



California Environmental Law Alert

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New Environmental State Laws and Regulations Impacting Businesses

Several environmental laws and regulations with potential impacts to businesses were signed into law effective in 2013. Many of these new laws are summarized below. As for future environmental developments, 2013 promises to be the year that the state tackles reforming one of its landmark environmental statutes: the California Environmental Quality Control Act (CEQA). On January 24, 2013, Governor Brown delivered his State of the State address, which indicated that he is interested in reforming CEQA so projects have fewer delays.

Another potential regulatory development on the immediate horizon is the approval of California's Green Chemistry Initiative, modeled largely after the European Union's REACH program that was enacted in 2007. This regulatory development would require manufacturers that sell products containing chemicals harmful to consumers' health and the environment to evaluate and encourage the use of ingredients deemed to be safer to the consumer. These regulations are still underdevelopment but it is anticipated that all of the chemicals listed under California's Proposition 65 may be included.

The changes discussed below were effective as of January 1, 2013 unless otherwise stated.

Green Building Incentives. California implemented new tax incentives for renewable energy and green building. Under California SBE Special Tax Notice L-330 (2012), sales and leases of farm equipment and machinery, including solar power facilities, that meet certain criteria are partially exempt from California's sales and use tax. The California State Board of Equalization (BOE) recently clarified that, under certain circumstances, solar power facilities may qualify for the farm equipment and machinery partial exemption. This partial exemption would apply even if the electricity generated first goes to the electrical grid before being used in qualified agricultural activities. If you otherwise qualify for the farm equipment and machinery partial exemption, your solar power facilities that are tied to the local power grid but are not directly attached to qualifying farm equipment may qualify, if they are designed to generate power for such equipment and machinery.

Additionally, under SB1128, California expanded the sales and use tax exemption for green manufacturing equipment to include "advanced manufacturing." To enhance the promotion, development and utilization of alternative energy sources and transportation technologies by granting financial assistance to eligible projects, "advanced manufacturing processes" are now eligible for the program. Such processes include manufacturing that improves existing or creates new, materials, products and process in several areas including micro- and nano-electronics, additive manufacturing, and industrial biotechnology.

Hazardous Wastes and Materials laws regarding tanks. Changes to the Underground Storage Tank regulatory program were made to clarify when a tank located in an underground area such as a basement should be considered an Underground Storage Tank (UST). California amended Sections 25270.2, 25270.4, 25270.12, 25281, and 25281.6 of, and added Sections 25270.4.1, 25270.12.1, and 25270.12.5 to, the Health and Safety Code, relating to aboveground storage tanks that are located in subsurface or below grade structures. This law expanded the definition of "aboveground storage tank" to include tanks in an underground area but above the floor, such as a basement or a cellar. This law also imposes criminal penalties for a violation of the Aboveground Petroleum Storage Act. To determine whether a tank is regulated as an aboveground storage tank or an underground storage tank, it may be helpful to consult this flowchart: http://www.swrcb.ca.gov/water_issues/programs/ust/tech_notices/ab1566_summary_12_20_2012.pdf.

California also amended Sections 25281, 25295, 25297.1, and 25299 of the Health and Safety Code, such that the term "local agency" is revised for purposes of implementation of the UST program. On and after July 1, 2013, only a city or county certified by the Water Board is authorized to implement the local oversight program.

Hazardous Wastes and Materials law exempting certain waste. California amended Section 25143.1 of the Health and Safety Code, such that certain spent brine solutions used to produce geothermal energy are exempt from the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the Health and Safety Code.

Insurance Coverage impacting environmental cleanup and litigation. A recent Supreme Court decision expands the availability of insurance as it applies to the cleanup of and litigation concerning environmental contaminated sites. State of California v. Continental Insurance Company et al. (2012) 55 Cal.4th 186. Please refer to this Insurance Coverage Law Alert:

- <http://www.burnhambrown.com/uploads/content/California%20Supreme%20Court%20Issues%20Decision%20on%20All%20Sums.WA1.FI4.pdf>

Proposition 65. The Office of Environmental Health Hazard Assessment (OEHHA) added 11 chemicals to be regulated under Prop 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986). These chemicals and uses are listed below.

1. Isopyrazam and 3, 3',4,4'-tetrachloroazobenzene. Listed July 24, 2012. This is a contaminant of 3, 4-dichloroaniline and the related herbicides linuron, diuron, and propanil, and a degradation product of 3, 4-dichloroaniline and chloroanilide herbicides.
2. Benzophenone. Listed June 22, 2012. This is found in certain cosmetics, including nail polish, hair spray, body wash, styling gel, shampoos, foundation, lipstick, cologne, and moisturizers. Benzophenone can be used as a photo initiator in UV-curing applications such as inks, imaging, and clear coatings in the printing industry. Benzophenone prevents ultraviolet (UV) light from damaging scents and colors in products such as perfumes and soaps. It can also be added to the plastic packaging as a UV blocker. Its use allows manufacturers to package the product in clear glass or plastic.
3. Coconut oil diethanolamine condensate. Listed June 22, 2012. This chemical is widely used in the manufacture of liquid shampoos, bubble baths soaps, dishwashing liquid, liquid hand soaps, soap bars, light-duty detergents and dishwashing detergents and as a delinting agent for cottonseed.
4. Diethanolamine. Listed June 22, 2012. Diethanolamine is a foaming agent widely used in personal care products such as shampoos, hair dyes, and bath products. It is also used in laundry and dishwashing detergents.
5. Isopyrazam. Listed July 24, 2012. This is found in fungicides.
6. Kresoxim-methyl. Listed February 3, 2012. This is found in fungicides.
7. Methanol. Listed March 16, 2012. Methanol is used as an industrial solvent; antifreeze for automotive radiators and air brakes; an ingredient in gasoline and diesel oil antifreezes; an octane booster in gasoline; fuel for picnic stoves and soldering torches; a softening agent for pyroxylin plastics; solvent for shellac and some paints and varnishes; a component of paint removers; an additive in windshield washing fluid, de-icing solution, duplicating fluids, solid canned fuels, model airplane fuels, embalming fluids, lacquers, and inks; a denaturant for ethanol; and as an alternative motor fuel.

8. 2-Methylimidazole. Listed June 22, 2013. This chemical is used in the manufacture of pharmaceuticals, photographic and photothermographic chemicals, dyes and pigments, agricultural chemicals and rubber. It is also widely used as a polymerization cross-linking accelerator and a hardener for epoxy resin systems for semiconductor potting compounds and soldering masks. It is a component of numerous polymers, including epoxy resin pastes, acrylic rubber-fluororubber laminates, films, adhesives, textile finishes, and epoxy silane coatings and as a dyeing auxiliary for acrylic fibres and plastic foams. 2-Methylimidazole has also been identified as an undesirable by-product in fermented foods and is found in several food products including caramel coloring, soy sauce, Worcestershire sauce, wine, ammoniated molasses, and caramel-colored syrups.
9. Methyl isopropyl ketone. Listed February 17, 2012. This chemical is an industrial solvent used in the production of paints, coatings, primers, rubber products, chemicals and machinery. As a solvent, it is used in pesticide applications. The compound also strengthens and preserves flavors and fragrances and is used in home products like hard surface cleaners, dyes and tints, laundry starches, paints and varnish products. It is also used as a lubricant in greases and oils, and in automotive chemicals, pet flea and tick products, shoe polish, wood office furniture, and in undercoats and clear finishes.
10. Alpha-Methylstyrene. Listed November 2, 2012. Alpha methylstyrene is an intermediate that provides higher thermal performance and impact strength to resins – either directly or as an additive. It is used in acrylonitrile butadiene styrene, coatings, adhesives, acrylic resins, waxes, and perfumery chemicals, drying oils, lubricating oils, alkyd resins, and modified phenolic resins. It is a UV stabilizer and antioxidant intermediate.
11. 1,3-dinitropyrene. Listed November 2, 2012. 1,3-dinitropyrene is found in some carbon blacks and in emissions from diesel engines, kerosene heaters, and gas burners.

CEQA. As mentioned above, it is anticipated that additional legislation concerning this statute will be forthcoming. As for the past legislative year, California added Section 21080.37 to the Public Resources Code, which provides a CEQA exemption for certain roadway improvements until January 1, 2016. The legislature also amended Section 21083.9 of the Public Resources Code so that lead agencies are now required to provide the notice of at least one scoping meeting for projects of statewide, regional, or area-wide significance to a public agency that filed a written request for the notice. Further, notice of completion of an Environmental Impact Report by a public agency is now required to be mailed upon request.

Climate Change. In late 2012, California held its first carbon auction. California Air Resources Board (ARB) has designed a California cap-and-trade program that is enforceable and meets the requirements of AB 32. Enforceable compliance obligations begin with the 2013 Greenhouse Gas emissions covering over 350 entities in the state that are considered to be large emitters, including power generators, paperboard mills, lime manufacturers, glass manufacturers, and cement manufacturers. ARB announced that it sold all 23.1 million allowances available for 2013 at \$10.09 each, generating \$233.3 million. To date, two lawsuits have been filed, challenging the cap-and-trade program. On January 28, 2013, California environmental regulators defeated the first challenge in Citizens Climate Lobby v. California Air Resources Board, CGC-12-519554, California Superior Court (San Francisco). The second suit may have a hearing as early as February 2013 (Cal. Chamber of Commerce v. Cal. Air Res. Bd., No. 2012-80001313, Sacramento Super. Ct. filed Nov. 12, 2012).

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