HIGHLIGHTS

Completely revised Chapter 11.
• This release includes a completely revised Ch. 11, Preliminary Litigation Issues.

Completely revised Chapter 40.
• This release includes a completely revised Ch. 40, Federal Requirements and the Goals and Structure of California’s Air Regulatory Program.

Full case and regulatory updating.

Environmental Litigation

Revised Chapter 11. Ch. 11, Preliminary Litigation Issues, has been completely revised and updated. The revised chapter includes newly added Practice Tips on litigating environmental matters as well as coverage of:

• Jurisdiction and venue [see §§ 11.02, 11.03].
• Standing, including discussion of federal standing requirements, writs of mandate, associational standing, private rights of action, and mootness [see § 11.04].
• Ripeness [see § 11.05].
• Exhaustion of administrative remedies, including discussion of the doctrine’s application to environmental cases, as well as coverage of the various exceptions [see § 11.06].
• Statutes of limitation, with a focus on their significance in environmental lawsuits [see § 11.07].
• Laches [see § 11.08] and governmental immunity [see § 11.09].
• Pre-litigation notice requirements, including notices required under CEQA [see § 11.10].
• Practical considerations when drafting your complaint or petition, joining parties, and filing and serving the complaint [see § 11.11].
• The administrative record, extra-record evidence, and discovery [see § 11.12].
• Intervention [see § 11.13], consoli-
dation [see § 11.14], and severance and bifurcation [see § 11.15].

- SLAPP suits, including the different burdens each party faces, the anti-SLAPP statute, and SLAPP-back suits [see § 11.16].

- Settlement, with discussion of mediation, settlement agreements, and stipulated judgments [see § 11.17].

California Environmental Quality Act (CEQA)

CEQA Updating. Chs. 20 through 23 have been fully updated with recent CEQA cases, including the following:

- Concerned McCloud Citizens v. McCloud Community Services Dist. (2007) 147 Cal. App. 4th 181, in which the court found that the decision by a community services district to sell water to a private water bottling company for the possible future use in a bottling facility was not a “project” under CEQA. See § 21.03(2)(c).

- Citizens for a Megaplex-Free Alameda v. City of Alameda (2007) 149 Cal. App. 4th 91, in which the court held that the execution of a Disposition and Development Agreement to permit a private entity to remodel a historic theater was a “project” under CEQA because details about the activities were known and environmental impacts were not speculative. See § 21.03(2)(c).

- Muzzy Ranch Co. v. Solano County Airport Land Use Com. (2007) 41 Cal. 4th 372, in which the California Supreme Court spelled out the requirements for an agency’s use of CEQA’s “general rule exemption.” Specifically, the Court found that the application of the general rule exemption requires the Lead Agency to make a determination based on all of the facts and circumstances surrounding the particular project, that the project would have no possibility of resulting in significant effects on the environment. See § 21.06(3).

- Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal. 4th 412, where the California Supreme Court comprehensively synthesized prior case law on water supply analysis and upheld a near-term water supply analysis, but rejected a long-term water supply analysis, for a large master planned community. For full coverage of the case, including a step-by-step approach to help CEQA practitioners comply with this decision, see § 22.04(6)[h].

Air Quality Control

Revised Chapter 40. Ch. 40, Federal Requirements and the Goals and Structure of California’s Air Regulatory Program, has been revised and updated by Kathleen Walsh, Assistance Counsel for the Bay Area Air Quality Management District. The chapter has been significantly expanded and now also includes numerous Practice Tips throughout. Specifically, the chapter includes coverage of:

- California’s air pollution regulatory program and how it relates to federal laws, including discussion of federal pre-emption rules [see Part A, §§ 40.01–40.05].

- The federal regulatory structure, including discussion of federal enforcement actions and citizen suits [see Part B, §§ 40.10–40.13].

- Federal standards and require-
ments, including an introduction to the federal Clean Air Act, discussion of national ambient air quality standards and state implementation plans, as well as treatment of interstate pollutant transport, operating permits, new source performance standards, hazardous air pollutants, and acid rain [see Part C, §§ 40.20–40.43].

- California’s state and local regulatory authority, including discussion of the State Air Resources Board and local and regional air pollution control authority [see Part D, §§ 40.50, 40.51].

- State standards and requirements, including coverage of the state ambient air quality standards, requirements applicable to particulate matter pollution, and voluntary and incentive programs [see Part E, §§ 40.60–40.64].

Hazardous Waste and Toxic Substances

Allocation of Liability—Apportionment. In United States v. Burlington Northern & Santa Fe Railway Company (9th Cir. 2007) 479 F.3d 1113, the Ninth Circuit held that apportionment of hazardous waste liability is available in CERCLA cases. For coverage of all aspects of this case, see § 56.26[2].

Climate Change

Massachusetts v. EPA. Ch. 85, Climate Change, has been updated with the U.S. Supreme Court’s landmark decision in Massachusetts v. EPA (2007) 127 S. Ct. 1438. In short, the Court found that U.S. EPA has the statutory authority under the federal Clean Air Act to regulate greenhouse gas emissions from new motor vehicles. For full discussion, see § 85.04[2].

Solid Waste

Public Notice and Informational Meetings. Ch. 91, Solid Waste Facilities, has been updated with regulations governing public notice and information meetings [see Register 2007, No. 15; 27 Cal. Code Reg. 21160 et seq.]. See § 91.25.

Local Regulation of Waste-Energy Facilities—Commerce Clause. In United Haulers Association v. Oneida-Herkimer Solid Waste Management Authority (2007) 127 S. Ct. 1786, the U.S. Supreme Court held that flow control ordinances that required haulers to bring waste to facilities owned and operated by a state-created public benefit corporation did not violate the Commerce Clause. See § 91.114[3].
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