



Editor's Note: Our survey of environmental legislation this year is authored by Gary Lucks and Erin Sullivan of Oakland's Beyond Compliance LLC.

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In this issue we begin our annual survey of new environmental legislation signed into law by Governor Arnold Schwarzenegger in 2006. The survey will be in two parts, with the second part contained in our next issue.

We have grouped the bills according to subject matter. Readers should not assume that all the bills in any particular category (e.g., air quality) are in this issue. Both issues should be consulted to get the full picture of new legislation in a particular area. Unless the bill is noted as "urgency" legislation, its provisions will become

effective on January 1, 2007. This is the second year of the two-year 2005-2006 session. Bills that failed to reach the governor's desk this year, or were vetoed by him, are dead.

As usual, there are a large number of changes in state legislation, often of a minute, technical nature. For this reason we caution that the bill summaries set forth below are our best efforts at describing these changes. Anyone interested in a particular bill should obtain a copy and review it in detail. Individual bills can usually be ordered from the Sacramento office of the bill's author (in parentheses) or from the legislative bill room at (916) 445-2645. They can also be found on the Official California Legislative Information website: www.leginfo.ca.gov.

AIR QUALITY

AB 32 (Nunez) California Global Warming Solutions Act of 2006. This landmark bill requires the California Air Resources Board (ARB) to adopt a statewide greenhouse gas (GHG) emissions limit that will ultimately reduce emissions by 25% by 2020. In addition to setting a mandatory limit on GHG emissions, this legislation requires the ARB to adopt regulations by January 1, 2008, requiring GHG emission sources to monitor and report their emissions. This bill is discussed in detail in our September 15 issue.

AB 1870 (Lieber) Motor Vehicles. Under existing law, it is possible for smoking vehicles to pass the Smog Check. In response, this bill requires the Department of Consumer Affairs, Bureau of Automotive Repair (BAR), to implement a visual smog check test to determine the presence of smoke in automobile exhaust by January 1, 2008. Any visible smoke from the tailpipe or crankcase of a motor vehicle during an inspection will result in failing the smog test. However, steam resulting from condensation by itself will not necessarily re-

sult in inspection failure. Low-income motorists who fail the test are eligible to receive a repair subsidy under the Consumer Assistance Program.

AB 2154 (Goldberg) Car Share Parking. This bill allows a city or county to designate certain streets or portions of streets for the exclusive parking privilege of motor vehicles participating in a car share vehicle or rideshare program. The city or county may choose to do this through local ordinance or resolution. The bill defines a "car share vehicle" as a motor vehicle that is operated as part of a regional fleet by a public or private car sharing company or organization and provides daily or hourly service.

AB 2276 (Pavley) Indoor Air Cleaning Devices. This bill requires the ARB to develop and adopt regulations to protect public health from ozone emitted by indoor air cleaning devices used in occupied spaces. The regulations will apply to both medical and non-medical devices. The ARB must adopt these regulations by December 31, 2008.

AB 2600 (Lieu) HOV Lanes. This bill extends the use of high-occupancy vehicle (HOV) lanes by single-occupant drivers of certain hybrid vehicles. AB 2600 allows an additional 10,000 high-mileage hybrid vehicles to drive in the HOV lanes regardless of the number of vehicle occupants. Under existing law, single-occupant drivers of certain hybrid vehicles can travel in these carpool lanes until January 1, 2008. AB 2600 extends this single-occupancy sunset provision to January 1, 2011, or until federal law determines otherwise, whichever is sooner.

SB 1266 (Perata) Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006. This bill, subject to voter approval on November 7, 2006, would enact the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006. The Act would authorize



\$19.925 billion of state general obligation bonds for specified purposes, including transportation corridor improvements, state highway safety improvements and repairs, freeway upgrades to reduce congestion, local street and road repairs, air pollution reduction, seismic safety improvements to local bridges, transit and passenger rail improvements, and port and transit-related security projects. Introduced as urgency legislation, this bill, subject to voter approval, will become effective immediately.

SB 1505 (Lowenthal) Hydrogen Alternative Fuel. SB 1505 requires the ARB to adopt regulations by January 1, 2008, establishing environmental performance standards for the production and use of hydrogen fuel for transportation purposes. The regulations must ensure that state funding for the production and use of hydrogen fuel, as described in the California Hydrogen Highway Blueprint Plan, contributes to the overall reduction of greenhouse gas, criteria air pollutants, and toxic air emissions.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

AB 1039 (Nunez) Exemption: Levees and Seismic Retrofit Projects. AB 1039 creates three new statutory exemptions from the California Environmental Quality Act (CEQA). These exemptions include: (1) the repair of certain critical levees of the Sacramento River Flood Control Project; (2) specified seismic retrofit projects on existing local bridges; and (3) specified highway seismic retrofit projects. Under each exemption, the implementing agency must conduct outreach efforts in the vicinity of the project, comply with air quality rules for construction equipment and for control of particulate matter, and to the extent feasible use construction equipment powered by emulsified diesel fuel, electricity, natural gas, or ultralow sulfur diesel. This bill also allows the California Department of Transportation (Caltrans) to prepare a master environmental impact report (EIR) for certain improvements along Highway 99.

AB 1341 (Committee on Environmental Safety and Toxic Materials) AB 1341 allows the California Pollution Control Financing Authority (CPCFA) to increase the amount of grants and loans to cities and counties under the Sustainable Communities Grant and Loan Program from \$5 million to \$7.5 million and extends the operation of the program until January 1, 2012. In addition, this bill requires an applicant for project funding by CPCFA, the California Health Facilities Financing Authority, and the California Educational Facilities Authority, to provide documentation that the project has complied with CEQA, or is not a project under CEQA, before those authorities can approve the issuance of bonds for the project. Passed as urgency legislation, this bill is effective immediately.

SB 1814 (Torlaxson) CEQA: Schools. This bill amends CEQA by authorizing a master environmental impact report (EIR) to be prepared for a plan for school projects undertaken by a school district that also complies with certain school facilities requirements.

CONTAMINATED PROPERTIES

AB 2144 (Montanez) Brownfields: Public Participation. The California Land Reuse and Revitalization Act (CLRRRA) of 2004 provides that an innocent landowner, a bona fide purchaser, or a contiguous property owner, as defined, qualifies for immunity from liability for response cost or damage claims under specified state statutory and common laws that impose liability upon an owner or occupant of property for pollution conditions caused by a release or threatened release of a hazardous material on, under, or adjacent to that property if the innocent purchaser, bona fide purchaser, or contiguous property owner meets specified conditions. This bill revises and improves public participation processes for the cleanup of these affected CLRRRA sites by making public participation procedures more uniform across agencies. Specifically, AB 2144 defines "agency" to mean the Department of Toxic Substances Control (DTSC), the State Water Resources

Control Board (SWRCB), or a California regional water quality control board (RWQCB). Second, the bill requires the agency, 30 days before taking action on a response plan, to notify all other appropriate governmental entities and local agencies, including, but not limited to, DTSC, the RWQCB, or a redevelopment agency, which is not party to the response plan regarding the proposed response action. The bill also requires that the agency consider environmental justice implications for communities most impacted and that it place a notice in a newspaper of general circulation, as specified, and post notice of the proposed response plan on the site.

ENERGY

AB 2189 (Blakeslee) Renewable Energy. The California Renewables Portfolio Standard (RPS) requires a retail seller of electricity to supply a minimum percentage or amount of its load with eligible sources of renewable energy. This bill alters the eligibility of hydroelectric generation facilities under the RPS. Under existing law, any "small" hydroelectric generation facility with a capacity of greater than 30 megawatts (MW) is ineligible for the RPS. This bill provides, among other things, that if a small hydroelectric generation facility that produced 30 MW or less prior to January 1, 2003, undergoes efficiency upgrades causing its capacity to exceed 30 MW, it will maintain eligibility for the RPS. However, the energy efficiency improvements must not result in a new or increased appropriation or diversion of water from a watercourse.

AB 2573 (Leno) Hetch-Hetchy Water and Power. This bill increases the amount of solar generation the Hetch-Hetchy Water and Power (HHWP) system can offer to the grid. The bill also requires Pacific Gas and Electric Company (PG&E) to accept HHWP-generated solar power at one location and provide electricity to a remote location up to the amount of electricity contemporaneously being used by the remote location.

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AB 2723 (Pavley) Solar Energy: Affordable Housing. This bill requires the California Public Utilities Commission (PUC) to ensure that not less than 10% of the funds from the California Solar Initiative (CSI) are used for the installation of solar energy systems on low-income residential housing. As a result, this legislation creates a low-interest/long-term loan program for solar energy in affordable housing projects.

AB 2778 (Lieber) Self-Generation. In March 2001, the PUC created the Self-Generation Incentive Program (SGIP) as a way to offer financial incentives to those customers who install certain types of distributed generation facilities to meet all or a portion of their energy needs. This bill extends the sunset date of the existing SGIP from January 1, 2008, to January 1, 2012. It also removes solar energy technologies from the program pursuant to the California Solar Initiative. Further, it requires the ARB and Energy Commission (CEC) to evaluate the costs and benefits of providing ratepayer subsidies for renewable and fossil fuel “ultraclean and low-emission distributed generation” as part of the Commission’s integrated energy policy report.

SB 107 (Simitian) Renewable Energy Program. The existing RPS requires investor-owned utilities to, among other things, achieve a 20% renewable electricity portfolio no later than December 31, 2017. SB 107 accelerates existing law by requiring that the 20% goal be reached by 2010. This bill also changes the definition of “eligible renewable resource” to allow renewable power that is produced outside the state to count toward a retail seller’s RPS if that power is delivered to an in-state location and complies with California’s environmental quality standards.

HAZARDOUS WASTE/ HAZARDOUS MATERIALS

AB 1953 (Chan) Lead Plumbing. Beginning January 1, 2010, this bill requires all faucets and plumbing fit-

tings sold in California to be lead-free. By redefining the term “lead free,” this bill will reduce the allowable lead content from 8% to 0.25%. In short, the bill prohibits the sale of any pipe, fitting, or fixture that contains more than .25% lead, except for a pipe that is used in manufacturing or industrial processing.

AB 2335 (Saldana) Medical Waste. This bill makes various technical revisions to the existing Medical Waste Management Act regulating the management of medical waste. Specifically, the bill expands the definition of “infectious agent” to include those organisms classified as Biosafety Level II, III, or IV by the federal Centers for Disease Control and Prevention. The bill also revises specific handling, containment, and storage requirements for medical waste.

AB 2861 (Ridley-Thomas) Lead Abatement. This bill increases the penalties for a person who fails to abate a lead hazard after receiving an order from the Department of Health Services (DHS) or a local enforcement agency. The bill makes the second or subsequent violation a misdemeanor punishable by a fine not to exceed \$5,000/day and/or by imprisonment for not more than 6 months.

SB 1379 (Perata) Biomonitoring. This bill requires DHS, in collaboration with the California Environmental Protection Agency (CalEPA), to establish the California Environmental Contaminant Biomonitoring Program – the nation’s first statewide biomonitoring program. The primary purpose of the program is to monitor the presence and concentration of designated chemicals in California. “Designated chemicals” are defined to include those chemicals that are known to be or strongly suspected of adversely affecting human health or development. Members of the Scientific Guidance Panel, appointed by the Governor and legislative leaders, will provide assistance.

LAND USE

AB 2140 (Hancock) General Plans. This bill authorizes a city, county, or a city and a county to adopt a local hazard mitigation plan (HMP) as part

of the safety element of its general plan and creates incentives for local governments to adopt HMPs.

AB 2511 (Jones) Housing. This bill makes several changes to state law to promote the development of affordable housing and prevent delays in processing applications for development projects that include a housing element. Specifically, this bill extends existing anti-discrimination provisions by prohibiting a local government agency from discriminating in its planning and zoning activities against low income persons or families. This bill also renames the “anti-NIMBY” law the “Housing Accountability Act.”

AB 2572 (Emerson) Housing: Colleges. AB 2572 requires councils of governments (COGs) to consider the housing needs generated by the presence of a college or university campus within the jurisdiction when developing a methodology to distribute regional housing needs assessments (RHNA) to local governments under state housing element law.

AB 2634 (Lieber) Low-Income Households. Under existing law, each city, county, or city and county must prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. This bill requires that the analysis of population and employment trends and quantification of a city or county’s existing and projected housing needs for all income levels in the housing element of its general plan include extremely low-income households, defined as those earning no more than 30% of the median income.

SB 53 (Kehoe) Redevelopment. This bill requires a redevelopment agency, in its redevelopment plan, to describe in detail the agency’s program for acquiring real property by eminent domain. Agencies must also make new findings of significant blight in order to extend the use of eminent domain past the initial 12-year authorization in plans.

NATURAL RESOURCES

AB 2485 (Jones and Laird) Sea Otters. Several types of nonpoint source



pollution are harmful to sea otters, including, but not limited to, cat feces. This bill establishes the California Sea Otter Fund to provide funds for increased enforcement and research to protect these marine mammals. The new law increases the penalties associated with illegal taking of sea otters and requires cat litter offered for sale in the state to contain specified disclosure statements regarding the proper disposal of cat feces.

SB 1535 (Kuehl) Fish and Game Commission. This bill authorizes the Fish and Game Commission to hire staff (including an executive director), requires the Commission to adopt a conflict of interest code, and makes changes to the frequency, times, and locations of the Commission's meetings and hearings.

SB 1556 (Torlakson) The Great California Delta Trail System. This bill requires the Delta Protection Commission to establish a continuous recreation corridor, including bicycle and hiking trails, around the Sacramento-San Joaquin Delta. This bill also requires the plan to link the San Francisco Bay Trail system to the planned Sacramento River trails in Yolo and Sacramento Counties.

SB 1843 (Committee on Natural Resources and Water) California Coastal Act. This is an omnibus bill allowing the California Coastal Commission to process a single coastal development permit application for projects that fall under the jurisdiction of both the commission and a local government with a certified local coastal program. This legislation is intended to streamline the permit processes in this unique situation, which usually arises with projects involving seawalls and bridges.

SOLID WASTE AND RECYCLING

AB 1333 (Frommer) Grease Waste Haulers. This bill prohibits a grease waste hauler from removing grease from a grease trap or grease interceptor unless the hauler removes all grease, greasy liquid, water, and solids from the grease trap or grease interceptor at the time of removal. Additionally, this bill makes it illegal

for any grease waste hauler to reinsert or otherwise improperly deposit grease materials into any place not expressly authorized to accept the waste. AB 1333 establishes civil penalties that are enforceable against grease hauling companies.

AB 2147 (Harman) Plastic Food and Beverage Containers. Existing law prohibits a person from selling a plastic bag that is labeled as "biodegradable," "compostable," or "degradable" unless the bag meets current American Society for Testing and Material (ASTM) standard specifications for the labeled term. AB 2147 broadens this existing law to include plastic food or beverage containers.

AB 2289 (Ruskin) Plastic Bulk Merchandise Containers. This bill requires businesses that recycle, shred, or destroy plastic bulk containers to obtain proof of ownership from a person selling five or more containers and to retain this information for one year from the date of purchase or delivery, whichever is later.

AB 2296 (Montanez) Landfills. This bill requires the California Integrated Waste Management Board (IWMB) to conduct a study, by January 1, 2008, to identify the potential long-term threats affecting the state's solid waste landfills. The study would also examine various financial assurance mechanisms to protect the State from long-term post-closure maintenance or corrective action costs if a landfill owner or operator fails to meet its legal obligation to fund post-closure maintenance or corrective action during the post-closure period. The bill requires IWMB to adopt regulations and develop recommendations based upon these studies by July 1, 2009.

AB 2449 (Levine) Recycling. On or before July 1, 2008, supermarkets and those stores with more than 10,000 feet of retail space and a pharmacy must implement an on-site plastic bag take-back and recycling program. Specifically, a visible and easily accessible collection bin for these bags must be placed in each store. Manufacturers must implement a public education program, and all bags must be labeled "Please Return to a Partici-

pating Store for Recycling."

WATER QUALITY AND SUPPLY

AB 371 (Goldberg) Water Recycling. This bill enacts the Water Recycling Act of 2006 to encourage the production and use of recycled water. The bill requires recycled water producers to notify Caltrans and the Department of General Services of their intent within 10 years to provide recycled water for state landscape irrigation. All piping installed by Caltrans or DGS for landscape irrigation within the area identified by the recycled water producer's notice must meet prescribed requirements.

AB 1881 (Laird) Water Conservation. This bill increases water conservation in California through new landscape irrigation requirements. The bill will reduce water use by prohibiting common interest developments from restricting the use of low water-using plants, requiring the CEC to adopt performance standards and labeling requirements for landscape irrigation equipment, and requiring the Department of Water Resources to develop an updated landscape water conservation ordinance.

AB 2701 (Blakeslee) Wastewater: San Luis Obispo County. Existing law authorizes the Los Osos Community Service District (District) to eliminate wastewater discharges in the area. AB 2701 removes from the District the power to construct and operate a wastewater collection and treatment system and transfers the authority to the County of San Luis Obispo. The bill also allows the County to undertake any efforts necessary to construct and operate a wastewater collection and treatment system to meet the needs of the District.

SB 475 (Runner) Drinking Water: Santa Clara River. This bill is intended to reduce the volume of chloride discharged to the Santa Clara River. This bill establishes a process whereby the Santa Clara Valley Sanitation District, upon voter approval of an ordinance adopted by the district board, may require the removal of all residential water softening or conditioning appliances that dis-

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charge to the public sewer system.

SB 729 (Simitian) Water Quality Agency Coordination. Under existing law, a regional water board investigates and enforces laws that protect the public's waters. This bill authorizes the State Board to carry out this authority if, after consulting with the appropriate regional board, the State Board determines that it will not duplicate the efforts of that board. The bill also requires the state and regional water boards to inform the public about their specific enforcement activities and to report rates of compliance.

SB 1347 (Machado) Solar Evaporators. This bill expands and makes permanent the regulatory framework at the State Board that allows the use of a solar evaporator system as one means to control or reduce potentially harmful high-salt-content agricultural drainage into surface water and groundwater.

SB 1425 (Kuehl) Groundwater Extraction. For more than 50 years, individuals in Los Angeles, Riverside, San Bernardino, and Ventura Counties who extracted 25 acre-feet of groundwater or more each year were required to file annual groundwater extraction reports with the SWRCB. The SWRCB was allowed to designate a local agency to receive and maintain groundwater extraction data for groundwater users within the agency's district if the board determined that the local agency met all the statutorily established requirements. SB 1425 requires the board to designate a local agency to receive and maintain this groundwater extraction data. This bill also allows a local agency to agree to accept and maintain extraction data for groundwater users outside the agency's district boundaries.

SB 1557 (Ducheny) Nonpotable Water Use. This bill determines that the use of potable water for non-potable uses within the Coachella Valley Water District is a waste or an unreasonable use if an adequate supply of non-potable water is available. In order for this determination to

apply, the District must make certain findings, including finding that the quality of the non-potable water is adequate for the use planned, that its cost is reasonable, and that the regional water board has determined that the use will not cause water quality problems.

WATER QUALITY

Appellate Court Upholds Substance of L.A. Stormwater Permit

The Second District Court of Appeal has added to the growing appellate court jurisprudence on municipal stormwater permits rejecting a number of challenges to the 2001 Los Angeles County MS4 permit. The Court, however, did order the Los Angeles regional water board, which issued the permit, to perform a more thorough environmental analysis of its consequences. This latter requirement is likely to be performed as part of the regional board's reissuance of the existing permit, which expires in December.

The permit was issued by the regional board in December 2001. Its permittees include the County of Los Angeles, the Los Angeles Flood Control District, and the 84 incorporated cities in the County (with the exception of Long Beach).

Thirty-two of those cities, the County, and various other parties filed five separate suits challenging the issuance of the permit. Those suits were consolidated before Judge Victoria Chaney in the Los Angeles Superior Court. Last April Judge Chaney issued a decision rejecting all of the various plaintiffs' arguments (CEI April 14, 2005), and this appeal followed.

The Second District's opinion is the third appellate decision largely upholding the authority of regional boards to issue MS4 permits with teeth. A December 2004 decision by the Fourth District upheld a lower court decision dismissing a challenge to the 2001 San Diego County MS4 permit issued by the San Diego regional board; *Building Industry Assn.*

of San Diego County v. State Water Resources Control Board, 124 Cal. App. 4th 866 (2004) (CEI December 20, 2004). Earlier this year the Fourth District again upheld a 2002 MS4 permit issued by the Santa Ana regional board; *City of Rancho Cucamonga v. Regional Water Quality Control Board*, 135 Cal. App.4th 1377 (2006) (CEI February 15, 2006). Many of the same issues raised by the plaintiffs in those cases were raised in this case also. However, there were some challenges unique to this case.

The Substantive Provisions of the Permit

Most of the plaintiffs' substantive challenges to the L.A. MS4 permit are dealt with by the Court in an unpublished portion of the opinion. Consequently, while they are certainly of interest to those in the field, they have no precedential effect.

Those substantive challenges dealt with in the published portion of the decision were resolved as follows.

- The plaintiffs sought declaratory relief as to whether they are required to go beyond controlling runoff "to the Maximum Extent Practicable" (MEP) under those provisions of the permit prohibiting their runoff from contributing to an exceedance of receiving water limits. In a somewhat confusing section of the decision, the appellate court ruled that the plaintiffs can only question a regional board action requiring a permittee to go beyond MEP by first appealing the particular board action to the State Board and then, if necessary, petitioning the Superior Court through the use of administrative mandamus pursuant to Code of Civil Procedure Section 1094.5.

In the unpublished part of the opinion (see below), the Court appears to say that even if such a challenge is mounted, the regional board has the authority to require going beyond MEP anyway.

- The permit requires the municipal permittees to update their general plans to consider storm water runoff and to amend their CEQA processes to ensure that the impact of commercial and residential development on

