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## LEGISLATION

Chapered bills from the 2004 legislative session are included in this issue.

### THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The county properly adopted a negative declaration for a reclamation plan for surface mining that included an expansion of the mining operation, even though the negative declaration did not address the effects of the expansion (p. 490)

### WATER QUALITY CONTROL

An urban water management plan was adopted in violation of the Urban Water Management Planning Act, because the plan failed to adequately address the reliability of the water supply in light of issues relating to perchlorate contamination (p. 506)

### FEDERAL LAND USE PLANNING

The City of Sausalito had standing under numerous environmental and conservation-oriented federal statutes to challenge the National Park Service's adoption of a plan for the development of Fort Baker, a former army post near the Golden Gate Bridge (p. 523)

## 2004 ENVIRONMENTAL LEGISLATIVE RECAP— A LIGHTWEIGHT YEAR

By  
*Gary A. Lucks\**

### Introduction

Governor Schwarzenegger completed the first year of his truncated term offering few clues about his environmental policy vision. This second year of the 2003-2004 Legislative session was dominated by election year politics and a Herculean struggle to again bring California's state budget into balance.

Arriving in the Governor's office in mid-term, the new administration was ill-equipped to move forward its environmental agenda, which, among other things, promotes renewable energy, manages suburban sprawl, and increases environmental penalties. The Governor spent his first year in office hiring staff and finding his way. As he gained his footing, he expended some political capital on several ballot initiatives and on the national stage while testing his strength against the democratically-controlled Legislature.

There have been rumblings about the "hydrogen highway" and incentives for hybrid vehicles; but on the whole, the Governor's environmental agenda took a back seat this session. The Legislature filled the void by serving up scores of bills—most of which failed. The Governor vetoed all of the bills addressing environment, health, and consumer protection that were targeted by the California Chamber of Commerce as "job killer" legislation.

Nonetheless, key legislation was approved, protecting California's coast, the Bay-Delta ecosystem, and water quality and water supply at publicly owned treatment works. Other bills were approved regulating "E" wastes from cell phones, requiring background checks for hazardous materials transporters, and establishing modified hazardous waste standards for treated wood waste, lead-based paint debris, and fuel filters. The Governor approved legislation imposing recycling standards on large venues like sports arenas, and softened enforcement on underground storage tanks (USTs). Compromise legislation governing immunity for cleanup of brownfields also became law. Finally, more permanent funding is now available to fund grants and loans to promote cleaner air emissions.

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## Agency Reorganization

Not since former Governor Pete Wilson's 1991 executive order creating the California Environmental Protection Agency (Cal-EPA) has the structure of California's disparate environmental agencies been fundamentally transformed. Although the executive order brought together the disparate boards, departments, and offices (BDOs) under one roof, it failed to integrate them in a meaningful, multi-media fashion. The coalescence of the air, water, and waste agencies under one umbrella was intended to allow the multimedia agencies to speak collectively, with a unified voice. Unfortunately, the Air Resources Board (ARB), the State Water Resources Control Board (SWRCB), the Department of Toxic Substances Control (DTSC), the Integrated Waste Management Board (IWMB), and other regulatory bodies continue to largely operate in an independent manner within a loose affiliation.

During his first State of the State address, Governor Schwarzenegger promised a more ambitious restructuring of government beyond simply reforming California's BDOs. After many months of work involving the efforts of 275 state employees, the Governor made good on his promise to "blow up the boxes" and issued the California Performance Review (CPR) report on August 3, 2004 [[www.report.cpr.ca.gov](http://www.report.cpr.ca.gov)]. The CPR Commission developed a 2,500-page report that offers over a thousand recommendations to streamline California's government structure by creating integrated super departments.

From an environmental standpoint, the govern-

ment reorganization is intended to integrate the “stove pipe” approach to regulating environmental matters in order to realize a multi-media government structure, while avoiding duplication of effort. The CPR envisions that the functions of the following agencies would be housed within a newly created Department of Environmental Protection: the ARB, the SWRCB (except the functions related to water rights allocation), the DTSC, the nine regional water quality control boards (RWQCBs), the IWMB, the Department of Pesticide Regulation, the Department of Health Services (including the Office of Drinking Water), the Department of Conservation (DOC), the Department of Fish and Game (the Oil Spill Prevention and Response Program only), the Office of Emergency Services, and the Coastal Commission (the Oil Spill program only). The Department of Natural Resources would oversee functions of the following agencies: SWRCB (functions related to water rights allocation only), the Department of Water Resources (DWR), the Office of Planning and Research (OPR) (CEQA Guideline Functions), the Department of Fish and Game (except functions transferred to newly created Department of Environmental Protection and Department of Safety Security), Coastal Commission (except the Oil Spill Program), and the State Coastal Conservancy. The Office of Environmental Health Hazard Assessment would be established within the new Health and Human Services Department. The CPR would also establish the Department of Infrastructure, which would house the following functions: OPR (state-wide planning duties, clearinghouse functions, and general plan guidelines), Public Utilities Commission (all non-Constitutional powers, duties, responsibilities, and functions), the Energy Resources Conservation and Resources Development Commission (otherwise known as the CEC), and the Public Works Board (except park land acquisition function). Finally, the CPR would establish the Department of Public Safety and Homeland Security, which would house the criminal investigations branch of DTSC and the law enforcement functions of the Department of Fish and Game.

According to the Governor, recasting California’s BDOs into this integrated structure would improve efficiency and eliminate potentially 12,000 state

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positions. The administration claims that the CPR would result in \$32 billion in savings over the next five years, and make government “more responsive to the needs of its citizens and business community.” The Legislative Budget Office counters that the Governor’s proposal overstates the financial savings and would not only be too cumbersome, but would lose the current benefits of a decentralized government structure that is deemed to be useful in a state the size of California.

After the CPR commission convenes public hearings on the recommendations described above, the fate of much of the reorganization plan could rest in the hands of the California Legislature, where each legislative house can approve or disapprove the CPR. The Constitution prohibits the legislative branch from negotiating the terms and conditions of the plan, providing only a take-it-or-leave-it proposition. The Governor can optionally implement other recommendations administratively or via legislation in the next biennial session.

In the midst of the CPR process, the administration pursued legislation designed to streamline the legions of reports due to the Legislature each year. The Governor signed Assembly Bill (AB) 2701 (Runner), which establishes a process to convert from paper to electronic means the countless state agency reports and documents that agencies must disseminate each year. This law additionally eliminates a number of outdated reporting requirements and regulatory adoption requirements that previously existed in state law.

## Water Quality

Water quality policies were front and center as the Legislature tackled a broad range of issues involving protecting California’s oceans, beaches, and the water quality in the Bay-Delta ecosystem. Other legislation broke a decades-long stalemate by requiring installation of water meters and establishing other conservation measures. Still other laws were enacted modifying release reporting obligations and drinking water standards.

The Governor signed into law two bills intended to restore and protect marine and coastal water quality. Senator Burton managed to enact signature legislation protecting the ocean ecosystem. He introduced two bills this session and succeeded in obtaining the Governor’s signature on one of them. Based

on a series of reports highlighting the dire condition of California’s coastal and ocean habitats, Senate Bill (SB) 1319 (Burton) establishes the California Ocean Protection Act, which creates a cabinet-level Ocean Protection Council. This Council brings together the Secretaries of the Resources Agency and Cal-EPA, along with the Chair of the State Lands Commission (SLC), and is empowered to protect coastal waters and ocean ecosystems. SB 1319 also establishes the California Ocean Protection Trust Fund and authorizes funding for activities related to coastal and ocean resources. Funding is available to (1) eliminate or reduce threats to coastal and ocean ecosystems, habitats, and species; (2) foster sustainable fisheries; (3) improve coastal water quality; (4) allow for increased public access to oceans and coastal resources; (5) improve management, conservation, and protection of coastal waters and ocean ecosystems; and (6) provide monitoring and scientific data to improve conservation and protection of ocean resources.

Other legislation designed to improve marine-managed areas includes AB 2529 (Kehoe). This law requires the SWRCB to award grants to local public agencies and nonprofit organizations to restore and protect water quality and the ecosystems in marine-managed areas. This legislation requires that SWRCB appoint a task force to recommend projects for funding in marine-managed areas.

SB 1155 (Machado) addresses concerns over implementation of the CALFED programmatic record of decision (ROD) that implements the Bay-Delta program. This program establishes a schedule to coordinate a series of water quality and water supply activities to protect and restore the Bay-Delta ecosystem. The environmental community was displeased with the priority of water supply projects over water quality programs. SB 1155 requires DWR and the U.S. Department of Interior to prepare a plan to meet the existing permit and license conditions pursuant to SWRCB Decision No. 164. The plan must be filed before the pumping rate from the Delta can be increased in order to ensure that specified water quality projects take place to protect and restore the Delta ecosystem.

The Legislature entertained several bills intended to more efficiently utilize the state’s limited water supply. Of the two bills introduced to require water meters, only AB 2572 (Kehoe) became law, breaking

an 84-year ban on water meters in the City of Sacramento. Sacramento and surrounding towns, along with Modesto, South Lake Tahoe, Marysville, and Oroville, have resisted installation of water meters to measure the volume of water consumed. AB 2572 requires urban water suppliers to install water meters on all municipal and industrial service connections constructed before 1992. With water meters in place, water suppliers will be in a position to impose demand-based pricing to promote water conservation. The law provides a great deal of latitude, allowing a 20-year grace period to install the meters. The law authorizes the urban water suppliers to charge customers based on the actual volume of water delivered on or after January 1, 2010. New urban water purveyors that commence operations on or after January 1, 2005, must install water meters on all municipal and industrial water connections within ten years of becoming a water supplier. These new suppliers must begin charging customers based on water usage within five years of becoming a water supplier.

Assembly Member Kehoe introduced AB 2470 (Kehoe) in response to data concluding that residential landscaping is responsible for consuming approximately 50 percent of urban water use in California. AB 2470 authorizes water suppliers that distribute water at retail or wholesale to educate the public about water conservation by preparing a booklet for use by buyers of real estate. AB 2717 (Laird) requires convening a working group to evaluate and recommend proposals to improve water use efficiency of urban irrigated landscapes. This working group must be composed of public and private agencies and associations. The working group is authorized to recommend improvements to the Model Water Efficient Landscape Ordinance.

AB 1408 (Wolk) responds to the Kinder-Morgan oil spill that fouled approximately 230 acres of wetlands in the Suisun Marsh last spring. Kinder-Morgan notified the Office of Spill Prevention and Response (OSPR) approximately 18 hours after first observing conditions suggesting a release had occurred. This legislation was enacted to clarify that the responsible party must provide immediate notice to OSP. This notice must occur notwithstanding parallel reporting provisions administered by the OSPR's sister organization—the Office of Emergency Services (OES) “which allows a responsible party to determine whether a spill is reportable based

on a determination” that the spill did not result in a significant hazard. This legislation further requires the State Fire Marshal expand the scope of their quadrennial reporting on pipeline leak incidents. The reports must now assess the condition of each pipeline, specifying, among other things, the number of leaks during each study period, average damage per incident, and the average age of leak pipe.

In the past few years, the Legislature enacted legislation [Stats 2000 AB 2872 (Shelley) and Stats. 1999 SB 25 (Escutia)] to lower action levels to protect the health of sensitive populations. AB 2342 (Jackson) requires the Office of Environmental Health Hazard Assessment (OEHHA) to consider revising public health goals that support drinking water standards to account for sensitive populations, including infants, children, pregnant women, the elderly, and individuals with a history of serious illness. AB 2528 (Lowenthal) modifies the type of notice that is required to be issued by public water systems (PWS) when they discover exceedances of maximum contaminant levels (MCLs). This new law requires operators of wholesale or retail PWSs to notify their governing bodies when MCLs or “response levels” are exceeded. A response level is the level where DHS recommends that additional steps beyond notification be followed to reduce public exposure. This law requires that the notification include the identification of the drinking water source in question, along with the origin of the contaminant exceeded. The notice must also include the MCL, the concentration of the detected contaminant, the response level, and the notification level (which is a precautionary, non-regulatory, health-based advisory level for contaminants for which no MCL has been established). Finally, the notice must include a brief, plainly worded statement of the health concerns raised by the exceedance. For those PWSs that are regulated public utilities, the California Public Utilities Commission (CPUC) must also be notified.

AB 1876 (Chan) expands on the recently enacted Watershed, Clean Beaches, and Water Quality Act [Stats 2002 AB 2534 (Pavley)], which appropriated \$223 million from Proposition 40 to improve water monitoring, water quality, and public beaches. The new law requires microbial testing and monitoring for heavily used public beaches and extends these provisions to include bay beaches. This legislation clarifies that “public” beaches include beaches that

are located within a coastal zone and beaches located within the jurisdiction of San Francisco Bay Conservation and Development Commission (BCDC).

### **Hazardous Materials**

The Legislature continues to shine the policy light on heavy metals, which have been shown to reside in dangerous concentrations within our collective body burden. Mercury, a neurotoxin, has received much attention in recent years with legislation to prohibit or manage its use as a universal waste. AB 1369 (Pavley) builds on recent policies designed to phase out the sale and use of mercury thermometers and novelty items that contain mercury. This law prohibits, with some exceptions, the sale of mercury-added thermostats used to control room temperatures, beginning on January 1, 2006. With safer alternatives, such as digital thermostats, consumers will have options to meet their needs. AB 2021 (Chu) revises legislation from last year [Stats. 2003, AB 455 (Chu)] that established the Toxics in Packaging Prevention Act. That Act prohibits the sale, for promotional purposes, of a package or packaging component that includes heavy metals such as mercury, lead, cadmium, or hexavalent chromium. That legislation established provisions by which a manufacturer, importer, or supplier could enjoy an exemption from the prohibition. AB 2021 modifies the process governing qualification for the exemption, providing that a package or component qualifies for an exemption only if: (1) the package or component is marked with a code indicating the date of manufacture prior to January 1, 2006; (2) the regulated metal was added to meet health or safety requirements of state or federal law; (3) the package or component contains no intentionally introduced regulated metals; and (4) the regulated metal is added to the package for a use where there is no feasible alternative.

Several other bills were introduced to expand on nascent programs addressing biomonitoring and the precautionary principle. Although these bills failed passage, we can expect to see these policy measures reemerging in the next legislative cycle.

Two bills, AB 901 and SB 50, modify the recently established electronic (“E”) Waste take-back program—the Electronic Waste Recycling Act of 2003 [known as “SB 20” (Sher)]. The Act established a product stewardship program for covered electronic devices (known as CEDs, which include computer

monitors, cathode ray tubes, flat panel screens, or other similar video display devices) and set forth a number of requirements governing the collection of fees to support and implement this manufacturer take-back program. The first bill—AB 901 (Jackson)—changes the date by which retailers are required to begin collecting the E-waste recycling fee in California. This fee must now be collected beginning November 1, 2004, instead of July 1, 2004, which was required by the original legislation.

The second bill was offered by Senator Sher, who authored last year’s SB 20. SB 50 (Sher) is “cleanup” legislation intended to clarify a number of provisions of SB 20. SB 50 expands on the original law and requires DTSC to adopt regulations that determine whether a discarded electronic device is presumed to be a hazardous waste. Retailers must be notified that covered electronic devices (CEDs) that are presumed to be hazardous wastes when discarded are subject to the Act and must also pay specified fees by January 1, 2005. SB 50 clarifies the definition of CED to also include a video display device that is an “electronic device” that may include a liquid crystal display (LCD), gas plasma, digital light processor, or other image projection technology. SB 50 also requires manufacturers of CEDs to notify retailers whether a device meets the definition of a “CED” for purposes of collecting fees beginning April 1, 2005, and annually thereafter. SB 50 also makes refurbished CEDs for sale in California subject to the Act. Finally, SB 50 clarifies the standards for exporting CED waste or other CEDs to other state or foreign countries. Be aware that DTSC will be revising its fact sheet on SB 20 in light of the changes described above.

AB 2901 (Pavley) establishes a similar manufacturer take-back program for another category of E-wastes by establishing the Cell Phone Recycling Act of 2004. This law requires cell phone retailers to establish, by July 1, 2006, a system to collect, reuse, and recycle cell phones. Retailers must make information available to consumers about cell phone recycling opportunities and California agencies that purchase or lease cell phones must require bidders to certify compliance with the provisions described above. Further, AB 2901 requires that DTSC provide information on cellular phone recycling rates and to post this information on the web.

AB 2587 (Chan) modifies groundbreaking legislation that passed last year [Stats. 2003, AB 302

(Chan)] and prohibits the manufacturing, processing, or distributing of brominated flame retardant (BFRs) products containing pentaBDE or octaBDE. AB 2587 advances the phase out schedule from January 1, 2008, to June 1, 2006. SB 922 (Soto) is another bill clarifying legislation from last year. SB 922 revises last year's SB 1004 [Stats. 2003, SB 1004 (Soto)], which requires owners and operators of perchlorate storage facilities to provide specified information to the SWRCB. SB 1004 imposes reporting obligations on owners or operators who have stored over 500 pounds per year of perchlorate since 1950. SB 922 changes the definition of "perchlorate" to exclude perchlorate located in unused military munitions (as per 40 C.F.R. § 261.10) and redefines "perchlorate storage facility" to exclude military munitions storage facilities within a military installation that meets the Department of Defense ammunition and explosives safety standards.

The California Legislature closed some regulatory gaps in the management and transportation of hazardous products and hazardous wastes. AB 2040 (LaSuer) harmonizes California law with federal standards by requiring applicants seeking a hazardous materials endorsement or renewal endorsement to meet federal credentials and background checks with the United States Transportation Security Administration for maritime and land transportation security. It also requires that truck drivers who transport hazardous materials submit fingerprints and undergo background checks. Previous California law required background checks for applicants seeking to treat, store, or dispose of hazardous wastes [Stats. 2002, SB 489 (Romero)]. Prior California law only required generators of hazardous waste and operators responsible for loading that waste to validate that the transporters possessed the appropriate endorsements [Stats. 2002, 1257 (Murray)].

### **Hazardous Waste**

The Legislature entertained legislation to relax the cradle-to-grave requirements of the Hazardous Waste Control Law for specified categories of hazardous waste. Standards were softened for spent fuel filters, lead-based paint debris (other than just wood debris), and treated wood waste. Other legislation made clear that revenues generated from Certified Unified Program Agency (CUPA) enforcement activities must be returned to hazardous waste enforcement activities.

AB 2877 (Aghazarian) extends the sunset date authorizing DTSC to adopt alternative management standards for some categories of hazardous wastes, such as electronic wastes, mercury, batteries, hazardous waste lamps, and lead-based wood debris. This law further expands authority to regulate the management of lead-based painted debris. Prior to enactment of this law, DTSC had authority to regulate the management of wood debris containing lead-based paint. AB 2877 authorizes DTSC to additionally regulate "lead-based paint debris," which include items other than wood, such as wall board, and metal items, such as piping.

AB 1353 (Matthews) requires that treated wood waste must be disposed of in a Class I hazardous waste landfill or a composite-lined portion of a municipal solid waste landfill unit (i.e., Class III). Those landfills accepting the treated waste wood must meet specified handling requirements, which among other things prevent scavenging. This legislation also requires that DTSC adopt regulations, by January 1, 2007, establishing management standards for treated wood waste as an alternative to hazardous waste management. This law exempts generators of treated waste wood from having to meet hazardous waste management requirements until promulgation of the alternative management regulations referenced above as long as generators meet specified conditions. Generators must, among other things, manage the waste to prevent scavenging, segregate the wood waste from other wastes, and not store it for more than 90 days (beginning July 1, 2005) and protect it from storm water run-on and run-off. Finally, all DTSC-issued variances granted for treated wood waste will be invalidated by January 1, 2005.

AB 2254 (Aghazarian) allows fuel filters to be managed pursuant to the relaxed hazardous waste standards enjoyed by generators of used oil filters as long as they meet specified conditions. Fuel oil filters must be stored in containers designed to prevent ignition of the gasoline or diesel fuel in the filter and must meet state and local fire codes. In addition, fuel filter containers must be labeled "used oil and gasoline filters." Spent fuel filters must meet DOT labeling and transportation requirements as well.

AB 3041 (Environmental Safety Committee) increases the amount of hazardous waste that a conditionally exempt small quantity generator (CESQG)

of hazardous waste can transport to a household hazardous waste (HHW) program. Prior law allowed a CESQG to transport up to 27 gallons of HHW on public roadways without a hazardous waste variance. AB 3041 allows a CESQG to transport up to 100 kilograms of HHW per month if the CESQG meets a number of conditions. First, the CESQG must generate the waste that it is transporting and must verify in advance that the HHW program will accept the waste. Second, the CESQG must have received information on how to properly package and handle the waste. Third, the HHW must be transported in a vehicle owned by the CESQG. AB 3041 additionally addresses how revenues generated from hazardous waste enforcement are to be used by the Certified Unified Program Agencies for enforcement activities. DTSC must use these funds to carry out the responsibilities assigned to enforce the handling and disposal of hazardous materials and waste.

AB 2251 (Lowenthal) clarifies prior law that a permitted hazardous waste treatment, storage, and disposal facility (TSDF) may continue operating after the expiration of its ten year permit if it submits a completed Part A and B permit (i.e., operations plan) application prior to the expiration date. DTSC does not have the staff to promptly review both the Part A and B permits upon arrival. By the time DTSC staff review the Part B operations plan, the application is often rendered stale and requires resubmittal. As result, AB 2251 was enacted to allow the extension of a TSDF permit upon submission of a complete Part A permit only. AB 2251 also provides for an expedited permit modification process for proposed changes to the structure or equipment at a TSDF where it is necessary to meet a state or federal agency or requirement designed to decrease risks to health and the environment.

### **Solid Waste**

With much of the heavy lifting completed on recycling programs, the Legislature looked beyond conventional recycling activities and directed its attention toward large arenas. Other legislation addressed manufacturers who claim that their plastic bags are biodegradable or compostable.

AB 2176 (Montanez) builds on the success of the Integrated Waste Management Act [Stats. 1989, AB 939 (Sher)] and regulates nonhazardous wastes generated at large venues such as concerts and sporting events. AB 2176 requires the IWMB to provide a

model ordinance to facilitate solid waste reduction, reuse, and recycling programs at large venues and events. The ordinance must be developed by April 1, 2005. The CIWMB must collect and evaluate local government data regarding large venues and large events and provide recommendations to the Legislature to assist with improved waste diversion. When issuing permits to operators of large venues and events, cities and counties must provide information on programs to reduce, reuse, and recycle solid waste materials generated at large venues and events. Finally, AB 2176 prohibits cities and counties from issuing building permits for development projects unless the developer can demonstrate there are adequate areas to collect and load recyclables.

SB 1749 (Karnette) prohibits the sale of plastic bags labeled as “biodegradable,” “compostable,” or “degradable” unless the plastic meets the American Society for Testing and Materials (ASTM) standards for the term used on the label. AB 2277 (Dymally) prohibits removing materials that require special handling from major appliances unless by a certified appliance recycler. “Major appliances” are defined to include washing machines, clothes dryers, hot water heaters, refrigerators, stoves, furnaces, and air conditioners, among other appliances. Only certified appliance recyclers can transport, deliver, or sell discarded major appliances to a scrap recycling facility.

AB 1924 (Bogh) increases fines for people who maintain solid waste facilities. This bill imposes up to a \$500 fine per violation for a first conviction and up to \$2,000 for a second and subsequent conviction for violation of requirements governing solid waste facilities.

### **Storage Tanks**

Since the 1998 federal deadline to upgrade or close USTs expired, owners and operators of USTs have been besieged with rules calling for additional performance standards. These recent programs include, among other requirements, installation of continuous vapor tight controls and monitoring on new tanks and under dispenser standards for tanks located within 1,000 feet of a public water supply well. AB 2955 (McCarthy) offers UST owners and operators relief from civil penalties for failure to comply with the UST upgrades. UST owners and operators will enjoy a six month reprieve from

penalties beginning September 21 and ending approximately March 19, 2005; however, they must still meet the terms of any notice to comply. AB 2955 also requires the SWRCB to provide grants from the Petroleum Underground Storage Tank Financing Account to small businesses to meet testing and leak detection equipment, interstitial space standards, and integrity testing requirements. These grants can be offered for up to \$15,000 to each applicant. AB 1068 (Liu) extends the sunset date of the Underground Storage Tank Cleanup Fund to January 1, 2011. This fund currently reimburses UST owners and operators for the costs to cleanup unauthorized releases and provides funds and loans to service station and other UST owners and operators to upgrade their USTs (for repair, replacement, upgrade, or removal of petroleum USTs).

Finally, AB 1906 (Lowenthal) increases the petroleum storage fees imposed on owners and operators of USTs. These fees are intended to reflect the increased costs to clean up petroleum releases under the Petroleum Underground Storage Cleanup Program.

### **Hazardous Substances and Cleanup Programs**

Thousands of contaminated properties located within the urban centers throughout California have been either abandoned or remain underutilized. Developers and the environmental justice community have teamed up to promote infill growth and brownfield reform that would expedite clean up of these properties. AB 389 (Montanez) enacts the California Land Reuse and Revitalization Act of 2004. This law extends immunity from liability for response costs or damage claims under common law and statutory schemes for innocent land owners, bona fide purchasers, and contiguous property owners. An owner qualifies for immunity by meeting the standards of a “qualifying property owner” (QPO) and by entering into an agency agreement addressing performance of a property site assessment. In addition, an agency can require a QPO to develop and implement a response plan to remediate the site. This law also builds upon recent legislation [Stats. 2002, AB 2436 (Frommer)] that required Cal-EPA, IWMB, the SWRCB, and each RWQCB to post restrictive covenants on their respective websites and the Cal-EPA website. AB 389 requires that the following agencies include information on brownfields and other

cleanup sites through a single web site portal: Cal-EPA, DTSC, SWRCB, and the RWQCBs.

SB 805 (Escutia) modifies legislation [Stats. 2001, SB 32 (Escutia)] that established the California Land Restoration and Reuse Act (CLERRA). SB 32 authorized municipalities to order cleanup or undertake investigation and cleanup of abandoned and underutilized brownfield sites under five acres. SB 805 now includes sites larger than five acres of contiguous property under the same ownership if the site is an “infill site” and a “qualified urban site” (which includes residential, commercial, public institutional, transit, or transportation passenger facilities).

### **Air Quality**

Except for a number of bills addressing mobile sources, such as vehicle scrappage, closing a smog check loop hole, and establishing long-term funding to reduce diesel exhaust, the Legislature approved a dearth of legislation addressing air quality pertaining to industrial, stationary sources.

Recognizing that hybrid vehicles use half the fuel consumed by conventional vehicles, the Governor gained national attention by approving AB 2628 (Pavley). This program allows fuel-efficient, single occupant vehicles to use high occupancy vehicle (HOV) lanes. This administration-sponsored bill applies to vehicles that meet the following standards: ultra-low emission vehicles (ULEV) (i.e., “hybrid vehicles), advanced technology partial zero-emission vehicles (AT PZEV) that achieve 45 miles per gallon or more, or federal inherently low emission vehicles (ILEV). Two other bills expanded the scope of the Carl Moyer Program which, among other things, provides funding for projects to replace diesel engines with cleaner fuels. AB 923 (Firebaugh) was a bipartisan effort and provides permanent, stable funding sources to an expanded Moyer Program. By increasing fees on vehicles and tires, the program is projected to collect approximately \$80 million annually. This legislation further expands the Moyer program from funding projects to reduce oxides of nitrogen (NOx) emissions in diesel trucks, school buses, and agricultural pumps to include particulate matter (PM) and reactive organic gases (ROG). AB 1394 (Levine) allows grant funding to support projects that reduce particulate matter and oxides of nitrogen. Specifically, this legislation allows grant funds to support heavy-duty fleet modernization projects that reduce NOx or particulate matter (PM).

Funds will support the replacement of older engine technologies and vehicles with more stringent emissions or by providing equivalent emissions reduction through the purchase of new very low or zero-emission vehicles, or via fleet modernization projects.

## Energy

Hopes were dashed for the 2004 legislative session, which was poised to be a banner year for solar legislation, when a bill designed to add solar panels to one million new California homes by 2017 failed to make it to the Governor's desk. Another important energy bill was vetoed; that bill would have required utilities to generate at least 20 percent of their power using alternative sources of energy by 2010, instead of 2017. Despite stirrings of another energy crisis in the near term, the Legislature repealed legislation enacted during the energy crisis [Stats. 2001, AB X1 (Keeley)] that allowed for the expedited rehearing and review of power permits before the CEC. That law also permitted expedited judicial review of a CPUC decision. The original legislation was enacted during the 2001 extraordinary session and was designed to allow DWR to purchase revenue bonds. At the time, these bonds could not be purchased unless the power permits issued by the CEC were final. AB X1 led to finality by expedited power permit appeals. Now that the energy bonds have been purchased, the need for the expedited rehearing procedures has become moot. As a result, SB 659 (Soto) was enacted to repeal the outdated process.

AB 1684 (Leno) requires the CEC and CPUC to administer a self-generation incentive program for combustion-operated fossil fuel distributed generation projects. This law promotes projects that meet specified NOx emissions limits. Distributed generation projects that operate solely on waste gas need not meet the NOx emissions standard if the project demonstrates that it will produce an onsite net air quality emissions benefit.

AB 2473 (Wolk) updates the Solar Rights Act, which was originally enacted a quarter century ago. The Act preempts local land use law and requires that municipalities permit installation of solar energy systems by right. Cities and counties must administratively approve land use applications to install solar systems by issuing building permits or other nondiscretionary permits. AB 2473 limits local decisions to those that impose reasonable restrictions on

solar energy systems. Local officials may issue conditional use permits if they can demonstrate that the solar project will adversely impact public health and safety. Finally, this legislation prohibits cities and counties from denying conditional use permits unless they issue a finding, supported by substantial evidence, that the solar devices would have specific adverse health and safety impacts and that feasible mitigation measures are unavailable to address these impacts.

SB 1565 (Bowen) is California's response to the August 2003 national blackout that stretched from New York City into the Midwest and Canada. This regional outage highlighted the vulnerability of the nation's electrical transmission and distribution system. SB 1565 requires that the CEC adopt a strategic plan for energy transmission that must identify investments to ensure reliability of the power grid in order to manage the energy load. The plan must promote demand reduction measures including renewable resources and efficiency.

## California Environmental Quality Act

Sweeping changes to the California Environmental Quality Act (CEQA) took a back seat to narrow administrative changes and clarifications to the existing regulatory scheme. SB 647 (Sher) requires that the OPR retain filed notices of determination (NOD) for at least 12 months. It also requires local lead agencies to retain NODs for 12 months rather than nine months. SB 1350 (Morrow) repeals a categorical exemption from CEQA for the treatment of medical waste by steam sterilization.

AB 2814 (Simitian) clarifies existing law, which provides that the failure to name potential parties, other than a real party in interest, is not grounds for dismissing the action. A "real party in interest" is a person who received an approval under CEQA, but who is neither the plaintiff nor the defendant. SB 1889 (Senate Environmental Quality Committee) conforms provisions of CEQA statutes to the CEQA Guidelines regarding lead agency consultation with trustee agencies. AB 2922 (Laird) clarifies a number of provisions governing the master environmental impact report (EIR) program. This law allows a master EIR to be used even if it was certified more than five years before filing an application for the subsequent project described in the master EIR if the following conditions are met: first, the lead agency must review the adequacy of the master EIR and find

no substantial changes have occurred regarding the circumstances involving the original master EIR or that no new information, which was not known and could not have been known at the time, has become available. Alternatively, the lead agency must prepare an initial study and certify a supplemental or subsequent EIR that has been incorporated in the previously certified master EIR. Third, the lead agency must approve a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the master EIR was certified. AB 2922 also prohibits the use of a master EIR if the application for the subsequent project occurs after the master EIR certification and the approval of the project that was not described in the master EIR may affect the adequacy of the environment in the master EIR for any subsequent project.

### **Land Use**

AB 1320 (Dutra) is intended to promote the creation of transit villages, which are mixed-use, pedestrian-friendly communities centered around a transit station. Prior law allowed a local government to develop a transit village meeting a list of 13 specified public benefits. The list of public benefits included, among others, reduced traffic congestion, improved air quality, and promotion of infill development. This law requires transit village plans to include any five of the 13 public benefits instead of all of the 13. As a result, this bill relaxes restrictions imposed on local governments. It additionally increases the modes of transit that may serve as the centerpiece of a transit village.

### **Natural Resources and Endangered Species**

SB 218 (Sher) builds on existing law, which requires the California DOC to establish and maintain a list of mining operations that meet the requirements of the Surface Mining and Reclamation Act. Operators of surface mines in California are prohibited from selling materials obtained from these mines unless they appear on the state list. SB 218 clarifies that the list is compiled for purposes of ensuring compliance with this prohibition.

AB 1857 (Koretz) makes it a misdemeanor

punishable by imprisonment in a county jail for a period up to one year, by a fine of \$10,000, or by both, for arranging for or actually declawing any cat that is a member of an exotic or native wild cat species such as a lion, tiger, cougar, leopard, lynx, or bobcat. This prohibition does not apply to a procedure performed solely for a therapeutic purpose.

### **Looking Ahead**

With the tumult of the election year and the gubernatorial transition behind him, Governor Schwarzenegger has a one-year window of opportunity to make his environmental policy a reality. The Governor's staff is now in place, improving the likelihood that we will see a determined effort to tackle the three Es: environment, economy, and energy. Like his predecessor, the Governor remains tethered to the challenges of a \$10 billion budget shortfall, a weakened economy, and a looming energy shortage. As the Legislature returns to the Capitol, it will join the Governor in its first legislative session together, uninfluenced by election year pressures and ready to begin the heavy lifting.

Many of the bills that eluded the Governor's signature last session will likely reemerge in the same or similar form during 2005. With the prospect of further environmental rollbacks during a second Bush term, there will be increased pressure on the democratically controlled Legislature to push back.

Having recently elevated Terry Tamminen from his post as Cal-EPA Secretary to a more prominent position as Cabinet Secretary, the Governor signaled his interest in raising the importance of the environment in his administration. As a result, we can expect the Governor to vigorously advance his Environmental Action Agenda under the influence of the talented, green-leaning Tamminen.

May the heavy lifting begin.