



1-1-1970

Environmental Protection Review of Selected 1970 California Legislation

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Environmental Protection Review of Selected 1970 California Legislation*, 2 PAC. L. J. 406 (1971).

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Environmental Protection

Environmental Quality Act

Public Resources Code §§ 21000-21151 (new).

AB 2045; STATS 1970, Ch 1433

The Environmental Quality Act of 1970 is closely patterned after the National Environmental Quality Act of 1969.

The California Act begins with a statement of intent to endeavor to protect and provide a high quality environment for the State of California.

Sections 21100 through 21107 implement the Act by providing for environmental impact reports from all state agencies, boards and commissions on any project they propose to carry out which would have a significant effect on the environment. The report must include the environmental impact of the proposed action. It must report any unavoidable adverse environmental effects, mitigation measures to minimize the impact, alternatives to the proposed action, local short-term and long-term effects, and any irreversible environmental changes. An impact report must also be made by a state agency on any federal projects within the state before official state comments are made.

Section 21150 requires an "impact report" from a local government agency before state or federal funds are allocated. Only planning funds can be allocated until an impact report has been submitted.

"Projects" are included under the act. The words "program" and "activity" were not included. Zoning laws and general area plans are, as such, not subject to the act.

Reference:

- 1) For legislative history and purpose of Pub. L. 91-190, see 1969 U.S. CODE CONG. AND ADM. NEWS, p. 2751.

Air Pollution; environmental control

Government Code §§6254.7 (new); 6254 (amended); Health and Safety Code §§39068.1-39068.5, 39113 (new); Vehicle Code §§21655.5, 27157, 27158 (new).

AB 1; STATS 1970, Ch 1295

This comprehensive legislation has been called the "Clean Air Bill" or

“Anti-smog Bill”. Auto makers are required to begin assembly line testing of smog control devices on 1972 model vehicles. In 1973, a \$5,000 fine will be imposed on manufacturers for every vehicle that fails to meet State Air Resources Board standards.

The Department of Public Works is authorized to order exclusive or preferential use of certain freeway lanes during rush hours for buses and pooled cars. Regulations regarding maximum allowable emissions of pollutants from vehicles will be adopted by the State Air Resources Board. The California Highway Patrol is empowered to make roadside examination of the smog control system of used vehicles. Stationary gasoline tanks of 250 gallons or more installed after December 31, 1970 must contain approved devices to curb vapor escape.

All air monitoring data and industrial plant records, except trade secrets required by air pollution control districts, are made public records.

Air Pollution; burning

Health and Safety Code §§39295-39299.3 (new); 39057 (amended).
AB 16; STAS 1970, Ch 1579
(*Effective September 20, 1970*)

Section 39057 is amended to allow local or regional air pollution authorities to set stricter standards than those set by the State Air Resources Board for agricultural burning (open outdoor fires). However, no local or regional board may completely ban all agricultural burning.

Formerly, agricultural burning and motor vehicle pollution were exempt from control by local or regional boards.

Chapter 10 is added to the code and relates to burning, setting forth detailed prohibitions and exceptions. It also contains provisions for agricultural burning.

Section 39295 to Section 39295.7 set out definitions and general provisions relating to burning, as used in this Chapter.

Article 2 of Chapter 10 provides that any person after December 31, 1971, who uses an open fire for disposal of petroleum wastes, demolition debris, tires, tar, trees, wood waste, or other combustible or flammable solid or liquid waste, or for metal salvage or burning of automobile bodies will be guilty of a misdemeanor punishable by a fine

not exceeding \$500 or imprisonment in the county jail not exceeding six months, or both. Also, any above violation may be enjoined in a civil action brought in the name of the state. The plaintiff shall not be required to prove inadequacy of a remedy at law or that irreparable damage will result.

Article 3 specifies that the following provisions shall be exempt from the above prohibition:

- a) Any public officer shall have authority to permit a fire when he determines such is necessary for prevention of a fire hazard;
- b) The instruction of public or private industrial employees in methods of fire fighting;
- c) Setting of backfires necessary to save life or valuable property;
- d) Abatement of fires.

Section 39297.2 exempts burning for disposal of combustible or flammable waste of a single or two-family dwelling if done on the premises.

Section 39297.3 exempts burning for a right-of-way clearing by a public entity or utility or for levee or ditch maintenance.

Section 39297.4 allows a city or county to use outdoor fires for a limited time only in operation of a solid waste dump upon the finding that such dump should be so operated. Circumstances to be considered are sparseness of population, geographical area, and economic and technical difficulties.

Article 4 pertains to agricultural burning. Any person knowingly setting or permitting agricultural burning without a valid permit shall be guilty of a misdemeanor punishable as above (*6 months, \$500, or both*). Valid permits must be issued by public fire protection agencies designated by the local or regional board, who shall also set rules or regulations. No permit issued shall be valid on days that burning is prohibited by the State Air Resources Board.

The State Air Resources Board shall set guidelines for regulation and control of designated basins, based on meteorological data, types of materials to be burned and overall effect. These guidelines shall be continuously reviewed and modified. By January 15, 1971 the board shall submit a progress report to the legislature.

Section 39298.7 provides that the State Air Resources Board shall adopt and publish a list of orchard and citrus heaters which produce no more than one gram per minute of unconsumed solid carbonaceous material. No heaters shall be sold after January 1, 1971, unless ap-

proved by the Board and no person shall use any heater after January 1, 1975, which has not been approved by the Board. Any such violation shall constitute a misdemeanor punishable as above (\$500, 6 months, or both).

The Chapter also provides that within 6 months after basin control guidelines have been set by the State Air Resources Board the local board shall adopt a plan with such guidelines implemented. Each such implementation plan shall be adopted by the Board after public hearings.

References:

- 1) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1967 CODE LEGISLATION 136.
- 2) 2 CALIFORNIA AIR RESOURCES BOARD BULLETIN p.3 (1970).

Air Pollution Control; violations

Health and Safety Code §§39054.1 (new); 24252, 24360.7, 39437 (amended).

AB 90; STATS 1970, Ch 73

Chapter 73 facilitates the process by which injunctive action may be brought against air polluters by modifying standard equitable action requirements as stated below.

Section 24252 provides that the plaintiff need not allege facts necessary to show or tending to show lack of adequate remedy at law or to show or tending to show irreparable damage or loss. Section 24252 applies to Article 3, Chapter 2 of the Health and Safety Code (*Air Pollution Control Districts authority to prohibit*).

Section 24360.7 is amended in the same manner but applies to Article 7 (*Unified Air Pollution Control Districts*), of Chapter 2. Section 39437 is also amended in the same manner but applies to Article 5, (*Hearing Board*), Chapter 2 (*District Air Pollution Control Boards*), of Part 2, (*Regional Air Pollution Control*) of the Mulford-Carrell Air Resources Act of the Health and Safety Code.

Section 39054.1 (*Mulford-Carrell Air Resources Act, Air Resources Board, Powers and Duties*) is added to the Health and Safety Code stating that no provision of Division 26 of the Health and Safety Code, or any order, rule or regulation of any local or regional authority, is a limitation on:

(a) The power of any local or regional authority to declare, prohibit, or abate nuisances.

(b) The power of the Attorney General to bring an action to enjoin any pollution or nuisance.

(c) The power of a state agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(d) The right of any person to maintain an appropriate action for relief against private nuisance.

Reference:

- 1) 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Equity* §§73, 83 (7th ed. 1960); (Supp. 1969).

Air Pollution Control; enforcement

Health and Safety Code §§24260.5, 24354.15, 39260-39263, 39391 (new); 39068 (amended).

AB 88; STATS 1970, Ch 694

State agencies responsible for air pollution control are authorized by this Chapter to fine polluters up to \$500, or issue an order of abatement which may result in a fine of up to \$6,000 per day if such order is violated.

Violation of a regulation promulgated by any air pollution control agency may result in a variety of penalties according to the local air pollution district. These penalties are generally either civil fines of \$500 or criminal fines. This amendment establishes a state-wide \$500 maximum civil penalty to encourage enforcement of local rules. Prosecutors formerly reluctant to bring a criminal action may now bring a civil action to abate air pollution without encountering the difficulties of a criminal action. In addition, this Chapter empowers regional district and pollution control boards, including the Bay Area Air Pollution Control District, to issue an order of abatement against polluters found to be discharging contaminants into the air in its jurisdiction. Notice must be given to the polluter and a hearing must be held on the issuance of an order. Violation of the order of abatement may result in a maximum fine of \$6,000 (*Section 39260*).

The Attorney General, district attorney, or attorney representing a pollution control agency may bring a civil action to enforce any of these provisions. Suits filed pursuant to these Sections must be given precedence over all civil matters on court calendars (*Section 39262*). The penalties do not apply to motor vehicle air pollution (*Section 29264*).

No government employee is to be held personally liable for pollution caused while performing his governmental functions.

Air Pollution Control; review of district board decisions

Health and Safety Code §§24323 (new); 24323 (repealed).

AB 1119; STATS 1970, Ch 194

Pursuant to this new Section, one is entitled to judicial review of the ruling of the hearing board of an air pollution control district.

To be entitled to such a review, the petitioner must file a writ of mandate in accordance with Code of Civil Procedure Section 1094.5 within 30 days after the date of decision by the hearing board.

Under old Section 24323, the petitioner was entitled to a trial de novo. This was a time consuming process which involved the setting of a trial date and a determination of all issues of law and facts. Any continuation would also add to the time before the issue was resolved.

Under the new Section, the appeal for judicial review must be filed within 30 days from the decision of the hearing board and then the court will make its judicial review to uphold or reverse the decision of the hearing board.

Reference:

- 1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §122 (7th ed. 1960).

Conservation of Aquatic Resources

Fish and Game Code §1700 (new).

SB 96; STATS 1970, Ch 88

By enactment of this Chapter the legislature has attempted to establish firm guidelines to be followed in the regulation of the state's aquatic resources.

When the legislature established the State Fish and Game Commission in 1945, it retained control over commercial fisheries and gave jurisdiction over sport fishing to the Commission. Gradually, limited powers of control over commercial fisheries were extended to the Commission (e.g., it was allowed to set quotas for certain fish crops). The result has been conflicting regulations, conflicting interpretations of regulations and a great deal of strife among the various interests, with the legislature generally favoring the commercial fisheries and the

Commission generally sympathetic to sport fishermen.

To help deal with this problem, the California Advisory Committee on Marine and Coastal Resources was created in 1968. The Committee drafted Senate Bill 96 to establish policy guidelines for the conservation of aquatic resources. Specific objectives of the policy are:

- 1) maintenance of all species in sufficient quantities to insure their existence;
- 2) recognitions of the aesthetic, educational, scientific and nonextractive recreational uses of aquatic resources;
- 3) maintenance of sufficient resources for sport fishing;
- 4) the growth of local commercial fisheries consistent with other uses of the resources to obtain the maximum sustainable yields and utilization of unused resources;
- 5) the management of fisheries on a scientific basis to maximize a sustained harvest.

Water Quality; regulations for regional boards

Water Code §§13441.5, 13522.5-13522.7, 13525.5 (new); 13204, 13223, 13261, 13264, 13267, 13300, 13301, 13304, 13331, 13361, 13523-13525, 13608, 13805 (amended); Fish and Game Code §5803 (new).

AB 1251; STATS 1970, Ch 918

Chapter 918 makes various technical and procedural changes in the Porter-Cologne Water Quality Control Act (*Water Code Sections 13000-13951*).

Most of the amendments clarify the provisions covering water reclamation. Any person proposing to reclaim water or use reclaimed water must file a technical report with the appropriate regional board.

The report must now be filed *before* the board sets quality standards for the reclaimed water; this change makes a logical connection between the report and the subsequent requirements imposed by the board. In addition, requirements concerning the reclaimed water may now be imposed on the user of the water as well as on the person conducting the reclamation activity. Until the reclamation requirements have been established, the reclamation or use of reclaimed water is now prohibited; a violation of this provision is made a misdemeanor. The Attorney General is authorized to enforce these provisions.

References:

- 1) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1967 CODE LEGISLATION 238.
- 2) Haydel, *Regional Control of Air and Water Pollution in the San Francisco Bay Area*, 55 CAL. L. REV. 702 (1967).
- 3) *California Assembly, Interim Committee on Conservation, Planning, and Public Works, 1957-1959*, JOURNAL OF THE CALIFORNIA ASSEMBLY, vol. 13, vol. 2 append. (1959 Reg. Sess.); *Water Pollution, Report of Assembly Interim Committee on Water, 1963-1965*, JOURNAL OF THE ASSEMBLY, vol. 26, vol. 2 append. (1965 Reg. Sess.).