



1-1-1993

Environmental Protection

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>



Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Environmental Protection*, 24 PAC. L. J. 867 (1993).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol24/iss2/24>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Environmental Protection

Environmental Protection; coastal resources--enforcement

Public Resource Code § 30821 (repealed); § 30820 (repealed and new); § 30826 (new).

SB 1449 (Rosenthal); 1992 STAT. Ch. 955

Under prior law any person who violated any provision of the California Coastal Act of 1976 (Coastal Act)¹ was subject to a specified civil fine and was potentially subject to an additional daily civil fine for any development² in violation of the Coastal Act.³ Chapter 955 removes prior penalties, and authorizes civil penalties for development in violation of the Coastal Act, varying according to whether the violation is intentional and knowing.⁴ Furthermore, Chapter 955 prescribes factors to be considered in the imposition of such liability.⁵ Additionally, Chapter 955 authorizes the California Coastal Commission⁶ or local government⁷ to order restoration of

1. See CAL. PUB. RES. CODE §§ 30000-30900 (West Supp. 1992) (setting forth provisions of the California Coastal Act of 1976).

2. See *id.* § 30106 (West 1992) (defining development).

3. 1976 Cal. Stat. ch. 1330, sec. 1, at 3190 (enacting CAL. PUB. RES. CODE §§ 30820, 30821); see *id.* (stating that civil fines could not exceed \$10,000, but that additional penalties of not less than \$50 nor more than \$5,000 per day for each day a violation occurs could be imposed for intentional and knowing development in violation of this Act); cf. R. I. GEN. LAWS § 42-17.1 (1991); OR. REV. STAT. § 196.180 (1991) (providing for a Department of Environmental Management to oversee and resolve conflicts pertaining to the use of coastal resources).

4. *Id.* § 30820 (enacted by Chapter 955). Penalties may not be less than \$1,000, nor more than \$15,000 per day for each day the violation exists. *Id.* § 30820(b) (enacted by Chapter 955). See *id.* §§ 30519, 30715 (West 1986) (delegating enforcement authority to local governments with certified local coastal programs and port governing bodies with certified port master plans). See generally Lynda Butler, *State Environmental Programs: A Study in Political Influence and Regulatory Failure*, 31 WM. & MARY L. REV. 823 (1990) (discussing the contrast between recent calls for a more serious commitment to the management of natural resources and the reluctance of state governments to assume a more active regulatory role).

5. CAL. PUB. RES. CODE § 30820(a), (c)(1)-(5), (d) (enacted by Chapter 955). Liability is imposed based on: (1) The nature, circumstances and gravity of harm; (2) the possibility of restoration; (3) the sensitivity of the resource; (4) the cost of the action; and (5) any mitigating circumstances. *Id.* § 30820 (c)(1)-(5) (enacted by Chapter 955). The Commission must develop guidelines to ensure consistent application of § 30820. *Id.* § 30821.5 (enacted by Chapter 955).

6. See *id.* § 30300-30400 (West 1986) (providing for the powers and duties of the California Coastal Commission).

7. See *id.* § 30109 (West 1986) (defining local government).

a site when development is inconsistent with the Coastal Act and is causing continuing resource damage.⁸

HAT

Environmental Protection; hazardous waste treatment standards

Health and Safety Code §§ 25179.7, 25179.13 (new); §§
25179.8, 25244.15, 25244.19, 25244.22 (amended).
SB 1726 (Calderon); 1992 STAT. Ch. 853

Existing law prohibits the land disposal¹ of any hazardous waste² designated as Resource Conservation and Recovery Act (RCRA) hazardous waste,³ unless a variance⁴ is obtained, or the

8. *Id.* § 30826 (enacted by Chapter 955).

1. *See* CAL. HEALTH & SAFETY CODE § 25179.3(h) (West 1992) (defining land disposal as placement in or on the land, including placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, or other structures intended for disposal purposes); *see also* 40 C.F.R. § 260.10 (1991) (defining land disposal); *People v. Taylor*, 7 Cal. App. 4th 677, 686-88, 9 Cal. Rptr. 2d 227, 231-33 (1992) (holding “disposal” of any hazardous waste includes “abandonment,” and that there is no requirement of movement of waste to some location other than the premises on which it was created, even if waste has been properly stored on the premises at which it is eventually abandoned).

2. *See* CAL. HEALTH & SAFETY CODE § 25117(a) (West 1992) (defining waste as hazardous waste, if, because of its quantity, concentration, or physical, chemical, or infectious characteristics, it may either cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or otherwise pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed); *see also* 40 C.F.R. § 261.3 (1991) (defining hazardous waste).

3. *See* CAL. HEALTH & SAFETY CODE § 25120.2 (West 1992) (defining RCRA hazardous waste as all waste identified as a hazardous waste under 40 C.F.R. § 261.1); The Resource Conservation and Recovery Act of 1976, Pub. L. No. 94-580, 90 Stat. 2795 (codified as amended in scattered sections of 42 U.S.C.).

4. *See* CAL. HEALTH & SAFETY CODE § 25179.8(a) (amended by Chapter 853) (exempting treatment standards for certain hazardous wastes subject to the land disposal ban). *But see id.* § 25179.8(e) (amended by Chapter 853) (denying variances if regulations would be less stringent than regulations issued by the Administrator of the Environmental Protection Agency).

hazardous waste undergoes treatment,⁵ meeting specified standards,⁶ prior to land disposal.⁷ Prior law also provided that the same land disposal restrictions would apply, beginning January 1, 1993, to additional hazardous wastes, known as non-RCRA hazardous wastes,⁸ unless certain criteria were met.⁹

Chapter 853 instead allows all RCRA hazardous wastes lacking an adopted federal treatment standard,¹⁰ and certain non-RCRA

5. See *id.* § 25179.3(j) (West 1992) (defining treatment as any method, technique, or process, including incineration, occurring at authorized facilities which changes the physical, chemical, or biological character or composition of any hazardous waste and, by that change, the waste becomes nonhazardous, significantly less hazardous, or more suitable for land disposal because of removal or substantial reduction of undesirable properties, such as toxicity, mobility, persistence, reactivity, bioaccumulation, flammability, or corrosivity); see also *id.* § 25179.3(a)(l) (West 1992) (defining treated hazardous waste); 40 C.F.R. § 260.10 (1991) (defining treatment).

6. See CAL. HEALTH & SAFETY CODE § 25179.3(l) (West 1992) (requiring treated hazardous wastes to meet federal treatment standards); *id.* § 25179.6(b) (West 1992) (specifying criteria for establishing treatment standards); see also 40 C.F.R. §§ 268.40-268.43 (1991) (specifying treatment standards); CAL HEALTH & SAFETY CODE § 25179.6(b)(3) (West 1992) (authorizing more stringent treatment standards where federal standards do not minimize the hazardous characteristics of the waste); “Complex” Chem. Waste Management, Inc. v. U.S.E.P.A., No. 90-1230, 1992 WL 235221 (D.C. Cir. 1992) (*per curiam*) (vacating deactivation treatment standards based on dilution for certain categories of hazardous wastes); Chem. Waste Management, Inc. v. U.S.E.P.A., 869 F.2d 1526, 1534-35 (D.C. Cir. 1989) (upholding EPA’s determination that treatment standards for leachate containing more than one hazardous waste would apply to leachate contaminated by waste not considered hazardous when it was disposed); *cf.* ALA. CODE § 22-30-16 (1991); IDAHO CODE § 39-4405 (1992); NEV. REV. STAT. § 459.490 (1991) (requiring the establishment of hazardous waste treatment standards).

7. CAL. HEALTH & SAFETY CODE § 25179.6(a)(1) (West 1992); *id.* § 25179.6(a)(2) (West 1992) (prohibiting the land disposal of any hazardous waste on or before May 8, 1990, unless the waste meets certain conditions); see 42 U.S.C. § 6926(b) (Supp. 1991) (allowing states to implement their own hazardous waste program in lieu of the federal program); see also *Liquid Chem. Corp. v. Department of Health Servs.*, 227 Cal. App. 3d 1682, 1690-94, 279 Cal. Rptr. 103, 106-08, (1991) (holding that the state was not required to have federal authorization under RCRA to administer its hazardous waste program).

8. See CAL. HEALTH & SAFETY CODE § 25117.9 (West 1992) (defining non-RCRA hazardous wastes as all hazardous waste regulated in the state, other than RCRA hazardous waste). A hazardous waste regulated in the state is presumed to be RCRA hazardous waste, unless it is determined, pursuant to adopted regulations that the hazardous waste is a non-RCRA hazardous waste. *Id.*

9. 1992 Cal. Legis. Serv. ch. 33, sec. ____, at ____; CAL. HEALTH & SAFETY CODE § 25179.6(a) (West 1992) (exempting hazardous wastes granted a variance, extension, or exclusion, or treated in accordance with the applicable treatment standards, or, under special conditions, if a solid waste has been generated in the cleanup or decontamination of a site).

10. See CAL. HEALTH & SAFETY CODE § 25179.7(a)(1) (enacted by Chapter 853) (allowing land disposal of all RCRA hazardous wastes that either lack an adopted federal treatment standard or the adopted standard is not yet in effect).

hazardous wastes,¹¹ to be disposed of at a hazardous waste facility until January 1, 1995, by suspending compliance with any adopted state disposal treatment standard.¹² Chapter 853 requires that any RCRA hazardous waste lacking a federal treatment standard, or any non-RCRA hazardous waste, must meet state treatment standards for disposal after January 1, 1995.¹³ However, Chapter 853 authorizes the issuance of a variance for agricultural drainage waters¹⁴ if certain conditions are met.¹⁵

Existing law requires each generator of more than 12,000 kilograms of hazardous waste per year, to conduct a source

11. *Id.* § 25179.7(a)(2)-(3) (enacted by Chapter 853) (allowing land disposal of all non-RCRA hazardous wastes currently regulated or subject to treatment standards based upon incineration, solvent extraction, or biological treatment).

12. *Id.* § 25179.7(a) (enacted by Chapter 853). *See generally Hazardous Waste Fee Increases Approved By Senate Toxic Committee*, BNA CAL. ENV'T DAILY, Apr. 14, 1992, available in WESTLAW (reporting that implementation of prior law would force hazardous waste generators to export their waste to other states, or to Mexico).

13. CAL. HEALTH & SAFETY CODE § 25179.7(b) (enacted by Chapter 853). *But see id.* § 25179.7(b)(1) (enacted by Chapter 853) (requiring implementation of federal treatment standards for those RCRA wastes having federally adopted treatment standards); *id.* § 25179.7(b)(2) (enacted by Chapter 853) (authorizing implementation of alternative treatment standards for non-RCRA wastes having incineration identified as a treatment method); *id.* § 25179.13(a) (enacted by Chapter 853) (requiring re-evaluation of treatment standards based upon incineration treatment standards). *See generally Land Disposal Restrictions for Newly Listed Wastes and Contaminated Debris*, 57 Fed. Reg. 958 (1992) (proposed Jan. 9, 1992) (proposing treatment standards for twenty newly listed hazardous wastes); *Proposed Consent Decree On "Mega-Deadline" For Hazardous Waste Listings*, ENV'T. REP., June 28, 1991 (reporting proposed consent decree requiring the EPA to issue deadlines for regulations, treatment standards, and listings of several new categories of hazardous wastes).

14. CAL. HEALTH & SAFETY CODE § 25179.3(a) (West 1992) (defining agricultural drainage water as subsurface water or perched groundwater which is drained from beneath agricultural lands and which results from agricultural irrigation).

15. *Id.* § 25179.8(b)(1) (amended by Chapter 853). To receive a variance, the applicant must demonstrate that continued disposal of agricultural drainage waters will not pose an immediate or significant long-term risk to public health or the environment, and that no technically and economically feasible treatment, reuse, or recycling alternatives exist to render the agricultural waste nonhazardous. *Id.* § 25179.8(b)(1)(A)-(B) (amended by Chapter 853). The disposal must also comply with California Health and Safety Code § 25179.5 which prohibits the disposal of liquid waste in a hazardous waste landfill. *Id.* § 25179.8(b)(1)(C) (amended by Chapter 853).

reduction¹⁶ evaluation review and plan,¹⁷ specifying source reduction measures¹⁸ that will be implemented by the generator.¹⁹

Chapter 853 requires all generators of more than 5,000 kilograms of certain hazardous wastes²⁰ per year to conduct source evaluation review and plans, which must contain four-year numerical goals for reducing hazardous waste and biennial progress reports addressing implementation of those goals.²¹ Chapter 853 allows compliance check lists in lieu of source evaluation review and plans for generators who generate less than 12,000 kilograms of hazardous wastes per year.²² Chapter 853 states the goal is to reduce the generation of hazardous waste in California by five percent per year.²³

JWC

16. See *id.* § 25244.14(e)(1) (West 1992) (defining source reduction as any action which causes a net reduction in the generation of hazardous waste or any action taken before the hazardous waste is generated that results in a lessening of the properties which cause it to be classified as a hazardous waste).

17. See *id.* § 25244.14(f) (West 1992) (defining source reduction evaluation review and plan); *id.* § 25244.16(a) (West 1992) (prescribing the source reduction evaluation review and plan format); *id.* § 25244.19(b) (amended by Chapter 853) (listing required elements of the source reduction evaluation review and plan).

18. See *id.* § 25244.14(e)(2) (West 1992) (defining actions considered source reduction measures); *cf. id.* § 25244.14(e)(3) (West 1992) (defining actions not considered source reduction measures).

19. *Id.* §§ 25244.15(d)(1), 25244.19(a)-(c) (amended by Chapter 853); see also *id.* §§ 25244.12-25244.24 (West 1992) (enacting the Hazardous Waste Source Reduction and Management Review Act of 1989). See generally *Review of Selected 1989 California Legislation*, 21 PAC. L.J. 493 (1990) (discussing the enactment of the Hazardous Waste Source Reduction and Management Review Act of 1989).

20. See CAL. HEALTH & SAFETY CODE § 25244.15(d)(3) (amended by Chapter 853) (applying specific provisions of Chapter 853 to generators who by site, routinely generate, through ongoing processes and operation, more than 5,000 kilograms per year of waste listed in California Health and Safety Code § 25179.7(a)(1)-(3)).

21. *Id.* § 25244.19(b)(9)-(10) (amended by Chapter 853).

22. *Id.* § 25244.15(d)(3)(B) (amended by Chapter 853). The stated purpose of the compliance checklist is to provide a simple, understandable method for small hazardous waste generators to comply with the statutory scheme. *Id.*

23. *Id.* § 25244.15(e) (amended by Chapter 853).

Environmental Protection; natural resource damages--liability

Health and Safety Code §§ 25189.1 (new).
AB 3694 (Alpert); 1992 STAT. Ch. 1123

Under existing law, any person¹ who illegally² disposes³ of hazardous waste⁴ or extremely hazardous waste⁵ is subject to civil and criminal penalties.⁶ Chapter 1123 mandates that any person liable under state law for illegally disposing of or releasing hazardous waste, shall also be liable to the state or a local agency for all costs

1. See CAL. HEALTH & SAFETY CODE § 25319 (West 1992) (defining person).

2. See *id.* § 25189.5(a) (West 1992) (defining prohibited disposal of hazardous waste as the disposal of any hazardous waste at an unlicensed facility or at any unauthorized point).

3. See *id.* § 25113 (West 1992) (defining disposal as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into the environment).

4. See *id.* § 25117 (West 1992) (defining hazardous waste as a waste with characteristics that may cause death, incapacitating illness, or environmental damage); see also *id.* § 25124 (West 1992) (defining waste as discarded material that is subject to regulation under chapter 6.5 of the Health and Safety Code).

5. See *id.* § 25115 (West 1992) (defining extremely hazardous waste as any hazardous waste to which exposure will likely result in death, disabling injury or serious illness to humans).

6. *Id.* §§ 25189(c)-(d), 25189.2(c), 25189.5(b), (e) (West 1992). Each violation may result in a civil penalty of not more than \$25,000 and imprisonment in the county jail for not more than one year or imprisonment in state prison for 16, 24, or 36 months. *Id.* §§ 25189.2(c), 25189.5(b) (West 1992). If the act causes great bodily injury or a substantial probability that death could result, the violator is subject to an additional 36 months in state prison and a fine not to exceed \$250,000 for each day the violation continues. *Id.* § 25189.5(e) (West 1992); see *id.* § 25189.5(f) (West 1992) (defining each day of violation); see also *People v. Martin*, 211 Cal. App. 3d 699, 715-716, 259 Cal. Rptr. 770, 779 (1989) (imposing criminal liability for negligently violating California Health and Safety Code § 25189.5 even though the state Legislature did not expressly promulgate a strict liability offense); cf. 42 U.S.C. §§ 9607(a)(4)(C), (f)(1) (1992); 33 U.S.C. § 1321(f)(1) (1992) (specifying that any person responsible for releasing hazardous waste into the environment is subject to civil liability for any resulting loss, injury, or destruction of natural resources under CERCLA and the Clean Water Act). See generally Frederick R. Anderson, *Natural Resource Damages, Superfund, and the Courts*, 16 B.C. ENVTL. AFF. L. REV. 405, 409-12 (1989) (discussing the implementation of CERCLA's environmental clean-up provisions).

and expenses incurred to restore⁷ or replace⁸ any natural resources that were damaged as a result of the unlawful activity.⁹

TKT

Environmental Protection; public waters

Fish and Game Code § 1601 (amended).
AB 2654 (Tanner); 1992 STAT. Ch. 646

Existing law provides that plans for any construction project by or on behalf of a governmental agency or public utility, which entails changing the shape or flow of designated waters,¹ must be submitted to the Department of Fish and Game for review, particularly if the affected water source contains an existing fish² or wildlife resource which would suffer substantial adverse effects.³ Chapter 646

7. For a federal statute defining restoration and rehabilitation of natural resources, which may have application in California, see, 43 C.F.R. § 11.14(l) (1992) (defining restoration and rehabilitation of natural resources).

8. For a federal statute defining replacement of natural resources, which may have application in California, see, 43 C.F.R. § 11.14(ii) (1992) (defining replacement of natural resources as substituting for an injured resource, a resource that provides the same or substantially similar services).

9. CAL. HEALTH & SAFETY CODE §§ 25189.1 (a), 25360.1 (a) (enacted by Chapter 1123). Liability for the destruction of natural resources is separate and additional to any other civil penalties. *Id.* § 25189.1(b) (enacted by Chapter 1123); *cf.* IOWA CODE § 455B.392(1)(c) (1991) (imposing strict liability for the loss, injury, or destruction of natural resources resulting from the release of a hazardous substance); *see generally* Frank B. Cross, *Natural Resource Damage Valuation*, 42 VAND. L. REV. 269, 297-320 (1989) (discussing the various methods used to calculate the dollar value of natural resource damage). *But see* *Ohio v. United States Dep't of the Interior*, 880 F.2d 432, 445-46 (D.C. Cir. 1989) (holding that the damage assessment regulations promulgated by the Department of the Interior were inconsistent with the Congressional intention that liability be sufficient to cover the cost of restoration).

1. *See* CAL. CODE REGS. tit. 14, § 720 (1992) (specifying waters designated by the Department of Fish & Game as protected for purposes of §§ 1601 and 1603 of the Fish and Game Code).

2. *See* CAL. FISH & GAME CODE § 45 (West 1984) (defining fish).

3. *Id.* § 1601(a) (amended by Chapter 646); *see id.* §§ 12000, 12002 (West Supp. 1992) (providing that violations of the Fish & Game Code are misdemeanors); *cf.* OR. REV. STAT. § 541.615 (1987) (prohibiting removal of material from the beds or banks or the filling of any waters of the state without a permit from the Director of the Division of State Lands); WASH. REV. CODE ANN. § 75.20.100 (West Supp. 1992) (prohibiting construction of any hydraulic or other project that

provides that if such a project involves the disposal of debris, waste,⁴ or other material containing crumbled, flaked, or ground pavement⁵ into such a water⁶ source, it must also be submitted to the department for review.⁷

ACR

Environmental Protection; reclaimed water

Water Code §§ 13555.2, 13555.3 (new).
AB 2627 (Baker); 1992 STAT. Ch. 414

will use, divert, obstruct, or change the natural flow or bed of any state waters without first securing written approval from the Department of Fisheries and Wildlife); *McNutt v. State*, 668 P.2d 1201, 1205 (Or. Sup. Ct. 1983) (holding that, absent proof of a culpable mental state, conviction under Oregon Revised Statutes § 541.615(1) could not stand as a misdemeanor, but only as a violation); *State v. Crown Zellerbach Corp.*, 602 P.2d 1172, 1175-76 (Wash. Sup. Ct. 1979) (holding that Revised Code Washington 75.20.100 lawfully delegates authority to the Department of Fisheries and Wildlife since it states in general terms what is to be done, and provides adequate procedural safeguards for the exercise of that authority); 60 Cal. Op. Att'y Gen. 4, 13-15 (Jan. 19, 1977) (stating that the Department of Fish and Game is prohibited from entering into any agreements which may have a detrimental effect upon the free-flowing and natural condition of a protected river even if the project is protective of fish and wildlife). *See generally* Stuart L. Somach, *The Excess in Environmental Regulation of the Water Resource*, 20 PAC. L. J. 337, 349 (1989) (discussing provisions of the California Fish and Game Code relating to stream bed alteration agreements).

4. *See* CAL. HEALTH & SAFETY CODE § 25124(a) (West 1992) (defining waste as any discarded material not excluded by the Hazardous Waste Control Chapter of the Health and Safety Code or by any regulations adopted pursuant to it); CAL. PENAL CODE § 374(b) (West 1988) (defining waste matter).

5. *See* CAL. STS. & HIGH. CODE § 5019 (West 1969) (defining "paved" as pavement of materials, such as stone, bituminous rock or asphalt, iron and wood, which are adopted by ordinance or resolution by the legislative body).

6. *See* CAL. WATER CODE § 1000 (West 1971) (defining water).

7. CAL. FISH & GAME CODE § 1601(a) (amended by Chapter 646); *see* *Rushing v. Hooper-McDonald*, 300 S.E. 2d 94, 96-97 (Ala. 1974) (holding that in a suit between two private landowners, trespass can be committed by one who disposes of asphalt in such a manner that it will eventually invade the riparian rights of another). *See generally* Marla Cone, *State to Charge Caltrans with Polluting Creek*, L.A. TIMES, Jan. 14, 1992, Orange County ed., part A, col.4, at 1 (detailing the type of event which would probably be prohibited under the new law).

Existing law prohibits a person¹ from using potable² water for non-potable uses when suitable reclaimed water³ is available.⁴ Chapter 414 requires certain water delivery systems, capable of delivering reclaimed water for non-potable uses to be designed with a separate pipeline for delivery of potable water.⁵ The separate pipeline is required from the point of entry to parcels of private property.⁶

LGC

Environmental Protection; toxic air contaminants

Health and Safety Code §§ 39655, 39656, 36657 (repealed);
§§ 39655, 39656, 39657, 39658, 39659, 39669 (new); §§

1. See CAL. WATER CODE § 13050(c) (West Supp. 1992) (defining person).

2. See BLACK'S LAW DICTIONARY 1168 (6th ed. 1991) (defining potable); CAL. WATER CODE § 14002 (West Supp. 1992) (specifying findings and declarations relating to water used for domestic purposes).

3. See CAL. WATER CODE § 13050(n) (West Supp. 1992) (defining reclaimed water). See generally Frank R. Booth, *Ownership of Developed Water: A Property Right Threatened*, 17 ST. MARY'S L.J. 1181, 1183 (1986) (describing what is and is not considered reclaimed water).

4. CAL. WATER CODE § 13551 (West Supp. 1992); see *id.* § 13550(a) (West Supp. 1992) (declaring use of potable water when non-potable water is available an unreasonable use of water); CAL. CONST., art. X, § 2 (providing for the prevention of unreasonable uses of water). See generally Norman K. Johnson, et.al., *A Survey of the Evolution of Western Water Law in Response to Changing Economic and Public Interest Demands*, 29 NAT. RESOURCES J. 347, 373 (1989) (discussing California's legislative response to emergency drought situations).

5. CAL. WATER CODE § 13555.3(a) (enacted by Chapter 414); cf. ORE. REV. STAT. § 537.132 (1991) (providing for a permit preference for persons using reclaimed water when the reclaimed water is delivered through a system other than a natural water course). Chapter 414 applies only to water delivery systems constructed after January 1, 1993, on private property located in jurisdictions or within five miles of jurisdictions which have water management plans which include the intent to develop reclaimed water use. CAL. WATER CODE § 13555.3(b) (enacted by Chapter 414). The Legislature has declared that the use of reclaimed water is an effective means of meeting the demands for water caused by drought conditions and encourages the design and construction of separate delivery systems on private property. CAL. WATER CODE § 13555.2 (enacted by Chapter 414). See generally Brian E. Gray, et. al., *Transfers of Federal Reclaimed Water: A Case Study of California's San Joaquin Valley*, 21 ENVTL. L. 911, 930 (1991) (suggesting that non-potable water used for irrigation could be conserved and transferred for other purposes including municipal and industrial uses).

6. CAL. WATER CODE § 13555.3(a) (enacted by Chapter 414).

39660, 39661, 39662, 39665, 39666, 39670, 39674, 39675
(amended).
AB 2728 (Tanner); 1992 STAT. Ch. 1161

Existing law requires the State Air Resources Board (ARB)¹ to establish airborne toxic control measures to reduce emissions of toxic air contaminants² from nonvehicular sources.³ Chapter 1161 requires the ARB to identify or designate certain substances as toxic air contaminants,⁴ and states that the ARB shall adopt and implement federal emission standards⁵ as the state's airborne toxic control measures⁶ under certain circumstances.⁷ If, however, the

1. See CAL. HEALTH & SAFETY CODE § 39510 (West Supp. 1992) (establishing the composition of the State Air Resources Board); *id.* § 39500 (West 1986) (granting the Air Resources Board responsibility to control emissions from motor vehicles and to coordinate, encourage, and review the efforts of all levels of government that may affect air quality).

2. See *id.* § 39655(a) (enacted by Chapter 1161) (defining toxic air contaminants as air pollutants which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health); see 42 U.S.C. § 7412(b)(1) (Supp. 1992); 40 C.F.R. § 61.01 (1991) (listing federal hazardous air pollutants).

3. CAL. HEALTH & SAFETY CODE § 39666(a) (amended by Chapter 1161); see *id.* § 39043 (West 1986) (defining nonvehicular sources as all sources of air contaminants, including the loading of fuels into vehicles, except vehicular sources). See generally Kenneth A. Manaster, *Administrative Adjudication of Air Pollution Disputes: The Work of Air Pollution Control District Hearing Boards in California*, 17 U.C. DAVIS L. REV. 1117 (1984) (discussing regulatory actions of air pollution control district hearing boards in California).

4. See CAL. HEALTH & SAFETY CODE § 39655(a) (enacted by Chapter 1161) (requiring all federally listed hazardous air pollutants to be included within the definition of toxic air contaminants). See generally *ARB Would Adopt 189 Air Contaminants Under Bill Passed By Assembly Committee*, BNA CAL. ENV'T DAILY, May 6, 1992, available in WESTLAW (reporting enactment of Chapter 1161 would immediately increase the number of toxic air contaminants and accelerate the designation process since each substance currently undergoes a full review process which normally takes 12 to 18 months to complete).

5. See 42 U.S.C. § 7412(d) (1992) (requiring emission standards for hazardous air pollutants). See generally JOHN-MARK STENSVAAG, CLEAN AIR ACT 1990 AMENDMENTS: LAW AND PRACTICE §§ 2.13, 11.2 (1991); Alan Jay Goldberg, Note, *Toward Sensible Regulation of Hazardous Air Pollutants Under Section 112 of the Clean Air Act*, 63 N.Y.U. L. REV. 612 (1988); Carlos Murawczyk & Paul A. Eisen, *An Update On Compliance Planning With the CAAA '90*, 761 PRAC. L. INST./CORP. 461 (1991); Philip Weinberg, *To Sheathe the Air-Drawn Dagger: The Quest for a Hazardous Air Pollutants Policy*, 1990 ANN. SURV. AM. L. 99 (1991) (discussing federal regulation of hazardous air pollutants).

6. See CAL. HEALTH & SAFETY CODE § 39655(b) (enacted by Chapter 1161) (defining airborne toxic control measures as either methods that reduce, avoid, or eliminate the emissions of a toxic air contaminant or emission standards adopted by the Environmental Protection Agency pursuant to § 112 of the Clean Air Act (42 U.S.C. § 7412)).

adopted or implemented measures have been found not to reduce toxic air emissions sufficiently,⁸ Chapter 1161 authorizes the ARB, or the air pollution control districts,⁹ and air quality management

7. *Id.* §§ 39657, 39658(a) (enacted by Chapter 1161); *see id.* § 39658(b)(1) (enacted by Chapter 1161) (requiring adoption and implementation of the federal emission standards for those substances listed as both federal hazardous air pollutants and state toxic air contaminants, unless implementation would result in noncompliance of Health and Safety Code § 39658(b)(2),(3),(4)); *see also* 40 C.F.R. § 61.17 (1991) (allowing states to adopt and enforce their own emission limits provided they are not less stringent than federal limits); *cf.* COLO. REV. STAT. ANN. §§ 25-7-101 - 25-7-134 (West 1989 & Supp. 1991); N.J. STAT. ANN. §§ 26:2c-1 - 26:2c-36 (West 1987 and Supp. 1992); WASH. REV. CODE ANN. §§ 70.94.011 - 70.94.990 (West 1992) (enacting state air pollution control laws).

8. *See* CAL. HEALTH & SAFETY CODE § 39662(c) (amended by Chapter 1161) (defining a threshold exposure level as that level below which no significant adverse health effects are anticipated); *id.* § 39666(b) (amended by Chapter 1161) (stating that where a threshold exposure level has been determined, the airborne toxic control measure must reduce emissions sufficiently so that ambient levels do not exceed a level which may cause or contribute to adverse health effects); *id.* § 39666(c) (amended by Chapter 1161) (stating that where no threshold exposure level has been determined, the airborne toxic control measure must reduce emissions to the lowest level achievable through application of best available control technology or a more effective control method). However, the ARB or an air pollution control district may determine, utilizing risk assessments, that an alternative level of emission reduction is adequate, or conversely, a more stringent measure is necessary to avoid endangering the public health. *Id.* *See generally* Janet L. McQuaid, *Risk Assessment of Hazardous Air Pollutants Under The EPA's Final Benzene Rules and the Clean Air Act Amendments of 1990*, 70 TEX. L. REV. 427 (1991); Mary Jean Sawey et al., Note, *The Potential Benefits of Controlling Hazardous Air Pollutants*, 1 VILL. ENVTL. L.J. 473 (1990) (discussing hazardous air pollutants and the use of risk assessments) Gary E. Marchant & Dawn P. Danzeisen, Comment, *"Acceptable" Risk For Hazardous Air Pollutants*, 13 HARV. ENVTL. L. REV. 535 (1989).

9. *See* CAL. HEALTH & SAFETY CODE § 39025 (West 1986) (defining an air pollution control district or an air quality management district as any district created or continued pursuant to Health and Safety Code §§ 40000-41499).

districts,¹⁰ to establish more stringent measures and take other actions as necessary to reduce toxic air contaminant emissions.¹¹

JWC

Environmental Protection; wild animal hunts

Fish and Game Code §§ 2124, 2125, 2126 (new).
SB 1332 (Hill); 1992 STAT. Ch. 888

Existing law makes it unlawful to import,¹ transport,² possess,³

10. *Id.*

11. *Id.* §§ 39658(b)(2), (3), 39659 (enacted by Chapter 1161); *id.* § 39666(b)-(d) (amended by Chapter 1161). Additional measures may include the imposition of air monitoring and regulatory permits. *Id.* § 39659(a)(1) (enacted by Chapter 1161); *see* 1992 Cal. Legis. Serv. ch. 1252, sec. 1, at ___ (amending CAL. HEALTH & SAFETY CODE § 39674) (providing civil penalties not to exceed ten thousand dollars per day for each violation of any rule, regulation, emission limit, or permit condition pursuant to California Health and Safety Code § 39659 or §§ 39665-39668); *W. Oil & Gas Ass'n. v. Monterey Bay Unified Air Pollution Control Dist.*, 49 Cal. 3d 408, 411, 777 P.2d 157, 158, 261 Cal. Rptr. 384, 385 (1989) (holding Health and Safety Code §§ 39650-39674 do not preclude air pollution control districts from regulating emissions of a substance before the ARB has identified the substance as a toxic air contaminant); *Security Envtl. Sys., Inc. v. South Coast Air Quality Management Dist.* 229 Cal. App. 3d 110, 133, 280 Cal. Rptr. 108, 121 (1991) (upholding the agency's decision not to renew permits for construction of hazardous waste incinerator unless the company seeking to construct the incinerator submitted requested information to the agency); *cf.* CAL. HEALTH & SAFETY CODE § 39666(f) (amended by Chapter 1161) (requiring the district to approve alternative methods if the operator of the source demonstrates that the method is enforceable and equal amounts of reduction in emissions and risk will be achieved within the time period required by the applicable airborne toxic control measure).

1. *See* CAL. FISH & GAME CODE § 8031(a)(3) (West Supp. 1992) (defining import for the purposes of commercial fish business licenses as receiving or purchasing fish taken outside of the state which are not landed in the state and for the purposes of receiving or purchasing aquaculture products from outside the state); *cf.* 16 U.S.C. § 1532(10) (1988) (defining import for the purposes of protecting endangered species as the attempt of, or the actual bringing or introducing of a listed species into or onto any place subject to the jurisdiction of the United States).

2. *See* *Svenson v. Engelke*, 211 Cal. 500, 502, 296 P. 281, 282 (1931) (holding that the state has the right to regulate transportation of fish and game).

3. *See Ex parte McClain*, 134 Cal. 110, 112, 66 P. 69, 70 (1901) (stating that under fish and game laws it is not the purpose of the possession, but the fact of possession, which prima facie establishes the offense); *cf.* Wis. STAT. § 29.425.(1)(b) (1989) (defining possession of animals as to own, restrain, keep in captivity or transport an animal); VT. STAT. ANN. tit. 10, § 5401(13) (1991) (defining possession of an endangered species as possessing, exporting, importing, processing, selling, offering to sell, delivering, carrying, transporting or shipping by any means a member of that

or release alive any wild animal⁴ except under a revocable, non-transferable permit.⁵ Except as otherwise authorized, Chapter 888 prohibits any person from possessing, transporting, importing, exporting, propagating, purchasing, selling, or transferring any mammal species specified,⁶ with the intent of maiming, injuring, or killing the mammal for gain, amusement, or sport.⁷ Raising deer to produce venison is expressly excluded from Chapter 888.⁸ Except as otherwise authorized, Chapter 888 also prohibits a buyer of a listed mammal from reselling it to a person who intends to maim, injure, or

species).

4. See CAL. FISH & GAME CODE § 2116 (West 1984) (defining wild animals as those animals of the class Aves (birds), class Mammalia (mammals), class Amphibia (frogs, toads, salamanders), class Osteichthyes (bony fishes), class Monorhina (lampreys), class Reptilia (reptiles), class Crustacea (crayfish), or class Gastropoda (slugs, snails) which are not normally domesticated in this state as determined by the Fish and Game Commission).

5. *Id.* § 2118 (West Supp. 1992); see *id.* (listing those wild animals that require a revocable, nontransferable permit to import, transport, possess, or release); *id.* § 2150 (West Supp. 1992) (providing for permits allowing the importation or transportation of wild animals); Adams v. Shannon, 7 Cal. App. 3d 427, 432, 86 Cal. Rptr. 641, 644 (1970) (holding that the state may prohibit the importation, possession, transportation, or sale of fish and game taken outside the state when the Legislature has reasonably determined the prohibition is needed to protect the local ecology). The prohibition cannot violate the Commerce Clause of the United States Constitution, and must be a valid exercise of the state's police power. *Id.*

6. See CAL. FISH & GAME CODE § 2118 (West Supp. 1992) (specifying classes, orders, families, genera, and species of birds, mammals, amphibia, fish, reptiles and other wild animals protected under Chapter 888). The Fish and Game Commission may designate additional animals to this list when a species is proven to be undesirable and a menace to native wildlife or the agricultural interests of the state, or for the welfare of other wild animals. *Id.*

7. *Id.* § 2124(a) (enacted by Chapter 888); cf. TEX. PARKS & WILD. CODE ANN. § 62.015 (West 1991) (allowing hunting and possession of exotic animals); N.M. STAT. ANN. § 17-4-15 (Michie Supp. 1978) (allowing any private preserve licensee, unless otherwise provided, to kill, capture, or dispose of all game in any manner). See generally Michael Goodman, *Caged Animals, Wild Hunters; The Canned Hunt Industry Has Made Bagging An Exotic Animal As Easy As Shooting Fish In A Barrel*, L.A. TIMES, Nov. 10, 1991, at 30 (describing the burgeoning hunting ranch industry); Amy Wallace, *San Diego Zoo Halts Sale to Breeders Tied To Hunting*, L.A. TIMES, Sept. 18, 1991, at A1 (reporting animals sold by the zoo were destined for hunting ranches); Chris Elliot, *3 Charged In Big-Game Hunt Of Captive Beasts*, L.A. TIMES, April 25, 1991, at A1 (reporting the discovery of an illegal big-game hunting operation); *Sale Of Zoo Animals To Ranches Banned*, L.A. TIMES, APRIL 4, 1990, at B2 (reporting city ordinance enactment prohibiting the sale of exotic zoo animals to hunting ranches); Robert F. Kennedy, Jr., *Falconry: Legal Ownership and Sale of Captive-Bred Raptors*, 4 PACE ENVTL. L. REV. 349, 378 (1987) (discussing state regulation of wildlife under the police power).

8. CAL. FISH & GAME CODE § 2124(a) (enacted by Chapter 888).

kill that mammal for purposes of gain, amusement, or sport.⁹ Chapter 888 further prohibits the taking¹⁰ of any specified mammal¹¹ pursuant to existing law.¹² Each violation carries civil penalties of at least \$500, but not to exceed \$10,000.¹³

JWC

9. *Id.* Chapter 888 does not apply to meat, hide, or parts of a dead animal. *Id.* § 2124(b) (enacted by Chapter 888). Chapter 888 expressly provides for the performance of authorized euthanasia as appropriately directed by a licensed veterinarian or animal health technician. *Id.* § 2126(b) (enacted by Chapter 888).

10. *See id.* § 86 (West 1984) (defining take as to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill); *id.* §§ 3000-3012 (West 1984 & Supp. 1992) (listing regulated or prohibited methods used to take birds and mammals).

11. *See id.* § 2118 (West Supp. 1992) (specifying animals that are prohibited from being imported, transported, possessed, or released without a revocable, nontransferable permit).

12. *Id.* § 2126(a) (enacted by Chapter 888). *See* *Betchart v. California Dep't of Fish and Game*, 158 Cal. App. 3d 1104, 1106, 205 Cal. Rptr. 135, 135 (1984) (holding California Department of Fish and Game agents may reasonably enter and patrol private open lands without warrants, where game is present and hunting occurs); 65 CAL. OP. ATT'Y. GEN. 648, 650-51 (1982) (concluding that the Legislature may prohibit the taking of wild game, or any traffic or commerce in wild game, for the animals' protection or preservation); *cf.* VT. STAT. ANN. tit. 10, § 5215(a) (West Supp. 1992) (authorizing the state to regulate or prohibit the taking of wild animals on private lands); *Cozy Pine Hunting Preserve v. Fish & Game Div.*, 208 A.2d 164, 168 (N.J. Super. 1965) (holding that the state could prohibit an owner of a private hunting preserve from stocking wild boars).

13. CAL. FISH & GAME CODE § 2125(a) (enacted by Chapter 888).