PUBLICATION UPDATE

Route to:  

California Environmental Law and Land Use Practice

Publication 102  Release 48  March 2008

HIGHLIGHTS

2007 Legislative Updating
  • This release includes coverage of 2007 environmental and land use legislation.

Recent Case and Regulatory Updating
  • Recent case law and regulatory developments have been added.

California Environmental Quality Act (CEQA)

Greenhouse Gases. 2007 legislation [2007 Stats., ch. 185] added a provision to CEQA requiring the Office of Planning and Research to prepare, develop, and transmit to the Resources Agency guidelines under CEQA for the mitigation of greenhouse gas (GHG) emissions. For discussion, see § 20.03[2][h].

CEQA Guidelines. Chs. 21 and 22 have been updated with recent amendments to the CEQA Guidelines [14 Cal. Code Reg. § 15000 et seq.] in Register 2007, No. 30.

Water Quality

Liability for Drinking Water Contamination. In In re Groundwater Cases (2007) 154 Cal. App. 4th 659, 64 Cal. Rptr. 3d 827, the court held that Los Angeles County residents failed to alleged causes of action for negligence, strict liability, trespass, public and private nuisance, fraudulent concealment, and wrongful death based on alleged contamination of drinking water supplied by water company defendants. See § 33.04[6][a][ii].

Marine Debris Litter and Preproduction Plastic. Coverage has been added reflecting 2007 Stats., ch. 735, in which the Legislature found that marine debris litter is harmful to marine resources and represents a threat to California’s tourist economy and that stormwater discharges containing preproduction plastic are a significant contributor of pollutants to waters of the state. For discussion, see § 33.13[4].

Guidance Document for Municipal Stormwater Programs and Permits. Recent legislation [2007 Stats., ch. 610] re-
quires the State Water Board to develop a comprehensive guidance document for evaluating and measuring the effectiveness of municipal stormwater management programs undertaken, and permits issued, in accordance with state and federal laws. See § 33.83[6].

Air Quality

State and Local Government Vehicle Fleets. Pursuant to 2007 legislation [2007 Stats., ch. 593], the Department of General Services, in consultation with the California Energy Commission and the State Air Resources Board, is required to develop and adopt specifications and standards for all passenger cars and light-duty trucks that are purchased or leased on behalf of, or by, state offices, agencies, and departments. The standards include maximizing the purchase or lease of alternative-fuel vehicles and the use of alternative fuels in those vehicles. See § 42.15[5].

Alternative Fuels and Vehicle Technology Programs. The California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007 [2007 Stats., ch. 750; Health & Safety Code § 44270 et seq.] establishes the Alternative and Renewable Fuel and Vehicle Technology Program, and was created to provide grants, loans, or other to public agencies, businesses, public private partnerships, vehicle and technology consortia, workforce training partnerships and collaboratives, fleet owners, consumers, recreational boaters, and academic institutions to develop and deploy innovative technologies that will transform California’s fuel and vehicle types to help attain the state’s climate change policies. The program’s emphasis is to develop and deploy technology and alternative and renewable fuels in the marketplace, without adopting any one preferred fuel or technology. See § 42.15[6].

Fleet Rules Not Preempted. In Engine Manufacturers Assn. v. South Coast Air Quality Management Dist. (9th Cir. 2007) 498 F.3d 1031, the Ninth Circuit found that SCAQMD’s fleet rules were not preempted by the federal Clean Air Act to the extent they direct state and local governmental entities’ purchasing, procuring, leasing, and contracting decisions. See § 42.30[2].

Hazardous Waste and Toxic Substances

Liability for Cleanup. In United States v. Atlantic Research Corp. (2007) 127 S. Ct. 2331, the U.S. Supreme Court found that CERCLA’s § 107(a) (cost recovery actions) provides potentially responsible parties (PRPs) with a cause of action to recover costs from other PRPs. For discussion, see § 50.51[2][b].

Transport of Hazardous Waste. Regulations surrounding the maximum driving time and hours of service have been revised. See § 52.04[3][a].

Aboveground Petroleum Storage Act. The Aboveground Petroleum Storage Act [Health & Safety Code § 25270 et seq.] was substantially amended [2007 Stats., ch. 626] to provide for implementation by unified program agencies instead of the State Water Resources Control Board and the regional boards. Revised provisions also address the preparation of a Spill Prevention Control and Countermeasure Plan, the Environmental Protection Trust Fund, and penalties. See § 58.22.

Pharmaceutical Drug Waste. To reduce the likelihood of improper disposal of drugs, 2007 legislation [2007 Stats., ch. 542] requires the California Integrated Waste Management Board to develop model programs through which the public may return and ensure the safe and environmentally sound disposal of drugs. For discussion, see § 58.31.
California Lighting Efficiency and Toxics Reduction Act. In the California Lighting Efficiency and Toxics Reduction Act [2007 Stats., ch. 534; Health & Safety Code § 25210.9 et seq.], the Legislature declared its intent that the State Energy Resources Conservation and Development Commission develop a strategy for substantially increasing the use of energy efficient lighting and phasing out the use of energy inefficient lighting over the next decade, and that there be a system established for the recycling of hazardous lighting products that is free and convenient for end users. See § 58.32.

Planning and Land Use

Flood Hazards. Recent legislation [2007 Stats., ch. 369] requires that the safety element of a general plan must provide information on flood hazards, including numerous items such as “flood hazard zones,” flood insurance program maps, and dam failure inundation maps. See § 62.03(7)(e).


Climate Change

State Agency Report Card. The Legislature has declared that it is vital that state government lead by example in meeting California’s greenhouse gas emission requirements and thus established reporting requirements to ensure that state agencies consider and implement measures and strategies under their authority to reduce their greenhouse gas emissions in furtherance of the targets in the Climate Action Team Report and the California Global Warming Solutions Act. See § 85.05[1][i].

2007 Legislation. Section 85.06 has been added to include coverage of numerous pieces of 2007 California climate change legislation, including the following:

- SB 85: Water and Energy, which requires the Department of Water Resources to address the reduction of greenhouse gas emissions associated with water and energy uses
- SB 97: CEQA—Mitigation of Greenhouse Gases, requiring the Office of Planning and Research to must prepare guidelines under the California Environmental Quality Act for the mitigation of greenhouse gas emissions
- SB 85: Funds Used for Market-Based Compliance Mechanisms, which provides that funds appropriated to the State Air Resources Board and used for “market based compliance mechanisms” may be spent solely for the assessment and evaluation of potential market based compliance mechanisms, and not for adoption or implementation of those mechanisms, until the State Air Resources Board has complied with all applicable requirements of the Global Warming Solutions Act.
- AB 1109: California Lighting Efficiency and Toxics Reduction Act, which prohibits the manufacture and sale of “general purpose lights” in California that contain levels of hazardous substances that would result in the prohibition of those lights being sold or offered for sale in the European Union pursuant to the RoHS Directive.
- AB 118: California Alternative and

- AB 1470: Solar Water Heating and Efficiency Act of 2007, which is designed to provide incentives to install 200,000 solar water heating systems in California homes and businesses by 2017.

- AB 236: State and Local Government Alternative Fuel Vehicle Fleets, which requires the Department of General Services to develop and adopt specifications and standards for all passenger cars and light duty trucks that are purchased or leased on behalf of, or by, state offices, agencies, and departments.

- AB 809, AB 946, and SB 1036: Renewable Portfolio Standard Program.


**Solid Waste**

**Temporary Solid Waste Facilities Permits.** 2007 legislation addresses a temporary permitting scheme to enable operators of existing solid waste facilities to obtain temporary permits more quickly than is possible under existing law. See § 92.09.

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Publication 102, Release 48, March 2008

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Publication 102 Release 48 March 2008

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