasting environmental fees as “taxes,” making it virtually impossible to obtain the requisite two-thirds vote for approval. This could jeopardize some programs and have profound and wide-ranging impacts on implementing many California environmental laws,

including the Global Warming Solutions Act of 2006 (otherwise known as “AB 32”).

Nonetheless, the recently closed legislative session produced noteworthy policy on product stewardship for carpet manufacturers; waste paint recycling, and limits on heavy metal content in bead blasting. The balance of the new laws addressed a number of technical clean-up provisions affecting existing environmental programs.

Legislation passed in the following sectors addressed various concerns:

- **Air Quality and Climate Change:** preserving AB 32; promoting cleaner, more efficient vehicles; easing the transition to electric vehicles and plug-in hybrids.
- **Energy:** expanding the Property Assessed Clean Energy (PACE) program; restricting investment in Iran's energy sector.
- **Solid Waste:** meeting labeling requirements for compostable bags.
- **Tanks:** establishing a limited exemption for underground storage tank (UST) construction and operational requirements.
- **Sustainability:** requiring carpet manufacturers to adopt strategies to increase the recycling and collection of carpets in California; exempting private passenger cars used for personal vehicle sharing programs (PVSP) from being considered commercial vehicles for insurance purposes.
- **Hazardous Materials and Green Chemistry:** requiring paint manufacturers to develop a paint stewardship plan to recover unused paint; limiting the use of brake pads containing specified metals and asbestos; prohibiting specified levels of cadmium in children's jewelry.
- **Hazardous Waste:** limiting the arsenic and lead content in blasting media.
- **Water Quality:** authorizing development of uniform recycled water criteria to reuse potable water for groundwater recharge and surface water augmentation; requiring adoption of grey water standards for indoor and outdoor uses in non-residential buildings.
- **Pesticides:** protecting farm workers from chemical exposure.

## • Air Quality and Climate Change

• (Proposition 23, SB 535 Yee, SB 1455 Kehoe, 1340 Kehoe)

• Proposition 23 would have indefinitely suspended Assembly Bill (AB) 32, leaving in limbo California's pioneering efforts to tackle climate change. With his approval ratings in the dumps, the lame duck Governor salvaged his reputation as one of the champions of Climate Change legislation when Proposition 23 went down to a resounding defeat in the November 2010 election, thus preserving part of Governor Schwarzenegger's legacy as a green crusader. AB 32 authorizes the California Air Resources Board (ARB) to craft strategies to reduce greenhouse gas (GHG) emissions to 1990 levels by 2020. Since enactment of AB 32, the ARB has been implementing the "scoping plan," which sets forth an ambitious set of regulatory strategies including a "cap-and-trade" scheme to reduce GHGs.

• SB 535 (Yee) is one of several bills designed to promote low emission vehicles along with the infrastructure to support electric vehicles. This law extends the types of low emission vehicles that can use the high-occupancy vehicle (HOV) lanes regardless of vehicle occupancy. Beginning on January 1, 2012, up to 40,000 enhanced advanced technology partial zero-emission vehicles will be extended this privilege. This law additionally extends until July 1, 2011, the HOV privilege for single-occupant hybrid vehicles with a fuel economy rating of at least 45 miles per gallon or greater fuel economy highway rating that meets specified design standards such as ultra-low emission vehicles and super ultra-low emission vehicles.

• Last year, the Legislature passed SB 626 [see Stats. 2009 SB 626 (Kehoe)], which required the California Public Utilities Commission (PUC) to develop strategies to overcome barriers to widespread use of plug-in hybrid vehicles by July 1, 2011. By 2020, the State Energy Resources Conservation and Development Commission (otherwise known as the CEC) expects the number of electric vehicles (EVs) such as light-duty plug-in hybrid EVs and full-size battery EVs, to reach 1.5 million. SB 1455 (Kehoe) responds to this projected demand for EVs and assists potential EV buyers in making an informed decision about home charging, electrical features, and safety measures to consider.

• With auto manufacturers gearing up to sell new EVs and plug-in EVs in California there will be a need for consumers to make electrical improvements in

their homes to accommodate these vehicles. SB 1340 (Kehoe) expands the authority for public agencies and property owners to voluntarily agree to be assessed in order to finance EV charging infrastructure. The law further prohibits public agencies from allowing property owners to participate in contractual assessment programs where the total assessments and taxes on their property exceed 5% of the property's market value. This law also expands the PACE Reserve program to do the following:

- assist local jurisdictions in financing installation of EV charging infrastructure;
- allow the proceeds of the PACE bonds to finance qualified EV charging infrastructure; and
- expand the definition of a PACE bond to include financing of EV charging infrastructure.

## Energy

(AB 1873 Huffman, AB 1650 Feuer)

AB 1873 (Huffman) builds upon the success of AB 811 [see stats. 2008 AB 811 (Levine)], which authorized local government to provide homeowners up-front funds to pay for energy efficiency or renewable energy projects while the participating property owner repays the loan annually over time. AB 1873 expands this program (otherwise known as the local PACE) state-wide by authorizing the state to purchase bonds to finance distributed generation renewable energy sources or energy or water efficiency improvements via PACE programs. Specifically, the State Treasurer, the California Public Employees Retirement System Board (CalPERS), and the State Compensation Insurance Fund (SCIF) are authorized to purchase the bonds. This law additionally authorizes joint powers authorities (JPA) to purchase, and a local agency to sell, the right, title, and interest in a PACE assessment contract

AB 1650 (Feuer) prohibits persons from bidding on or entering into contracts with a public entity for goods and services of \$20 million or more in Iran's energy sector. Further, beginning June 1, 2011, financial institutions are prohibited from extending \$20 million or more in credit to persons providing goods or services to Iran's energy sector. Beginning June 1, 2011, this law additionally prohibits persons from contracting with a public entity in Iran for goods or services of \$1 million or more.

## Solid Waste

(SB 228 DeSaulnier)

SB 228 (DeSaulnier) builds upon a California law that prohibits the sale of plastic bags labeled "compostable" or "marine degradable" unless the bag complies with a specified American Society for Testing and Materials (ASTM) standard. This law requires manufacturers of compostable bags, beginning July 1, 2011, to ensure that the compostable plastic bag is readily and easily identifiable from other plastic bags and has a "compostable" label and a certification logo indicating the bag meets the ASTM D6400 specification. Manufacturers must abide by the Federal Trade Commission's *Guides for the Use of Environmental Marketing Claims* and may not sell or distribute as "compostable" plastic bags that display a recycling symbol (e.g., a chasing arrow).

## Tanks

(AB 1674 Saldana)

AB 1674 (Saldana) exempts from specified requirements vaulted tanks (*i.e.*, below-grade tanks that are not buried in the ground) that are connected to an emergency generator tank system that meets specified conditions. These tanks do not have to comply with all standards imposed on USTs installed after July 1, 2004, which includes, among other things, pressure monitoring between the soil and the exterior walls of the tanks. The tank must have the following characteristics:

- 1) The tank must be situated above the surface of the floor in such a way that all of the surfaces of the tank can be visually inspected by either direct viewing or through the use of visual aids monitored through the use of a continuous leak detection and alarm system capable of detecting unauthorized releases;
- 2) For single-walled tanks, the structure — or a separate discrete secondary structure — must be able to contain the entire contents of the liquid stored in the tank, and must be sealed with a material compatible with the stored product;
- 3) The owner or operator of the tank must keep a log of visual inspections conducted each time the emergency generator tank system is operated, or at least once a month; and
- 4) The tank or combination of tanks in the below-grade structure must have cumulative capacity of 1,100 gallons or less of diesel fuel.

## Sustainability

(AB 2398 Perez)

The California Department of Resources Recycling and Recovery (DRRR) published a Statewide Waste Characterization Study in 2008, which estimated that 1.3 million tons of carpet are disposed of annually in California landfills; this constitutes 3.2% of all solid waste generated in landfills. AB 2398 (Perez) was enacted to increase the rate of landfill diversion for carpets. It addresses one of the barriers to increasing carpet recycling rates by establishing infrastructure to collect and process waste carpet. This law requires carpet manufacturers in California, by September 30, 2011, to submit a carpet stewardship plan. This plan is intended to increase carpet recycling by implementing product design, use, and end-of-life management strategies.

Beginning July 1, 2011, a carpet manufacturer must add a \$0.05 per square yard assessment on the purchase price for carpet sold in California. Retailers and wholesalers are obligated to add this assessment to the purchase price. Beginning April 1, 2012, the law prohibits manufacturers, wholesalers, and retailers from selling carpets in California without an approved stewardship plan.

AB 1871 (Jones) provides that private passenger motor vehicles used for PVSPs are exempt from being classified as commercial vehicles for insurance purposes. The annual revenues generated by vehicle sharing must be less than the annual expenses of owning and operating the vehicle.

## Hazardous Materials and Green Chemistry

(SB 346 Kehoe, SB 1365 Corbett, SB 929 Pavley, AB 1343 Huffman)

Several years ago, the Department of Toxic Substances Control (DTSC) was authorized to remove mercury-containing vehicle light switches from vehicles. SB 346 (Kehoe) builds on this program by limiting for sale in California specified metals and asbestos from motor vehicle brake pads on and after January 1, 2014. Motor vehicle brake friction materials that exceed the following concentrations may not be sold in the state:

- 0.01% by weight for cadmium and its compounds, and
- 0.1% by weight for chromium (VI)-salts, lead and its compounds, mercury and its compounds.

The prohibition applies to asbestiform fibers in any amount. In addition, beginning January 1, 2014, new motor vehicles sold in California must be equipped with

brake friction materials that meet the limits specified above. In addition, this law prohibits copper in motor vehicle brake pads. By January 1, 2021, the limit is 5% by weight of copper and 0.5% by weight of copper by January 2025. A violation of these limits subjects manufacturers to a civil fine of up to \$10,000 per violation.

Manufacturers of vehicle brake pads must use the newly established Toxics Information Clearinghouse to evaluate and analyze potential alternatives to lower the potential hazard to public health and the environment.

California law prohibits the manufacture or sale of toys contaminated with specified levels of lead, antimony, arsenic, cadmium, mercury, selenium, or barium contained in paint and lacquer coatings. SB 1365 (Corbett) updates this law and makes reference to the lead content allowed pursuant to the federal Consumer Product Safety Act and the Consumer Product Safety Improvement Act of 2008. This law prohibits the manufacture or sale by a retailer of toys made using chromium identified in ASTM International Standard F963-08.

Notwithstanding the recent developments with green chemistry regulation in California, SB 929 (Pavley) expands on prior legislation by the same author [see stats. 2006 AB 1681 (Pavley)] that prohibited lead in jewelry. According to the author, jewelry manufacturers have since replaced lead with cadmium in children's jewelry products. Cadmium and cadmium compounds are known to the State to cause cancer and reproductive toxicity. Long-term exposure to cadmium could lead to kidney disease and cause fragile bones. Commencing on January 1, 2012, SB 929 prohibits a person from manufacturing, shipping, or selling children's jewelry that contains cadmium at any level above 300 parts per million (ppm).

Waste latex and oil-based paints generated by consumers in California represent the largest source of household hazardous waste (HHW) for consumers. With only 5% of California households using HHW programs, AB 1343 (Huffman) was introduced to establish an architectural paint recovery program to recover and properly manage leftover paint. According to the author of this law, this new law will reduce the financial burden on local governments and protect the environment by requiring manufacturers to take responsibility for establishing and financing a safe and reliable system for the recovery and proper management of leftover paint.

This program requires paint manufacturers or a designated stewardship organization to develop and implement an architectural paint stewardship plan. The plan must be designed to recover and reduce the generation of and promote the re-use of post-consumer architectural paint. In addition, the plan must manage the end-of-life of post-consumer architectural paint, in an environmentally sound fashion, including collection, transportation, processing, and disposal.

## Hazardous Waste

(AB 1930 De La Torre)

Glass beads used to treat or otherwise to strip paint from parts and materials contain dust with elevated levels of toxic heavy metals. These metals present a health hazard to employees and an environmental risk to soil and water. AB 1930 (De La Torre) follows the lead of the United States military, which established maximum levels of arsenic and lead to protect individuals and the environment. AB 1930 adopts this standard and prohibits the manufacture or sale of glass beads containing arsenic or lead above limits in blasting equipment. The law specifies that glass beads must contain less than 75 ppm arsenic and 100 ppm lead, and that each container or bag must be labeled: "Glass bead contents contain less than 75 ppm arsenic and less than 100 ppm lead."

## Water Quality

(SB 918 Pavley, AB 518 Lowenthal)

According to Senator Pavley "each year, California discharges nearly four million acre feet of wastewater into the ocean... much of that water could be recycled." However, because the state has not adopted uniform recycling standards, the permitting and design processes for building and operating water recycling facilities are unpredictable, discouraging local communities from tapping into this major water source. The Water Recycling Act of 1991 established a statewide goal to recycle 1 million acre feet of water each year by 2010. SB 918 (Pavley) expands the authority of the state Department of Public Health (DPH) to establish uniform statewide recycling criteria for recycled water beyond its existing authority to protect public health. This law requires DPH to adopt uniform water recycling criteria for indirect potable water reuse for groundwater recharge and surface water augmentation by December 31, 2013, and December 31, 2016, respectively. DPH is conditionally authorized to approve the water

recycling criteria if an expert panel on uniform water recycling criteria determines the recycling criteria would adequately protect public health.

The Governor's Climate Action Team anticipates more frequent and more severe water shortages due to the effects of climate change and growing population. AB 518 (Lowenthal) builds upon recent legislation that promoted reuse of graywater by requiring the Department of Housing and Community Development to establish graywater standards for residential uses. Graywater is untreated wastewater such as from clothes washers and showers. This law requires the California Building Standards Commission to adopt building standards for indoor and outdoor uses in non-residential occupancies. In so doing, this law terminates prior authority of the Department of Water Resources

## Pesticides

(AB 1963 Nava)

AB 1963 (Nava) was introduced to enhance monitoring of farm workers for exposures to organophosphates and carbamate pesticides that suppress cholinesterase levels. When the cholinesterase nerve enzyme is suppressed, it can lead to impaired reproductive function; birth defects; a weakened immune system; an increased risk of non-Hodgkin's lymphoma and leukemia; nerve damage; severe neurological effects; and even death. Prior to AB 1963, the state cholinesterase medical supervision program requires that farm workers who are regularly using organophosphate and carbamate pesticides must undergo medical supervision to monitor whether the pesticides are suppressing the workers' cholinesterase levels. Employers must remove from the work environment employees whose cholinesterase levels are suppressed. In order to improve the effectiveness of the cholinesterase medical supervision program, this law requires clinical laboratories to electronically submit the cholinesterase testing data to the Department of Pesticide Regulation (DPR). This enables the employer to satisfy his or her responsibilities for medical supervision of his or her employees who regularly handle organophosphates and carbonates. The same data must also be reported in response to alleged cholinesterase inhibitor exposures or known exposures resulting in illness. DPR must share this data with the Office of Environmental Health Hazard Assessment and DPH on an ongoing basis

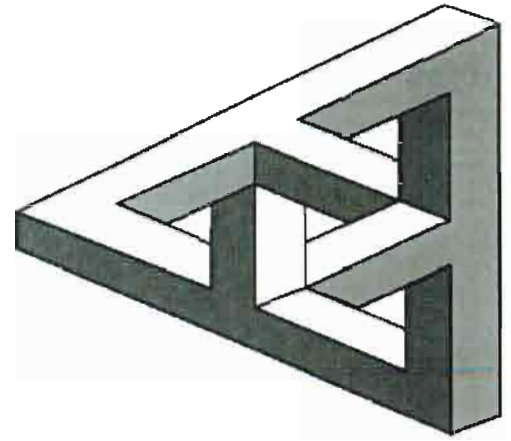
## Looking Ahead

The last legislative session was once again mired in financial crisis, owing to the insurmountable supermajority required to pass a budget. The Legislature and outgoing Governor managed to close a \$19 billion dollar budget hole in October 2010, thus ending the longest budget impasse in legislative history. Without significant structural changes, we can expect \$20 billion annual shortfalls for the next five years.

After two decades, Jerry Brown returns to Sacramento as a third-term governor facing this crippling

: budget deficit. During his absence, the political climate in Sacramento has become more polarized and dysfunctional. Against this backdrop, Governor Brown appears poised to tackle the state's irrational budgeting system. He is expected to call for a special election to raise revenues, which may well require rethinking some aspects of Proposition 13. The outcome of this effort has the potential to dominate his administration and distract from policy making in the near term. However, if he can finally break the fiscal log jam, he would indeed deliver an encore performance.





## 2010 CALIFORNIA ENVIRONMENTAL LEGISLATIVE YEAR IN REVIEW

by Gary A. Lucks, JD, CPEA

*Gary A. Lucks JD CPEA is a Principal at BEYOND COMPLIANCE, LLC in Oakland, California, where he advises clients on multimedia environmental regulatory compliance, auditing, and sustainability. He is a certified professional environmental auditor and regular instructor at the University of California (U.C.) Berkeley and U.C. Davis Extension Program where he teaches courses on environmental law, legislation, auditing, compliance, and sustainability. He currently serves as an advisor to the Bay Area Air Quality Management District and on the California State Bar Environmental Legislation Committee. He also chairs the West Coast Auditing Roundtable. Mr. Lucks has published numerous articles and newsletters addressing environmental legislation and policy. He is the co-author of a book entitled California Environmental Law and Policy: A Practical Guide and is co-founder of the Sustainable Earth Initiative (SEI), a non-profit organization dedicated to helping businesses and government become more sustainable through local actions.*

Preoccupied by another financial crisis and election year politics, the Legislature and the outgoing Governor concluded one of the most lackluster legislative sessions in decades. Despite the dearth of earth-shattering legislation, last year was noted for significant ballot initiatives that may have far reaching implications in California and on the national stage.

This year was marked by the passage of Proposition 26, which changes the state Constitution by recasting environmental fees as “taxes,” making it virtually impossible to obtain the requisite two-thirds vote for approval. This could jeopardize some programs and have profound and wide-ranging impacts on implementing many California environmental laws,

including the Global Warming Solutions Act of 2006 (otherwise known as “AB 32”).

Nonetheless, the recently closed legislative session produced noteworthy policy on product stewardship for carpet manufacturers; waste paint recycling, and limits on heavy metal content in bead blasting. The balance of the new laws addressed a number of technical clean-up provisions affecting existing environmental programs.

Legislation passed in the following sectors addressed various concerns:

- **Air Quality and Climate Change:** preserving AB 32; promoting cleaner, more efficient vehicles; easing the transition to electric vehicles and plug-in hybrids.
- **Energy:** expanding the Property Assessed Clean Energy (PACE) program; restricting investment in Iran's energy sector.
- **Solid Waste:** meeting labeling requirements for compostable bags.
- **Tanks:** establishing a limited exemption for underground storage tank (UST) construction and operational requirements.
- **Sustainability:** requiring carpet manufacturers to adopt strategies to increase the recycling and collection of carpets in California; exempting private passenger cars used for personal vehicle sharing programs (PVSP) from being considered commercial vehicles for insurance purposes.
- **Hazardous Materials and Green Chemistry:** requiring paint manufacturers to develop a paint stewardship plan to recover unused paint; limiting the use of brake pads containing specified metals and asbestos; prohibiting specified levels of cadmium in children's jewelry.
- **Hazardous Waste:** limiting the arsenic and lead content in blasting media.
- **Water Quality:** authorizing development of uniform recycled water criteria to reuse potable water for groundwater recharge and surface water augmentation; requiring adoption of grey water standards for indoor and outdoor uses in non-residential buildings.
- **Pesticides:** protecting farm workers from chemical exposure.

## **Air Quality and Climate Change**

(Proposition 23, SB 535 Yee, SB 1455 Kehoe, 1340 Kehoe)

Proposition 23 would have indefinitely suspended Assembly Bill (AB) 32, leaving in limbo California's pioneering efforts to tackle climate change. With his approval ratings in the dumps, the lame duck Governor salvaged his reputation as one of the champions of Climate Change legislation when Proposition 23 went down to a resounding defeat in the November 2010 election, thus preserving part of Governor Schwarzenegger's legacy as a green crusader. AB 32 authorizes the California Air Resources Board (ARB) to craft strategies to reduce greenhouse gas (GHG) emissions to 1990 levels by 2020. Since enactment of AB 32, the ARB has been implementing the "scoping plan," which sets forth an ambitious set of regulatory strategies including a "cap-and-trade" scheme to reduce GHGs.

SB 535 (Yee) is one of several bills designed to promote low emission vehicles along with the infrastructure to support electric vehicles. This law extends the types of low emission vehicles that can use the high-occupancy vehicle (HOV) lanes regardless of vehicle occupancy. Beginning on January 1, 2012, up to 40,000 enhanced advanced technology partial zero-emission vehicles will be extended this privilege. This law additionally extends until July 1, 2011, the HOV privilege for single-occupant hybrid vehicles with a fuel economy rating of at least 45 miles per gallon or greater fuel economy highway rating that meets specified design standards such as ultra-low emission vehicles and super ultra-low emission vehicles.

Last year, the Legislature passed SB 626 [see Stats. 2009 SB 626 (Kehoe)], which required the California Public Utilities Commission (PUC) to develop strategies to overcome barriers to widespread use of plug-in hybrid vehicles by July 1, 2011. By 2020, the State Energy Resources Conservation and Development Commission (otherwise known as the CEC) expects the number of electric vehicles (EVs) such as light-duty plug-in hybrid EVs and full-size battery EVs, to reach 1.5 million. SB 1455 (Kehoe) responds to this projected demand for EVs and assists potential EV buyers in making an informed decision about home charging, electrical features, and safety measures to consider.

With auto manufacturers gearing up to sell new EVs and plug-in EVs in California there will be a need for consumers to make electrical improvements in

their homes to accommodate these vehicles. SB 1340 (Kehoe) expands the authority for public agencies and property owners to voluntarily agree to be assessed in order to finance EV charging infrastructure. The law further prohibits public agencies from allowing property owners to participate in contractual assessment programs where the total assessments and taxes on their property exceed 5% of the property's market value. This law also expands the PACE Reserve program to do the following:

- assist local jurisdictions in financing installation of EV charging infrastructure;
- allow the proceeds of the PACE bonds to finance qualified EV charging infrastructure; and
- expand the definition of a PACE bond to include financing of EV charging infrastructure.

## Energy

(AB 1873 Huffman, AB 1650 Feuer)

AB 1873 (Huffman) builds upon the success of AB 811 [*see stats. 2008 AB 811 (Levine)*], which authorized local government to provide homeowners up-front funds to pay for energy efficiency or renewable energy projects while the participating property owner repays the loan annually over time. AB 1873 expands this program (otherwise known as the local PACE) state-wide by authorizing the state to purchase bonds to finance distributed generation renewable energy sources or energy or water efficiency improvements via PACE programs. Specifically, the State Treasurer, the California Public Employees Retirement System Board (CalPERS), and the State Compensation Insurance Fund (SCIF) are authorized to purchase the bonds. This law additionally authorizes joint powers authorities (JPA) to purchase, and a local agency to sell, the right, title, and interest in a PACE assessment contract

AB 1650 (Feuer) prohibits persons from bidding on or entering into contracts with a public entity for goods and services of \$20 million or more in Iran's energy sector. Further, beginning June 1, 2011, financial institutions are prohibited from extending \$20 million or more in credit to persons providing goods or services to Iran's energy sector. Beginning June 1, 2011, this law additionally prohibits persons from contracting with a public entity in Iran for goods or services of \$1 million or more.

## Solid Waste

(SB 228 DeSaulnier)

SB 228 (DeSaulnier) builds upon a California law that prohibits the sale of plastic bags labeled "compostable" or "marine degradable" unless the bag complies with a specified American Society for Testing and Materials (ASTM) standard. This law requires manufacturers of compostable bags, beginning July 1, 2011, to ensure that the compostable plastic bag is readily and easily identifiable from other plastic bags and has a "compostable" label and a certification logo indicating the bag meets the ASTM D6400 specification. Manufacturers must abide by the Federal Trade Commission's *Guides for the Use of Environmental Marketing Claims* and may not sell or distribute as "compostable" plastic bags that display a recycling symbol (*e.g.*, a chasing arrow).

## Tanks

(AB 1674 Saldana)

AB 1674 (Saldana) exempts from specified requirements vaulted tanks (*i.e.*, below-grade tanks that are not buried in the ground) that are connected to an emergency generator tank system that meets specified conditions. These tanks do not have to comply with all standards imposed on USTs installed after July 1, 2004, which includes, among other things, pressure monitoring between the soil and the exterior walls of the tanks. The tank must have the following characteristics:

- 1) The tank must be situated above the surface of the floor in such a way that all of the surfaces of the tank can be visually inspected by either direct viewing or through the use of visual aids monitored through the use of a continuous leak detection and alarm system capable of detecting unauthorized releases;
- 2) For single-walled tanks, the structure — or a separate discrete secondary structure — must be able to contain the entire contents of the liquid stored in the tank, and must be sealed with a material compatible with the stored product;
- 3) The owner or operator of the tank must keep a log of visual inspections conducted each time the emergency generator tank system is operated, or at least once a month; and
- 4) The tank or combination of tanks in the below-grade structure must have cumulative capacity of 1,100 gallons or less of diesel fuel.

## Sustainability

(AB 2398 Perez)

The California Department of Resources Recycling and Recovery (DRRR) published a Statewide Waste Characterization Study in 2008, which estimated that 1.3 million tons of carpet are disposed of annually in California landfills: this constitutes 3.2% of all solid waste generated in landfills. AB 2398 (Perez) was enacted to increase the rate of landfill diversion for carpets. It addresses one of the barriers to increasing carpet recycling rates by establishing infrastructure to collect and process waste carpet. This law requires carpet manufacturers in California, by September 30, 2011, to submit a carpet stewardship plan. This plan is intended to increase carpet recycling by implementing product design, use, and end-of-life management strategies.

Beginning July 1, 2011, a carpet manufacturer must add a \$0.05 per square yard assessment on the purchase price for carpet sold in California. Retailers and wholesalers are obligated to add this assessment to the purchase price. Beginning April 1, 2012, the law prohibits manufacturers, wholesalers, and retailers from selling carpets in California without an approved stewardship plan.

AB 1871 (Jones) provides that private passenger motor vehicles used for PVSPs are exempt from being classified as commercial vehicles for insurance purposes. The annual revenues generated by vehicle sharing must be less than the annual expenses of owning and operating the vehicle.

## Hazardous Materials and Green Chemistry

(SB 346 Kehoe, SB 1365 Corbett, SB 929 Pavley, AB 1343 Huffman)

Several years ago, the Department of Toxic Substances Control (DTSC) was authorized to remove mercury-containing vehicle light switches from vehicles. SB 346 (Kehoe) builds on this program by limiting for sale in California specified metals and asbestos from motor vehicle brake pads on and after January 1, 2014. Motor vehicle brake friction materials that exceed the following concentrations may not be sold in the state:

- 0.01% by weight for cadmium and its compounds, and
- 0.1% by weight for chromium (VI)-salts, lead and its compounds, mercury and its compounds.

The prohibition applies to asbestos fibers in any amount. In addition, beginning January 1, 2014, new motor vehicles sold in California must be equipped with

brake friction materials that meet the limits specified above. In addition, this law prohibits copper in motor vehicle brake pads. By January 1, 2021, the limit is 5% by weight of copper and 0.5% by weight of copper by January 2025. A violation of these limits subjects manufacturers to a civil fine of up to \$10,000 per violation.

Manufacturers of vehicle brake pads must use the newly established Toxics Information Clearinghouse to evaluate and analyze potential alternatives to lower the potential hazard to public health and the environment.

California law prohibits the manufacture or sale of toys contaminated with specified levels of lead, antimony, arsenic, cadmium, mercury, selenium, or barium contained in paint and lacquer coatings. SB 1365 (Corbett) updates this law and makes reference to the lead content allowed pursuant to the federal Consumer Product Safety Act and the Consumer Product Safety Improvement Act of 2008. This law prohibits the manufacture or sale by a retailer of toys made using chromium identified in ASTM International Standard F963-08.

Notwithstanding the recent developments with green chemistry regulation in California, SB 929 (Pavley) expands on prior legislation by the same author [see stats. 2006 AB 1681 (Pavley)] that prohibited lead in jewelry. According to the author, jewelry manufacturers have since replaced lead with cadmium in children's jewelry products. Cadmium and cadmium compounds are known to the State to cause cancer and reproductive toxicity. Long-term exposure to cadmium could lead to kidney disease and cause fragile bones. Commencing on January 1, 2012, SB 929 prohibits a person from manufacturing, shipping, or selling children's jewelry that contains cadmium at any level above 300 parts per million (ppm).

Waste latex and oil-based paints generated by consumers in California represent the largest source of household hazardous waste (HHW) for consumers. With only 5% of California households using HHW programs, AB 1343 (Huffman) was introduced to establish an architectural paint recovery program to recover and properly manage leftover paint. According to the author of this law, this new law will reduce the financial burden on local governments and protect the environment by requiring manufacturers to take responsibility for establishing and financing a safe and reliable system for the recovery and proper management of leftover paint.

This program requires paint manufacturers or a designated stewardship organization to develop and implement an architectural paint stewardship plan. The plan must be designed to recover and reduce the generation of and promote the re-use of post-consumer architectural paint. In addition, the plan must manage the end-of-life of post-consumer architectural paint, in an environmentally sound fashion, including collection, transportation, processing, and disposal.

## Hazardous Waste

(AB 1930 De La Torre)

Glass beads used to treat or otherwise to strip paint from parts and materials contain dust with elevated levels of toxic heavy metals. These metals present a health hazard to employees and an environmental risk to soil and water. AB 1930 (De La Torre) follows the lead of the United States military, which established maximum levels of arsenic and lead to protect individuals and the environment. AB 1930 adopts this standard and prohibits the manufacture or sale of glass beads containing arsenic or lead above limits in blasting equipment. The law specifies that glass beads must contain less than 75 ppm arsenic and 100 ppm lead, and that each container or bag must be labeled: "Glass bead contents contain less than 75 ppm arsenic and less than 100 ppm lead."

## Water Quality

(SB 918 Pavley, AB 518 Lowenthal)

According to Senator Pavley "each year, California discharges nearly four million acre feet of wastewater into the ocean... much of that water could be recycled." However, because the state has not adopted uniform recycling standards, the permitting and design processes for building and operating water recycling facilities are unpredictable, discouraging local communities from tapping into this major water source. The Water Recycling Act of 1991 established a statewide goal to recycle 1 million acre feet of water each year by 2010. SB 918 (Pavley) expands the authority of the state Department of Public Health (DPH) to establish uniform statewide recycling criteria for recycled water beyond its existing authority to protect public health. This law requires DPH to adopt uniform water recycling criteria for indirect potable water reuse for groundwater recharge and surface water augmentation by December 31, 2013, and December 31, 2016, respectively. DPH is conditionally authorized to approve the water

recycling criteria if an expert panel on uniform water recycling criteria determines the recycling criteria would adequately protect public health.

The Governor's Climate Action Team anticipates more frequent and more severe water shortages due to the effects of climate change and growing population. AB 518 (Lowenthal) builds upon recent legislation that promoted reuse of graywater by requiring the Department of Housing and Community Development to establish graywater standards for residential uses. Graywater is untreated wastewater such as from clothes washers and showers. This law requires the California Building Standards Commission to adopt building standards for indoor and outdoor uses in non-residential occupancies. In so doing, this law terminates prior authority of the Department of Water Resources

## Pesticides

(AB 1963 Nava)

AB 1963 (Nava) was introduced to enhance monitoring of farm workers for exposures to organophosphates and carbamate pesticides that suppress cholinesterase levels. When the cholinesterase nerve enzyme is suppressed, it can lead to impaired reproductive function; birth defects; a weakened immune system; an increased risk of non-Hodgkin's lymphoma and leukemia; nerve damage; severe neurological effects; and even death. Prior to AB 1963, the state cholinesterase medical supervision program requires that farm workers who are regularly using organophosphate and carbamate pesticides must undergo medical supervision to monitor whether the pesticides are suppressing the workers' cholinesterase levels. Employers must remove from the work environment employees whose cholinesterase levels are suppressed. In order to improve the effectiveness of the cholinesterase medical supervision program, this law requires clinical laboratories to electronically submit the cholinesterase testing data to the Department of Pesticide Regulation (DPR). This enables the employer to satisfy his or her responsibilities for medical supervision of his or her employees who regularly handle organophosphates and carbonates. The same data must also be reported in response to alleged cholinesterase inhibitor exposures or known exposures resulting in illness. DPR must share this data with the Office of Environmental Health Hazard Assessment and DPH on an ongoing basis

## Looking Ahead

The last legislative session was once again mired in financial crisis, owing to the insurmountable supermajority required to pass a budget. The Legislature and outgoing Governor managed to close a \$19 billion dollar budget hole in October 2010, thus ending the longest budget impasse in legislative history. Without significant structural changes, we can expect \$20 billion annual shortfalls for the next five years.

After two decades, Jerry Brown returns to Sacramento as a third-term governor facing this crippling

: budget deficit. During his absence, the political climate in Sacramento has become more polarized and dysfunctional. Against this backdrop, Governor Brown appears poised to tackle the state's irrational budgeting system. He is expected to call for a special election to raise revenues, which may well require rethinking some aspects of Proposition 13. The outcome of this effort has the potential to dominate his administration and distract from policy making in the near term. However, if he can finally break the fiscal log jam, he would indeed deliver an encore performance.

