

California and Federal Environmental Legislative and Regulatory Update 2011/2012

California Maritime Leadership Symposium

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2011/2012 Environmental Legislative Topics

- **Climate Change**
- **Air Quality**
- **Energy**
- **Hazardous Waste/Hazardous Materials**
- **Water Quality and Water Supply**
- **UST**
- **Solid Waste**
- **Sustainability**
- **Enforcement**



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Compliance Assurance Strategies

- **Legal Registry:** List all potentially applicable regulatory requirements
- **Program Descriptions** of regulatory programs and requirements (to ensure that staff is familiar with specific compliance tasks and action items)
- **SOPs:** addressing the “who, what, when, and how” of obligations to be accomplished throughout the year
- **Checklists** for multi-media environmental inspection checklists
- **Roles and responsibilities** for implementing the compliance calendar
- **Training** program (identify what environmental training is required for which types of employees, and when)
- **Updates:** Module for gathering and implementing new regulatory developments
- **Release reporting** protocol
- **Spill Management/Emergency Response**
- **Dealing with Regulators:** Protocol for Dealing with Regulators
- **Compliance calendar** with brief descriptions of specific compliance tasks (permit renewals, monitoring frequencies, report submittals, training deadlines, etc.) and action items.
- **Third Party Auditing:** Validate compliance



Disclaimer

- This presentation is intended for informational purposes only
- Content may not cover all newly approved laws
- Before acting on legislation addressed in this presentation, the implications of the law should be independently evaluated considering the unique factual circumstances of the potentially affected facility, party, or entity.
- Not a lobbyist!



California Global Warming Solutions Act of 2006 (AB 32)

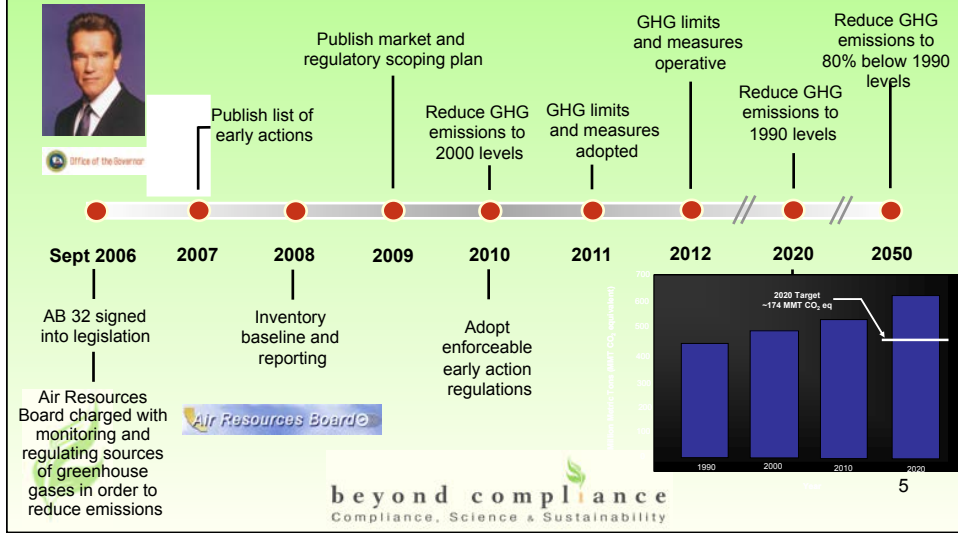
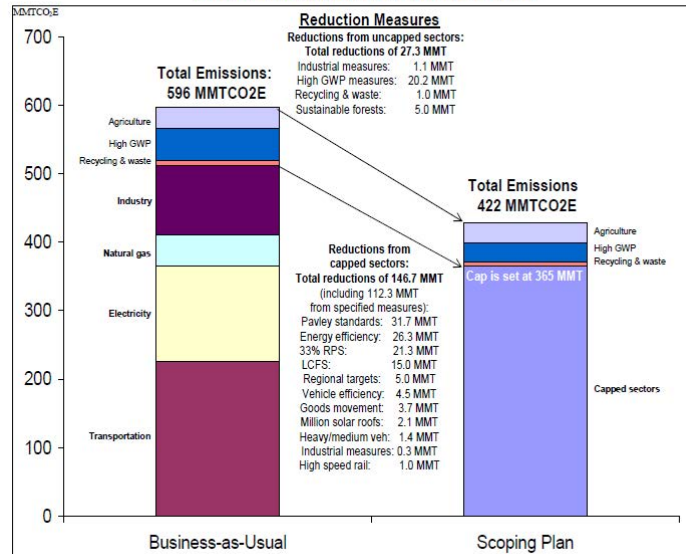


Figure 3: California Greenhouse Gas Emissions in 2020 and Recommended Reduction Measures



Judge Goldsmith approves of ARB's



- **Cap-and-trade Analysis**
- SF superior court Judge Goldsmith issued a final order in May 2011 for the ARB to redo the alternative analysis in its CEQA equivalent document supporting the AB32 scoping plan
- The plan lays out measures for meeting the requirement that the state reduce GHG emissions to 1990 levels by 2020.
- SF superior court Judge Goldsmith has ruled in December 2011 that ARB's adoption of a revised analysis of the impacts of its cap-and-trade program complies with CEQA



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Cap and Trade Time Frames

- Starts in 2013 for:
 - Electric utilities and large industrial facilities
- Starts in 2015 for
 - Distributors of transportation, natural gas and other fuels
- The cap is set in 2013 at about 2 percent below the emissions level forecast for 2012
 - Declines about 2 percent in 2014
 - Declines about 3 percent annually from 2015 to 2020



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

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



SB 375: Regional Per-Capita Emissions Reduction Targets

- The San Diego Area: 7 percent and 13 percent
- Sacramento Region: 7 percent and 16 percent
- Bay Area Region: 7 percent and 15 percent
- Southern California: 8 percent and 13 percent, with the 2035 target conditioned on discussions with the MPO
- San Joaquin Valley (includes eight planning organizations): placeholder of 5 percent and 10 percent, to be revisited in 2012
- Targets for the remaining six Metropolitan Planning Organizations—the Monterey Bay, Butte, San Luis Obispo, Santa Barbara, Shasta and Tahoe Basin regions—generally match or improve upon their current plans for 2020 and 2035.



AB 631 (Ma)

Electric Vehicle Charging Stations

- This bill provides that the ownership, control, operation, or management of a facility that supplies electricity to the public only for use to charge light duty plug-in electric vehicles does not make the corporation or person a public utility for purposes of the Public Utilities Act.



33% Renewable Portfolio Standard

SB X 1 2 (Simitian)

- Written by State Senator Joe Simitian, casting it as a way of boosting California's clean-energy industry
- Gives California one of the nation's most aggressive policies for increasing the use of renewable power
- Requires California's utilities to get 33% of electricity from renewable sources by Dec. 31, 2020

Note: Arnold Schwarzenegger signed an executive order in

2009 setting a similar goal but vetoed an earlier version of Simitian's bill, saying the details were too



California Adopts Greenest Building Codes in the US

- The new code takes effect January 2011 and requires:
 - Builders to install **plumbing that cuts indoor water use**,
 - **Divert 50% of construction waste from landfills** to recycling,
 - Use **low-pollutant paints, carpets and floorings**,
 - In nonresidential buildings, install **separate water meters** for different uses,
 - The **inspection of energy systems** by local officials to ensure that heaters, air conditioners and other mechanical equipment are working efficiently



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CALGreen



- The California Green Building Standards Code is the 1ST statewide green building code in the country
- Seeks to establish minimum green building standards for the majority of residential and commercial new construction projects across California
- Both CALGreen and LEED address 5 main categories relating to new commercial buildings: site, water, energy, materials and the indoor environment.
- Composed of mandatory measures
- Overall, LEED requirements are more stringent and cover a broader spectrum of green building strategies
- Helps promote green building practices throughout the state by requiring all projects to meet minimum measures
- Encourages LEED and other 3rd party rating systems to adapt and improve



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EPA Tailoring Rule Requirements



- **New Source Review:**
 - “major sources” subject to Best Available Control Technology (BACT)
- **Title V (Operating Permits):**
- Starting July 2011:
 - **New sources** with PTE of 100,000 tons of GHGs a year
 - **Major Modification:** Any **existing plants** that **increase** emissions by 75,000 tons will have to seek permits
- Sources with PTE less than 50,000 TPY of CO2 equivalent will be subject to PSD or title V for GHG emissions before 2016



3 Step Phase-in Schedule

- **Step 1:** January 2, 2011:
 - Sources currently subject to PSD or Title V permit programs **involving Emissions other than GHGs**
- **Step 2:** July 1, 2011:
 - Sources not currently subject to PSD or Title V permit, but **exceed new GHG major thresholds**
- **Step 3:** April 30, 2015:
 - Smaller sources based on EPA rulemaking due in 2015



Nuisance Not a Basis for Climate Change Relief

- States cannot invoke federal common law “public nuisance” to limit GHG emissions
- US Supreme Court blocked 6 states from suing power-plant operators over GHG emissions
 - Unanimous Ruling rejecting merits of case (8-0)
 - American Electric Power Co. v. Connecticut
- Clean Air Act regulations preempted the case
- 4-4 Split concluding plaintiff’s had standing to bring claim
- No decision on state common law claims; remanded
- Leaves open possibility to revive action if Obama fails to issue final emissions rule by May 2012.



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Smog Standards Were to be Tightened Further

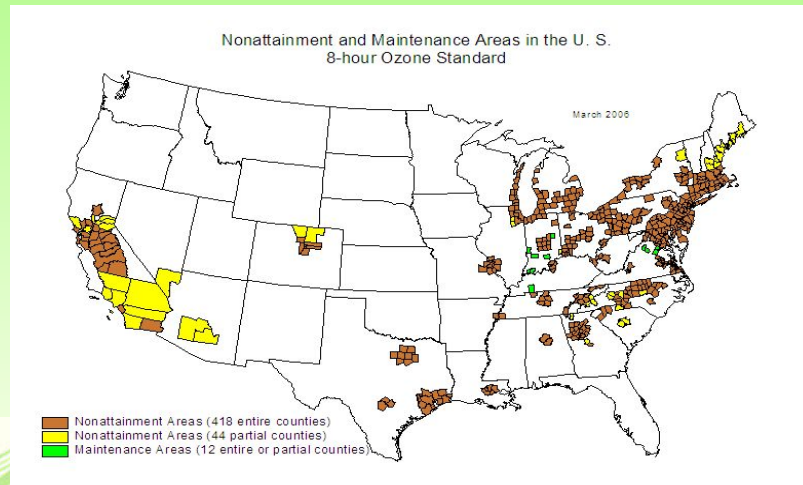
- Allowable smog levels nationwide have been lowered by EPA from 84 parts per billion to 75 parts per billion
- 345 counties don’t meet the 75 standard
- In 2007 a scientific panel recommended 60 to 70 parts per billion
- Estimates are that 900 to 1,100 premature deaths and 5,600 fewer hospital or emergency room visits will result if all counties are brought into compliance
- Obama No longer seeking lower standard



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Ozone Nonattainment (Source EPA)



SB 739 (Lowenthal) Ports Infrastructure

- Requires the Ports of Oakland, Long Beach and Los Angeles to assess their infrastructure and air quality improvement needs and provide this assessment, to committees in the Legislature by 7-1-12. The assessment must include:
 - Costs of improvements;
 - Funding options for the projects;
 - Estimated timelines for implementation of projects.



Revised Periodic Smoke Inspection Program



- California Air Resources Board's decision amended the Periodic Smoke Inspection Program (PSIP) to exempt diesel fleet owners of delivery vans and larger pick-up trucks 1998 and newer from mandatory annual smoke inspections
- Under a new law, these vehicles must undergo a Smog Check every other year
- Streamlined approach removing the PSIP test requirement affects 77,000 lighter trucks with weights between 6,000 and 14,000 pounds
- This is expected to save industry approximately \$4.2 million annually



ARB's Diesel Filter Deadlines



- Heavier trucks and buses have 2 options to reduce diesel emissions:
 - Follow a staggered implementation schedule that requires 1996-1999 model engines be retrofit with a diesel particulate matter (PM) filter by January 1, 2012, or
 - Use a flexible phase-in option that requires any 30 percent of vehicles in the fleet to have a PM filter. (Note: this option requires fleet owners to report information about all their heavier vehicles to ARB by January 31, 2012. Fleets that report can also take advantage of credits and special provisions.)
- Small fleets can postpone the January 2012 compliance requirement for their heavier trucks until 2014, but must report their fleet information to ARB by January 31, 2012 in order to receive the extension.
- Lighter diesel trucks have no compliance requirements until 2015.



SB 909 (La Mafia): Treated Waste Wood Alternative Management Standards

- This bill extends the sunset date of the TWW disposal requirements from 6-1-12 to June 1, 2017.



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Treated Waste Wood Alternative Management Standards 22 CCR 66386.1 *et seq.*

- Based on full HW requirements
 - Adjusted for unique circumstances involving TWW
 - Lessened storage requirements
 - Extended accumulation periods
 - Allows shipments without:
 - HW manifest
 - HW Hauler
 - Allows disposal at specific no-HW landfills



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Businesses generating TWW Incidental to Normal Course of Business

- “Incidentally generated” where businesses not routinely involved in construction, demolition, or other activities involving TWW.
- Handling/Disposal Requirements:
 - Keep TWW **segregated** from other materials
 - **Label** TWW bundle/shipments with:
Treated Wood Waste –Do not burn or scavenge.
TWW Handler
Name: _____
Address: _____
Accumulation Date: _____



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Businesses generating TWW Incidental to Normal Course of Business (cont.)

- Store up to 1000 lbs of TWW for up to 30 days
- Transport TWW to authorized TWW facility
- Identifying TWW to TWW facility personnel



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AB 358 (Smyth) HazMat UST Releases

- Streamlines UST closure process:
 - requires owner or operator of UST to transmit certain information regarding an unauthorized release to the local agency on a written form or using an electronic format developed by the board and approved by Cal-EPA Secretary



AB 1112 (Huffman) Bunkering and Lightering Operations

- Requires the development and implementation of a **screening mechanism** and a **monitoring program for inspecting** the bunkering and lightering operations of vessels at anchor and alongside a dock;
- Requires identifying highest risk bunkering and lightering operations and coordination with the USCG to routinely monitor and inspect those operations;
- Increases the oil spill prevention fee until 1-1-15 from an amount not to exceed \$0.065/barrel of crude oil from \$0.05/barrel.



\$11.1 Billion Water Bond Postponed until 2012

- Voters in November 2010 decide on general obligation bond to pay for the water package enacted by a special legislative session in 2009.
 - **\$455 million = Drought Relief**
 - Drought relief projects, disadvantaged communities, small community wastewater treatment improvements and safe drinking water fund
 - **\$1.4 billion = Regional Water Supply**
 - Regional water management projects and local water delivery projects
 - **\$2.25 billion = Delta Sustainability Projects**
 - Levees, water quality, infrastructure and to help restore the ecosystem of the delta
 - **\$3 billion = Water Storage**
 - Water storage projects, including dams
 - **\$1.7 billion = Watershed Conservation**
 - For ecosystem and watershed protection and restoration projects in 21 watersheds including coastal protection, wildlife refuge enhancement, fuel treatment and forest restoration, fish passage improvement and dam removal
 - **\$1 billion = Groundwater Cleanup and Protection**
 - Cleanup and protection of underground aquifers
 - **\$1.25 billion = Water Recycling, Conservation**
 - Water recycling, treatment and efficiency projects



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SPCC Amendment Compliance Date Extension

- 7-30-10: EPA extended compliance date by one year for certain facilities subject to recent amendments to the Spill Prevention Control and Countermeasure (SPCC) rule to November 10, 2011.
- The agency is also announcing that certain facilities will not be eligible for the one year extension and will have to comply by the current date of November 10, 2010:
 - Drilling, production or workover facilities that are offshore or that have an offshore component, or onshore facilities required to have and submit facility response plans (FRPs), due to the threats these facilities could pose of significant oil spills to navigable waters or adjoining shorelines.



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SB 1284 (Ducheny)

Water Violation Penalties / Compliance

- Failure to file a discharge monitoring report under the Porter-Cologne Water Quality Control Act **is not** a “serious violation” that would incur minimum mandatory civil penalties **if there were no discharges to** water of the United States reportable during the monitoring period **and** the discharger submits a statement as such to the state or regional board also **states the reason(s) why the report was not filed on time.**
 - Discretionary penalties, however, may still be levied against the discharger.
- Provides for a one-time fine totaling \$3,000 for certain violations involving a failure to file a discharge monitoring report, rather than \$3,000 for each 30-day period of non-compliance following the deadline, if certain conditions are met.
- Authorizes a regional board, after a public hearing, to extend the time allowed for bringing a waste discharger into compliance an additional five years.



AB 408 (Wieckowski)

Incident Expense Recovery

- This bill provides that the expense of a public agency’s emergency response to the release, escape, or burning of hazardous substances is “a charge against the **person whose negligence** caused the incident *if the incident*:
 - necessitated an **evacuation** from the building, structure, property, or public right-of-way where the incident originates, or
 - the incident **results in the spread** of hazardous substances or fire beyond the building, structure, property, or public right-of-way where the incident originates.”



AB 341 (Chesbro) Solid Waste Diversion

- Establishes state policy to divert at least **75%** of solid waste generated by source reduced, recycled, or composted by the year 2020.
- Requires businesses or public entities to arrange for recycling services, on and after July 1, 2012, including at least one of the following actions:
 - Source separate recyclable materials from solid waste and subscribe to a basic level of recycling service that includes collection, self-hauling, or other arrangements for the pickup of the recyclable materials.
 - Subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation.



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ULE 880 Sustainability Certification Pilot

- A new version of the first sustainability standard for businesses
- Addresses organizations as a whole but focuses on manufacturers
- Developed from a partnership between UL Environment, a division of safety certified Underwriters Laboratories, and GreenBiz Group
- Focus on how companies interact with products at the organizational level
- Once the latest comment period ends and UL Environment gathers feedback from companies implementing the standard, it will make any necessary updates and publish a final version of the standard.



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National Poll Says America Wants the EPA

- Public Policy Polling, surveyed 1,249 registered voters across the country and showed that:
 - 78% of Americans want the EPA to **hold corporations responsible for toxins they release** into the environment
 - 69% of Americans agree with health experts who **support the reduction of air pollution** from industrial sources, rather than those who advocate overruling the EPA to protect jobs
 - 70% of Americans support the EPA requiring **stricter limits on the amount of toxic chemical industrial facilities can release**



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Audit Policy of Newly Acquired Facilities Clarified by EPA

- EPA detailed how it would encourage firms that acquire facilities to participate in its audit policy
- The policy gives firms that have acquired another company incentives to report and correct violations.
- The Audit policy has been largely supported by environmentalists and industry.
- New owners that voluntarily disclose violations could still be assessed penalties if the violations gave the firm a competitive advantage.



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Self-Disclosure Leads to Benefits

- Under the USEPA's audit policy, the agency may reduce penalties up to 100% for violations that are voluntarily discovered and promptly reported
 - In 2008, the U.S. EPA waived several penalties after voluntary disclosure and correction
 - i.e. missing info in its annual chemical inventory report or corrected environmental violations
- Nearly **\$2 million** in penalties was reduced for 15 California based companies that self-reported violations
 - All reported violations of EPCRA



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2010 Environmental Enforcement Update

- The Criminal Investigation Division is slated for a **\$3 million increase** from fiscal 2009 –
 - Now \$45.4 million, up from \$42.6 million last year
- The EPA hiring strategy is to increase the number of agents to 200 by the end of fiscal year 2010
- EPA's overall Enforcement and Compliance Assurance Program budget includes a **\$32 million increase** for fiscal year 2010
 - *The highest enforcement budget ever!*
 - Expect a significant upturn in environmental enforcement during 2010



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Looking forward...



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Questions?

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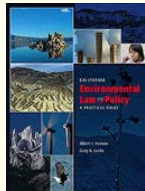
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