California Environmental Law and Land Use Practice

Publication 102  Release 63  September 2015

HIGHLIGHTS

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

Revised Chapters
- Ch. 92, Resource Recovery and Recycling, has been revised and updated and is now titled Solid Waste Handling Facilities.

California Environmental Quality Act (CEQA)

Projects Subject to CEQA—Categorical Exemptions. In Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal. 4th 1086, the California Supreme Court found that a categorical exemption to CEQA may not be used for an activity if a reasonable possibility exists that the activity will have a significant environmental effect because of unusual circumstances. Petitioners using this exception to attack a categorical exemption must show both that (1) “unusual circumstances” exist and (2) these unusual circumstances create the “reasonable possibility” of a significant environmental impact. The Court further held that that a potentially significant environmental effect does not by itself constitute an unusual circumstance for purposes of the exception. See § 21.06[7][b][i].

Water Quality

Safe Drinking Water Act. The California Safe Drinking Water Act of 1989 (Health & Safety Code § 116270 et seq.; 22 Cal. Code Reg. § 64551.10 et seq.) is intended to establish a program that is more protective of public health than the federal Safe Drinking Water Act. The Act was formerly implemented by the Department of Public Health. Responsibility for implementation was recently transferred to the State Water Resources Control Board (2014 Cal. Stats., ch. 35 (SB 861); see Health & Safety Code § 116271). For coverage, see § 33.04[6][a][ii].

Safe Drinking Water State Revolving Fund Law. The provisions of the Revolving Fund Law were repealed and reenacted in 2014, contingent on adoption of a policy
handbook by the State Water Resources Control Board (2014 Cal. Stats., ch 35 § 78; see Health & Safety Code § 116760.43). For coverage, see § 33.04[6][a][v].

**Hazardous Waste and Toxic Substances**

**Accounting for Settlements in CERCLA Contribution Action.** In AmeriPride Servs. v. Tex. Eastern Overseas, Inc. (9th Cir. 2015) 782 F.3d 474, the Ninth Circuit found that a district court has discretion under CERCLA to determine the most equitable method of accounting for settlements between private parties in a contribution action. See § 50.51[2][b].

**Forestry Development**

**Regulatory Activity—Logging Roads and Landings.** Regulatory activity (Register 2014, No. 24) updates rules governing logging roads and landings. See § 80.12[2][b].

**Program Timberland Environmental Impact Report.** The Program Timberland Environmental Impact Report for Carbon Sequestration and Fuel Reduction Program was recently adopted as one of a number of programs established to address greenhouse gas reduction and funded through the Greenhouse Gas Reduction Fund (2014 Cal. Stats., ch. 36 (SB 862)). The legislation authorizes the Director of Forestry and Fire Protection to enter into agreements and make grants for the purpose of preparing a program timberland environmental impact report for projects that demonstrate potential to increase carbon sequestration, decrease atmospheric carbon levels, and reduce the potential for large wildland fires on land owned by smaller nonindustrial landowners. See § 80.13[10][e].

**Climate Change**

**Executive Orders.** The section on executive orders has been expanded. The expanded section includes coverage of Governor Brown’s recent Executive Order B-30-15. In his 2015 Inaugural Address, the Governor called for 2030 targets of an increase in renewable energy to 50%, a reduction in petroleum use by 50%, doubling of energy savings in existing buildings, and developing cleaner heating fuels. Issued on April 29, 2015, Executive Order B-30-15 established an interim California GHG reduction target of 40 percent below 1990 levels by 2030. See § 85.02.

**Climate Change Legislation.** The section on California climate change legislation has been updated with several pieces of recent chaptered legislation, including:


See § 85.05[32]–[38].

**Solid Waste**

**Revised Chapter.** Chapter 92, Resource Recovery and Recycling, has been revised and updated. The chapter is now titled Solid Waste Handling Facilities, and covers the following topics:

- An introduction to solid waste facilities (Part A), including a section on current topics. See
§§ 92.01, 92.02.

- Various solid waste management units, facilities, and disposal sites (Part B), with sections on landfills and landfill gas systems; biomass conversion facilities; transfer stations; materials recovery facilities; composting and anaerobic digestion facilities; household hazardous waste facilities; tire disposal facilities; transformation (waste-to-energy) facilities; used oil “collection” centers and “recycling” facilities; battery collection centers; recycling (buy back) centers and processing facilities; and non-hazardous petroleum contaminated soil operations and facilities. See §§ 92.10–92.24.

- “Special wastes” (Part C), with sections on asbestos; household hazardous waste; metallic discards; sewage sludge/biosolids; shredder waste; used oil; beverage containers; tires; e-waste; and universal waste. See §§ 92.30–92.40.

- Siting and permitting of solid waste facilities (Part D), with sections on permitting agencies; the permit application process; the permit denial and appeal process; suspension or revocation of a permit; changes in design or operation; and permit monitoring. See §§ 92.50–92.56.

- Remediation, closure, and post-closure (Part E), with sections on the post-closure plan and the Solid Waste Disposal Site Cleanup Program. See §§ 92.70, 92.71.

- “Flow control” of solid waste and exclusive franchising (Part F). These sections cover waste stream guarantees and constitutional challenges; exclusive franchises and antitrust challenges; federal preemption; and the prohibition of import bans. See §§ 92.80–92.83.
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