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Environmental Protection

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Environmental Protection

Environmental Protection; air pollution--halogenated refrigerants

Health and Safety Code §§ 44470, 44471, 44472, 44473, 44474 (new).

AB 859 (Vasconcellos); 1991 STAT. Ch. 874

Existing law requires the State Air Resources Board (Board)¹ to evaluate programs to reduce chlorofluorcarbon (CFC) emissions from motor vehicle air conditioning systems since these emissions are potential ozone layer depleters.² Chapter 874 requires specified reductions in the percentage of new motor vehicles equipped with air conditioners which utilize CFC-based products.³ Chapter 874

1. See CAL. HEALTH & SAFETY CODE § 39003 (West 1986) (providing for the duties of the State Air Resources Board).

2. *Id.* § 39667 (West Supp. 1991). See generally *id.* §§ 39650-39675 (West 1986 & Supp. 1991) (defining toxic air contaminants and establishing measures for identification and control of toxic air contaminants). See also *id.* §§ 42400-42408 (West Supp. 1991) (providing penalties for emission of air contaminants). See *id.* § 39602 (West 1986) (noting that the Board is responsible for the preparation of the state implementation plan required by the federal Clean Air Act). See 42 U.S.C.A. § 7401 (1991) Clean Air Act (providing for a scheduled reduction of air contaminants threatening the ozone layer); 40 CFR §§ 82.1-85.401 (1990) (implementing the provisions of the Montreal Protocol, a joint agreement between twenty-five nations concerning the reduction of air contaminants that deplete the ozone layer). See also 56 Fed. Reg. 30519 (1990) (discussing the implementation of the Montreal Protocol).

3. CAL. HEALTH & SAFETY CODE § 44472 (enacted by Chapter 874). Effective January 1, 1993, and prior to January 1, 1994, not more than 90% of new 1993 or later model year motor vehicles may be equipped with CFC-based air conditioners. *Id.* § 44472(a) (enacted by Chapter 874). Effective January 1, 1994, and prior to January 1, 1995, not more than 75% of new 1994 model year motor vehicles may be so equipped. *Id.* § 44472(b) (enacted by Chapter 874). Effective September 1, 1994, not more than 10% of all new motor vehicles may be equipped with CFC-based air conditioners. *Id.* § 44472(c) (enacted by Chapter 874). Effective January 1, 1995, no new motor vehicles may be equipped with CFC-based air conditioners. *Id.* § 44472(d) (enacted by Chapter 874). These deadlines may be extended up to two years if the Board determines that either the alternatives to CFC-based products are not yet available in sufficient supply or that motor vehicle manufacturers need more time to redesign vehicle air conditioning systems. *Id.* § 44473(b) (enacted by Chapter 874). Compare *id.* § 44472 (enacted by Chapter 874) (calling for the reduction of CFC pollutants) with MINN. STAT. § 116.731 (1990) (calling for the recycling of CFC pollutants) and VT. STAT. ANN. tit. 10, § 573(d) (1990) (mandating the provision that no motor vehicle with air conditioning containing CFC's shall be sold with a model year 1993).

additionally requires the Board to adopt regulations to provide for the enforcement of those provisions.⁴

SDW

Environmental Protection; air pollution--rice straw burning

Health and Safety Code § 41865 (new).

AB 1378 (Connelly, Aries, and Chandler); 1991 STAT. Ch.

787

Existing law prohibits agricultural burning without a permit issued by an agency designated by the State Air Resources Board (Board).¹ Chapter 787, the Connelly-Aries-Chandler Rice Straw Burning Reduction Act of 1991 (Act), places additional restrictions upon the burning of rice straw in the Sacramento Valley Air Basin² by limiting the number of acres that may be burned after specified dates.³ Chapter 787 establishes conditions and procedures under which the Sacramento Valley Basinwide Air Pollution Control Council⁴ may issue conditional rice straw burning

4. CAL. HEALTH & SAFETY CODE § 44473(c) (enacted by Chapter 874). Any person or business that violates Chapter 874 is liable for a civil penalty of \$500 per incident, not to exceed \$5,000 per day. *Id.* § 44474 (enacted by Chapter 874).

1. CAL. HEALTH & SAFETY CODE § 41852 (West 1986). *See id.* §§ 39600-39612 (West 1986 & Supp. 1991) (defining the powers and duties of the State Air Resources Board); § 41853 (West 1986) (directing the Board to designate public fire protection agencies or other equivalent agencies to issue permits for agricultural burning).

2. *See* CAL. CODE REGS. tit. 17, § 60106 (1991) (describing the area covered by the Sacramento Valley Air Basin).

3. CAL. HEALTH & SAFETY CODE § 41865(c) (enacted by Chapter 787). The number of acres that may be burned from September 1 to August 31 of each year is the following percentage of the number of acres on which rice is grown during the prior year ending on September 1: (1) In 1992, 90%; (2) in 1993, 80%; (3) in 1994, 70%; (4) in 1995, 60%; (5) in 1996, 50%; (6) in 1997, 38%; and (7) in 1998 and 1999, 25%. *Id.* In 2000 and thereafter, a conditional rice straw burning permit is required for all rice straw burning. *Id.*

4. *See id.* § 40900 (West 1986) (authorizing the creation of basin-wide air pollution control councils and specifying the required composition of the councils).

permits.⁵ Chapter 787 also provides that reductions in rice straw burning shall qualify for air quality offsets⁶ pursuant to state law, and indicates that air quality offset rights and air quality banking rights⁷ shall not be eliminated or reduced by the phase down of rice straw burning under this section.⁸ Chapter 787 imposes criminal and civil penalties for any violations.⁹

BAM

5. *Id.* § 41865(f) (enacted by Chapter 787). The maximum annual allocation of rice straw burning permits is either a total of 125,000 acres, or 25% of each individual applicant's acreage that is planted with rice, whichever is less, as determined by the air pollution control council. *Id.* § 41865(i) (enacted by Chapter 787). Growers owning or operating 400 acres or less, and who meet the criteria for a conditional rice straw burning permit, may burn their entire acreage once every four years, provided the maximum annual allocation in the Sacramento Valley is not exceeded. *Id.* 41865(i)(4) (enacted by Chapter 787). Permits may be granted if: (1) The fields to be burned are specifically described; (2) the applicant has not violated any provision of this section during the past three years; (3) during the growing season, the county agricultural commissioner independently determines the significant presence of pathogen sufficient to constitute a rice disease; and (4) after the growing season, the county agricultural commissioner finds that the existence of a pathogen during the growing season caused a significant, quantifiable reduction in yield. *Id.* § 41865(h)(1)-(4) (enacted by Chapter 787). Permits will not be granted if the State Air Resources Board and the Department of Food and Agriculture jointly determine, during an annual review, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. *Id.* § 41865(h) (enacted by Chapter 787).

6. *See id.* § 40709 (West 1986) (authorizing each district board to establish a system by which certain reductions in emissions may be banked and used to offset certain future increases in emissions).

7. *See id.* § 40710 (West 1986) (specifying that certificates evidencing reductions in emissions, approved pursuant to a system established under section 40709, shall be issued to the owner of the emissions source and such that reductions may be banked until used according to district regulations).

8. *Id.* § 41865(o)(1)-(2) (enacted by Chapter 787).

9. *Id.* § 41865(p)(1)-(2) (enacted by Chapter 787). A negligent or intentional violation of the provisions of the Act is a misdemeanor punishable by a fine of up to \$10,000, or imprisonment for up to nine months, or both. *Id.* Any person who intentionally or negligently violates any provision of the Act is liable for a civil penalty of up to \$10,000. *Id.*

Environmental Protection; California coastal resources

Public Resources Code §§ 30809, 30810, 30821.6 (new);
§§ 30803, 30805 (amended).
SB 317 (Davis); 1991 STAT. Ch. 761

Under existing law, when the California Coastal Commission (Commission)¹ determines that a violation of the California Coastal Act (Act)² has occurred or is threatened, the Commission must refer the matter to the Attorney General, who may then commence an action on behalf of the regional commission to enjoin the violation or activity, for civil penalties, or both.³ Chapter 761 provides that when the Commission or the executive director⁴ determines that any person or governmental agency has undertaken, or has threatened to undertake, an activity which requires a permit, without first obtaining a permit, or an activity which is inconsistent with a permit previously secured, the Commission or executive director may issue a cease and desist order.⁵

1. See CAL. PUB. RES. CODE § 30300 (West 1986) (creating the California Coastal Commission).

2. See *id.* §§ 30000-30900 (West 1986) (provisions of the California Coastal Act).

3. CAL. CODE REGS. tit. 14, § 13172 (1991). Existing law provides that civil fines, of not less than \$50 nor more than \$5,000, will be imposed on any person who intentionally and knowingly violates the Act for each day the violation occurs. CAL. PUB. RES. CODE § 30821 (West 1986).

4. The Commission must appoint an executive director who will be exempt from civil service and will serve at the pleasure of the appointing power. CAL. PUB. RES. CODE § 30335 (West 1986). The Commission must also prescribe the duties and salaries of the executive director. *Id.*

5. *Id.* §§ 30809(a), 30810(a) (enacted by Chapter 761). A cease and desist order may also be issued in order to enforce the requirements of specified coastal programs or master plans. *Id.* § 30809(a) (enacted by Chapter 761). A cease and desist order may be issued only if the person or agency has not adequately responded to a notice which stated that the activity violated the California Coastal Act and that a cease and desist order will be issued, thus subjecting the violator to fines unless the activity is discontinued. *Id.* § 30809(b) (enacted by Chapter 761). The cease and desist order may be subject to such terms and conditions as the commission or executive director determines are necessary. *Id.* §§ 30809(c), 30810(b) (enacted by Chapter 761). Under Chapter 761, civil fines, not to exceed six thousand dollars for each day in which the violation continues, will be imposed upon any person or governmental agency for intentionally or negligently violating a cease and desist order. *Id.* § 30821.6(a) (enacted by Chapter 761). However, Chapter 761 prohibits the issuance or enforcement of any cease and desist order for any activity undertaken by a local governmental agency due to the declaration of emergency by the local county's board of supervisors. *Id.* § 30821.6(b) (enacted by Chapter 761). Cf. N.L.R.B. v. Colten, C.C.A., 105 F.2d 179, 183 (6th Cir. 1939) (definition of cease and desist order); People v. Fremont Energy Corp., 651 P.2d 802, 806 (Wyo. 1982) (definition of cease and desist order as an order of an administrative agency forbidding

Existing law further provides that any person may seek declaratory and equitable relief to restrain any violation of the California Coastal Act without a bond.⁶ Under Chapter 761, any person may also seek declaratory and equitable relief to restrain any violation of a cease and desist order without a bond.⁷

DKA

**Environmental Protection; Department of Fish and Game--
notices**

Fish and Game Code § 2073.3 (new); §§ 2074.2, 2078
(amended).
SB 403 (Greene); 1991 STAT. Ch. 974

Existing law provides that an interested person may petition¹ the Fish and Game Commission (Commission),² or the Department of Fish and Game (Department)³ may recommend to the Commission, that they add a species to, or remove a species from the endangered species⁴ or threatened species⁵ lists.⁶ Chapter 974

a person from continuing a course of conduct that violates a statute or rule).

6. CAL. PUB. RES. CODE § 30803(a) (amended by Chapter 761).

7. *Id.* § 30803(a) (amended by Chapter 761). After holding a hearing and notifying the Commission, a court may stay the operation of a cease and desist order if the stay is not against public interest. *Id.* § 30803(b) (amended by Chapter 761).

1. See CAL. FISH & GAME CODE § 2072 (West Supp. 1991) (setting forth requirements for a petition). See also *id.* § 2072.3 (West Supp. 1991) (listing required contents of a petition).

2. See *id.* §§ 101-390 (West 1984 & Supp. 1991) (providing for the duties and regulations of the Commission).

3. See *id.* §§ 700-1933 (West 1984 & Supp. 1991) (providing for the organization of the Department, and for the powers and duties of the Department).

4. See *id.* § 2062 (West Supp. 1991) (definition of endangered species).

5. *Id.* § 2067 (West Supp. 1991) (definition of threatened species).

6. *Id.* § 2071 (West Supp. 1991). The Commission must refer the petition to the Department within 10 days of its receipt. *Id.* § 2073 (West Supp. 1991). The Department must then evaluate the petition within 90 days and advise the Commission as to whether or not the petition should be accepted and considered. *Id.* § 2073.5 (West Supp. 1991). The Department must promptly review the status of the species listed in the petition, and must, within 12 months after a notice of acceptance

requires the Commission to publish a notice in the California Regulatory Notice Register⁷ when it receives a petition, or when it begins evaluating a petition which adds a species to, or removes a species from, the endangered species or threatened species lists.⁸

Existing law further requires the Commission to either reject or accept the petition during its next meeting, and distribute its findings relating to the petition to all interested persons.⁹ Chapter 974 expressly provides that the Commission must publish its findings relating to the petitions.¹⁰

DKA

of a petition for consideration by the Commission has been published, furnish a written report to the Commission indicating whether or not the petitioned action is warranted. *Id.* § 2074.6 (West Supp. 1991).

7. The California Regulatory Notice Register is an official state publication, published by the Office of Administrative Law, Bancroft-Whitney.

8. CAL. FISH & GAME CODE § 2073.3(a) (enacted by Chapter 974). The notice must include the scientific and common name of the species and the habitat type, if available. *Id.* See *id.* § 2073.3(b) (enacted by Chapter 974) (requiring the Commission to mail copies of the notice to interested persons); § 2078(b) (amended by Chapter 974) (providing that the Commission may impose an annual fee upon all persons who request an addition to the list in order to offset the cost of creating and maintaining the list, and preparing and mailing the notices). See *id.* (providing that any fees collected must be deposited in the Fish and Game Preservation Fund). Additionally, existing law requires the Commission to distribute its agenda of pending actions and minutes to interested persons. *Id.* § 2078(a) (amended by Chapter 974). Chapter 974 also requires the agenda and minutes to be published in the California Regulatory Notice Register. *Id.*

9. *Id.* § 2074.2(a) (amended by Chapter 974). See *id.* § 2074.2(a)(2) (amended by Chapter 974) (providing that when a petition, which is accepted for consideration, recommends that a species be added to either the endangered species or threatened species list, the Commission must indicate that the petitioned species is a candidate species, and it must maintain a list of candidate species).

10. *Id.* § 2074.2(b) (amended by Chapter 974).

Environmental Protection; deposit of deleterious substances in state water

Fish and Game Code §§ 12011 (new); § 13003 (amended).
SB 1081 (Hart); 1991 STAT. Ch. 1193

Under existing law, it is a misdemeanor to discharge certain substances¹, including any substance deleterious to fish, plant or bird life, into any body of water.² Also under existing law, any person responsible for polluting a body of water must bear the cost of cleaning up the pollutant,³ and must compensate the state for any actual damages to animal or plant life or their habitat.⁴ Chapter 1193 provides that, in addition to the existing penalties, any person convicted of polluting a body of water must pay ten dollars per gallon of pollutant.⁵

BMW

1. See CAL. FISH & GAME CODE § 5650 (West 1984) (list of substances whose discharge will constitute a crime).

2. *Id.* § 12002 (West Supp. 1991). A violation of Fish and Game Code section 5650 is a misdemeanor punishable with a maximum \$2,000 fine. *Id.* § 12002(b)(4). See *People v. Guntert*, 126 Cal. App. 3d Supp. 1, 7, 179 Cal. Rptr. 426, 429 (1981) (stating that a material is deleterious if it will kill, destroy or cause severe injury to fish, birds or plants). See also *People v. Chevron Chemical Co.*, 143 Cal. App. 3d 50, 56, 191 Cal. Rptr. 537, 541 (1983) (holding that if a statute is within the regulatory public welfare exception, no mens rea is required for criminal prosecution).

3. See CAL. FISH & GAME CODE § 12015(b) (West Supp. 1991) (providing that in addition to any fine, the offending party will bear the cost of removing the pollutant). See also *id.* § 12011(a)(1-2) (enacted by Chapter 1193) (providing that a party convicted of polluting California's waters will pay the cleanup costs resulting therefrom).

4. *Id.* §§ 12016 (West Supp. 1991), 12011(a)(2) (enacted by Chapter 1193).

5. *Id.* § 12002.4 (enacted by Chapter 1193). The fines collected will be deposited into the Fish and Game Preservation Fund and may also be used to retain legal counsel in order to bring actions against said offenders in the name of the People of California. *Id.* § 13003(a) (enacted by Chapter 1193).

Environmental Protection; Fiberglass Recycled Content Act of 1991

Public Resources Code §§ 19500, 19501, 19502, 19510, 19511, 19512, 19515, 19515.5, 19516, 19517, 19518, 19519, 19520, 19521, 19522, 19523, 19524, 19530, 19531, 19532, 19533, 19534, 19535 (new).

AB 1340 (Eastin); 1991 STAT. Ch. 706

Existing law requires each glass container¹ manufacturer² to use a specified minimum percentage of postfilled³ glass in the manufacturing of glass food and beverage containers.⁴ Chapter 706 enacts the Fiberglass Recycled Content Act of 1991⁵ which requires each fiberglass manufacturer⁶ to use a specified minimum percentage of glass cullet⁷ in the manufacturing of fiberglass.⁸ Chapter 706 further provides a schedule which increases the percentage of glass cullet required in manufacturing, unless such an increase would impose an unreasonable burden upon the manufacturer.⁹ Chapter 706 also requires each manufacturer to

1. See CAL. PUB. RES. CODE § 14513 (West Supp. 1991) (definition of glass beverage container). See also *id.* § 14513.3 (West Supp. 1991) (definition of glass food or drink container).

2. See *id.* § 14513.2 (West Supp. 1991) (definition of glass container manufacturer).

3. See *id.* § 14517.5 (West Supp. 1991) (defining postfilled container to include any container previously filled with beverage or food).

4. *Id.* § 14549(b) (West Supp. 1991). Each manufacturer must report to the Department of Conservation each month the number of new glass containers made or sold in California and the amount of postfilled glass used in the manufacturing of new glass containers. *Id.* § 14549(a) (West Supp. 1991).

5. See generally *id.* §§ 19500-19535 (enacted by Chapter 706) (establishing The Fiberglass Recycled Content Act of 1991).

6. See *id.* § 19502(c) (enacted by Chapter 706) (definition of fiberglass manufacturer).

7. See *id.* § 19502(a) (enacted by Chapter 706) (defining cullet to include postconsumer glass from food and beverage containers).

8. *Id.* § 19510 (enacted by Chapter 706). Each manufacturer of fiberglass must use at least ten percent cullet in the manufacturing process after January 1, 1992. *Id.*

9. *Id.* § 19511 (enacted by Chapter 706). After January 1, 1994 at least 20% cullet must be used, and after January 1, 1995 at least 30% cullet must be used in the manufacturing of fiberglass. *Id.* 15% postfilled must be used in the manufacturing of glass food and beverage containers after January 1, 1992; 25% after January 1, 1993; 35% after January 1, 1996; 45% after January 1, 1999; 55% after January 1, 2002; and 65% after January 1, 2005. *Id.* § 14549(b) (West Supp. 1991). The Department of Conservation must request comments from at least two fiberglass manufacturers, two cullet processors, and any other interested parties on the feasibility of increasing the percentage of

report to the Department of Conservation¹⁰ (Department) the amount of cullet used in the manufacturing of fiberglass.¹¹

TD III

Environmental Protection; hazardous waste facilities--permits

Health and Safety Code §§ 25200.9, 25200.11, 25200.12, 25200.13 (new); § 25200.5 (amended); Public Resources Code § 21151.1 (amended).

AB 1613 (Lempert); 1991 STAT. Ch. 719

Under existing law, the State Department of Health Services (Department)¹ may issue hazardous waste facility² permits³ under specified conditions.⁴ Additionally, the Department may grant

cullet in fiberglass to 30% by or on January 1, 1994. *Id.* § 19512 (enacted by Chapter 706). The Department of Conservation must hold a public hearing on or before July 1, 1994 with representatives from the fiberglass industry, cullet processors, and other interested parties to determine the feasibility of increasing cullet content in fiberglass manufacturing. *Id.* If the Department of Conservation determines that it is not feasible for glass containers to achieve the minimum percentage of postfilled glass required because of a lack of available glass cullet, the Department of Conservation may reduce the 65% amount. *Id.* § 14549(c) (West Supp. 1991).

10. *See id.* §§ 600-614 (West 1984 & Supp. 1991) (establishing the organization and powers of the Department of Conservation).

11. *Id.* § 19520 (enacted by Chapter 706). If a fiberglass manufacturer is unable to obtain sufficient amounts of cullet, it must certify this to the Department and provide specific reasons for its failure to use cullet. *Id.* § 19522 (enacted by Chapter 706). *See id.* § 19531 (enacted by Chapter 706) (providing that if a fiberglass manufacturer misleads the Department as to why it failed to use the correct amount of cullet, the Department must refer the manufacturer to the Attorney General for prosecution for fraud). *Cf. id.* § 14550(b) (West Supp. 1991) (providing that each processor of glass report to the Department the number of empty beverage containers received from recycling centers for recycling each month).

1. *See generally* CAL. HEALTH & SAFETY CODE §§ 100-103 (West 1990) (stating powers and duties of the State Department of Health Services).

2. *See id.* §§ 25117.1, 25205.1(b) (West Supp. 1991) (definition of hazardous waste facility).

3. *See id.* § 25200(a), (c) (West Supp. 1991) (definition of permit).

4. *Id.* § 25200 (West Supp. 1991). Hazardous waste facility permits may be granted provided the Department determines that the waste facility meets the state building codes and the requirements of Chapter 6.5 (Hazardous Waste Control) of the Health and Safety Code. *Id.*

interim status⁵ to hazardous waste facilities under specified conditions.⁶ Chapter 719 limits the Department's authority to grant interim status to hazardous waste facilities by stating that no interim status may be granted on, or after, a specified date unless the facility was not subject to hazardous waste facility requirements until after that specified date and the facility was engaged in waste management before that date.⁷ Chapter 719 further requires the Department to take final action⁸ on non-Resource and Conversation Recovery Act (RCRA)⁹ hazardous waste facility applications.¹⁰

Under existing law, lead agencies¹¹ are required by the California Environmental Quality Act (CEQA)¹² to prepare an environmental impact report (EIR)¹³ or negative declaration¹⁴ for

5. See *id.* § 25200.5(a) (amended by Chapter 719) (establishing requirements for granting interim status).

6. *Id.* § 25200.5 (amended by Chapter 719). If an application for a hazardous waste facility permit has been submitted, interim status may be granted, during the pending review and decision period by the Department, to any waste facility in existence before November 19, 1980, or to any waste facility which has become subject to hazardous waste facility permit requirements. *Id.* § 25200.5(a) (amended by Chapter 719).

7. *Id.* § 25200.9 (enacted by Chapter 719). No interim status may be granted after January 1, 1992 except where the hazardous waste facility was not subject to hazardous waste facility permit requirements until after January 1, 1992, and the facility was acting as a hazardous waste facility before that date. *Id.*

8. See *id.* § 25200.11(a) (enacted by Chapter 719) (establishing department requirements for taking final action). The department must issue the permit or make a final denial. *Id.*

9. See *id.* § 25117.9 (West Supp. 1991) (definition of non-RCRA waste). See also *id.* § 25120.2 (West Supp. 1991) (definition of RCRA waste). RCRA waste is defined in Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations. *Id.*

10. *Id.* § 25200.11 (enacted by Chapter 719). By January 1, 1993, action must be taken on non-RCRA waste processing facilities for which a hazardous waste facility permit application was submitted by January 1, 1992. *Id.* § 25200.11(a) (enacted by Chapter 719). All off-site interim status non-RCRA waste managing facilities are terminated by January 1, 1992 unless an application for a hazardous waste facility permit is submitted by December 31, 1991. *Id.* § 25200.11(b) (enacted by Chapter 719). See *id.* § 25117.11 (West 1984) (definition of off-site waste facility). See also *id.* § 25200 (West Supp. 1991) (definition of hazardous waste facility permit application).

11. See CAL. PUB. RES. CODE § 21067 (West 1986) (providing that a lead agency is a public agency responsible for the approval or implementation of a project).

12. See *id.* §§ 21050-21165 (West 1986 & Supp. 1991) (stating the provisions of the California Environmental Quality Act).

13. See *id.* § 21061 (West 1986) (definition of environmental impact report).

14. See *id.* § 21064 (West 1986) (definition of negative declaration). A negative declaration is a brief written statement prepared by a public agency declaring that a proposed project will not have a significant impact on the environment and an environmental impact report is not necessary. *Id.*

new facilities, and for all projects which involve the burning of specified waste materials or projects that expand the permitted burning capacity.¹⁵ Chapter 719 expands existing law by additionally requiring an EIR to be prepared for the modification¹⁶ of existing treatment facilities.¹⁷ Chapter 719 further requires an EIR to be prepared for the issuance of permits to land disposal facilities¹⁸ and to all large treatment plants.¹⁹

NW
SDW

Environmental Protection; hazardous wastes--mining wastes

Health and Safety Code § 25143.1 (amended).
AB 213 (Tanner); 1991 STAT. Ch. 174

Under existing law, wastes from the extraction, beneficiation,¹ and processing of ores and minerals² are exempted from the

15. *Id.* § 21151.1(a)(1) (amended by Chapter 719).

16. *See* CAL. HEALTH & SAFETY CODE § 25200.12 (enacted by Chapter 719) (providing that all modifications to hazardous waste facilities under interim status are discretionary projects which are governed by Division 13 of the Public Resources Code). *See also* CAL. PUB. RES. CODE § 21080(a)-(b) (West 1986) (stating that Division 13 applies to discretionary projects carried out or approved by public agencies unless specifically excluded).

17. CAL. PUB. RES. CODE § 21151.1(a) (amended by Chapter 719).

18. *See* CAL. HEALTH & SAFETY CODE § 25199.1(d) (West Supp. 1991) (definition of land disposal facility).

19. CAL. PUB. RES. CODE § 21151.1(a)(2)-(3) (amended by Chapter 719).

1. *See* WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 144 (9th ed. 1991) (defining beneficiation to be the preparation of iron ore for smelting).

2. *See* CAL. PUB. RES. CODE § 2005 (West Supp. 1991) (defining minerals as any naturally-occurring chemical element or compound including, among others, coal, peat and bituminous rock while excluding, among others, natural gas and petroleum). *See also* CAL. HEALTH & SAFETY CODE § 25143.1(b)(3)(A)(i)-(ii) (amended by Chapter 174) (defining "wastes from the extraction, beneficiation, and processing of ores and minerals" to include soil, waste rock, overburden, and other materials removed, unearthed, or displaced as a result of excavating ore or minerals).

provisions regulating hazardous waste.³ Prior law provided that “other natural materials” also were exempted from those provisions.⁴ Chapter 174 instead provides that mining wastes are exempt from regulation under the provisions regulating hazardous waste only if the wastes are derived from the mining or processing of ores or minerals that are subject to the state mining laws.⁵ Chapter 174 deletes the exemption of “other natural materials” from these laws so that only wastes from the extraction, beneficiation, and processing of ores and minerals are exempted.⁶ Finally, Chapter 174 defines “mineral” with respect to the definition in the provisions regulating geology and mining.⁷

TD III

3. *Id.* § 25143.1(b)(1)-(2) (amended by Chapter 174). The provisions regulating hazardous waste include: (1) The Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6921-6939b (West 1984 & Supp. 1991) (enacting 40 C.F.R. §§ 261.30-261.33 (1984) which lists hazardous wastes and characteristics to use to identify as yet unspecified hazardous wastes), Health and Safety Code section 25117 (definition of hazardous waste), and the regulations adopted pursuant to Health and Safety Code section 25141 (establishing guidelines for identification of wastes by the State Department of Health Services). *Id.*

4. 1989 Cal. Legis. Serv. ch. 642, sec. 1, at 1950 (enacting CAL. HEALTH & SAFETY CODE § 25143.1(b)(3)(A)) (amended by Chapter 174). Prior law provided that “wastes from the extraction, beneficiation, and processing of ores and minerals” included soil, waste rock, overburden, and other materials removed or unearthed or displaced as a result of excavating “other natural materials”. *Id.*

5. CAL. HEALTH & SAFETY CODE § 25143.1(b) (amended by Chapter 174).

6. *Id.* § 25143.1(b)(3) (amended by Chapter 174).

7. *Id.* § 25143.1(b)(3)(B) (amended by Chapter 174).

Environmental Protection; natural community conservation

Fish and Game Code §§ 2800, 2805, 2810, 2820, 2825,
2830, 2840 (new).
AB 2172 (Kelley); 1991 STAT. Ch. 765

Under existing law, it is the state's policy to conserve, protect, restore, and enhance all endangered or threatened species¹ and their habitats, and to acquire lands for habitats for these species.² Pursuant to this policy, Chapter 765 establishes the Natural Community Conservation Planning Act.³ Under Chapter 765, the Department of Fish and Game (Department)⁴ is authorized to enter into agreements with any person⁵ to prepare and implement a natural community conservation plan for the purpose of providing

1. See CAL. FISH & GAME CODE § 2062 (West Supp. 1991) (definition of endangered species); § 2067 (West Supp. 1991) (definition of threatened species).

2. *Id.* § 2052 (West Supp. 1991). See *Puyallup Tribe v. Dept. of Game*, 391 U.S. 392, 398 (1968) (holding that fishing may be regulated by the State for conservation purposes as long as the regulation meets appropriate standards and does not discriminate against Indians); *Antoine v. Washington*, 420 U.S. 194, 207 (1975) (finding that the State must show that the "regulation is a reasonable and necessary conservation measure and that its application to the Indians is necessary in the interest of conservation"); *U.S. v. Oregon*, 718 F.2d 299, 305 (9th Cir. 1983) (rejecting the endangered species approach to conservation with respect to state regulation of Indian fishing rights, and finding that fishing limitations may be appropriate even if extinction is not imminent). *Cf.* 16 U.S.C.A. § 3372(a)(2) (West 1991) (indicating that a violation of any state conservation law constitutes a federal offense); 16 U.S.C.A. § 1531(a)(5) (West 1991) (stating that one of the goals of the Endangered Species Act is to encourage states and all other interested parties to create and maintain conservation plans).

3. CAL. FISH & GAME CODE § 2800 (enacted by Chapter 765). See *id.* § 2305(a) (enacted by Chapter 765) (indicating that the natural community conservation plan identifies and provides for the regional or area-wide protection and perpetuation of natural wildlife diversity, and at the same time allows for compatible and appropriate development and growth). See also *id.* (definition of natural community conservation plan). The Legislature enacted sections 2800-2830 because of the need for broad-based planning to protect and conserve California's wildlife heritage while permitting development and community growth for the increasing California population. 1991 Cal. Stat. ch. 765, sec. 1(a)-(b), at ____.

4. See CAL. FISH & GAME CODE §§ 200-260 (West 1984 & West Supp. 1991) (providing for powers and duties of the Department).

5. See *id.* § 711.2(b) (West Supp. 1991) (definition of person).

for the comprehensive management and conservation of multiple wildlife species.⁶

DKA

Environmental Protection; oil spills--vessel traffic service systems

Government Code §§ 8574.4, 8670.21 (amended).

SB 200 (Marks); 1991 STAT. Ch. 945

Support: The Marine Exchange of Los Angeles and Long Beach Harbors; The Steamship Association; The Ports of Los Angeles and Long Beach; Jacobsen Pilot Service

Under existing law, the administrator for oil spill response¹ is required to attempt to negotiate an agreement with the Coast Guard for a vessel traffic service (VTS) system² for the harbors of the

6. *Id.* § 2810 (enacted by Chapter 765). Chapter 765 additionally provides that local, state, and federal agencies may undertake the natural community conservation planning either independently, or in cooperation with other persons, so long as the plan complies with section 2810 and is approved by the Department. *Id.* § 2820 (enacted by Chapter 765). *See id.* § 2825(a) (enacted by Chapter 765) (listing some of the guidelines the Department of Fish and Game may prepare for the development and implementation of natural community conservation plans). If the Department so recommends, the Fish and Game Commission may authorize the taking of any candidate species whose conservation, protection, restoration, and enhancement is governed by a natural community conservation plan. *Id.* §§ 2830, 2835 (enacted by Chapter 765). However, the Natural Community Conservation Planning Act does not apply to any agreement for the preparation of a habitat conservation plan or natural community conservation plan that was approved by the Director of Fish and Game when this act was enacted. 1991 Cal. Stat. ch. 765, sec 3 at ____ *Cf.* 16 U.S.C.A § 1535(b) (West 1991) (providing that the Endangered Species Act authorizes the Secretary of the Interior (Secretary) to enter into agreements with any state for the purpose of the administration and management of any area created for conserving endangered or threatened species). The Secretary of the Interior may enter into a cooperative agreement with any state that institutes and maintains an adequate and active program for the conservation of endangered and threatened species. *Id.* § 1535(c) (West 1991). Once the Secretary receives a copy of a proposed state program, the Secretary is authorized to enter into a cooperative agreement with the state to assist in the implementation of the state program. *Id.*

1. *See* CAL. GOV'T CODE § 8670.5 (West Supp. 1991) (providing powers and duties of administrator for oil spill response). *See also id.* § 8670.4 (West Supp. 1991) (definition of administrator for oil spill response); § 8670.3(a) (West Supp. 1991) (definition of administrator).

2. *See id.* § 8670.21(a) (amended by Chapter 945) (providing that the purpose of a VTS system is to aid navigation by providing satellite tracking, radar, or other information regarding ship locations and traffic to prevent collisions and groundings).

state by December 31, 1991.³ Existing law further provides that if an agreement is not reached within the specified time period, the administrator shall develop a plan for implementing a VTS system for specified areas of the state.⁴ Only systems operated by the Coast Guard may be included in the plan.⁵ Chapter 945 permits systems which have direct communication with a Coast Guard officer who has Captain of the Port enforcement authority⁶ to be included in the plan.⁷ Chapter 945 further provides that the Marine Exchange of Los Angeles and Long Beach Harbors and its officers, directors, or employees operating a VTS system will be protected from liability by the vessel⁸ covered by its operations,⁹ for any damages resulting from the operation of the VTS service.¹⁰ The liability protection does not apply to acts of intentional or willful misconduct or gross negligence.¹¹

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3. *Id.* § 8670.21(a) (amended by Chapter 945).

4. *Id.* § 8670.21(b) (amended by Chapter 945). VTS system plans must be implemented for the harbors of Los Angeles/Long Beach, San Francisco, San Pablo and Suisun Bays, the Santa Barbara Channel, and any other areas where establishing a VTS or vessel monitoring and communications system is recommended by the Coast Guard. *Id.* The system must be installed and operational by December 31, 1993. *Id.*

5. *Id.* § 8670.21(b) (amended by Chapter 945).

6. *See* 33 C.F.R. § 1.01-30(a) (1983) (providing that Captains of the Port must enforce port safety provisions, security, and marine environmental protection, within their respective areas).

7. CAL. GOV'T CODE § 8670.21(b) (amended by Chapter 945).

8. *See* CAL. HARB. & NAV. CODE § 21 (West 1978) (definition of vessel).

9. CAL. GOV'T CODE § 8670.21(e) (amended by Chapter 945) (noting that VTS systems and communications systems deemed not approved by the Coast Guard will not be included in the plan until receiving specific approval from the Legislature).

10. *Id.* § 8670.21(d)(3) (amended by Chapter 945). The liability protection applies even though the claim may result in whole or in part from negligent acts or omissions of the marine exchange or any officer, director, employee, or representative of the marine exchange. *Id.*

11. *Id.* § 8670.21(d)(5) (amended by Chapter 945).

Environmental Protection; oil well start-up

Public Resources Code §§ 3203, 3277 (amended).
AB 1212 (Costa); 1991 STAT. Ch. 701

Existing law requires the owner¹ of any gas² or oil³ well⁴ to obtain permission from the State Oil and Gas Supervisor⁵ before drilling is commenced.⁶ Existing law permits the Supervisor to regulate the safety of oil and gas wells by ordering well-owners to alter or cease their well operations.⁷ Chapter 701 allows the Supervisor to deny permission to drill a new well if the owner has failed to comply with the Supervisor's order regarding another well.⁸

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1. See CAL. PUB. RES. CODE § 3018 (West 1984) (stating that the term "owner" includes the operator of the well).

2. See *id.* § 3007 (West 1984) (definition of gas).

3. See *id.* § 3006 (West 1984) (definition of oil).

4. See *id.* § 3008 (West 1984) (definition of well).

5. See *id.* § 690 (West 1984) (creating the position of Oil and Gas Supervisor).

6. *Id.* § 3203(a) (amended by Chapter 701).

7. *Id.* § 3224 (West 1984). The Supervisor has power to order remedial action to ensure public safety. *Id.* Failure to obey an order may lead to civil and/or criminal penalties. *Id.* §§ 3236, 3236.5 (West 1984 & Supp. 1991).

8. *Id.* § 3203(c) (amended by Chapter 701). *Cf.* W. VA. CODE § 22B-1-6 (Michie 1988) (permitting denial of drilling permit for prior violations).

Environmental protection; plastic containers--required use of recycled materials

Public Resources Code §§ 42300, 42301, 42310, 42320, 42321, 42322, 42323 (new).
SB 235 (Hart); 1991 STAT. Ch. 769

Under existing law, rigid plastic containers¹ sold in California must be labelled to indicate the resin used in their manufacture.² Chapter 769 requires manufacturers to use a minimum amount³ of recycled material in the production of plastic containers.⁴ However, the California Integrated Waste Management Board⁵ may exempt certain manufacturers from the Chapter 769 requirements.⁶

GRR

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1. See CAL. PUB. RES. CODE § 18010 (West Supp. 1991) (definition of plastic container); § 18011 (West Supp. 1991) (definition of rigid plastic bottle).
 2. *Id.* § 18015(a) (West Supp. 1991).
 3. See *id.* § 42310(a)-(e) (enacted by Chapter 769) (specifying amount of recycled material required in manufacture). A container not made of polyethylene terephthalate meets the minimum requirements if it is 25 percent recycled material, 25 percent of the container can be recycled, the container is reusable, or the amount of material used in making the material has been reduced by at least 10 percent since January 1, 1990. *Id.* A polyethylene terephthalate container must have a recycling rate of at least 55 percent. *Id.* The requirements promulgated by Chapter 769 go into effect January 1, 1995. *Id.* § 42310 (enacted by Chapter 769).
 4. *Id.* (enacted by Chapter 769). The intent of the legislature is to encourage recycling. *Id.* § 42300(h) (enacted by Chapter 769).
 5. See CAL. PUB. RES. CODE § 40400 (West Supp. 1991) (promulgating the creation of the Waste Management Board); § 40401 (West Supp. 1991) (explaining composition of Board).
 6. *Id.* § 42330 (enacted by Chapter 769). A manufacturer may be exempt from Chapter 769 requirements if: (1) Federal law prevents compliance; (2) the containers are for nonprescription pharmaceuticals; (3) compliance is technologically infeasible; or (4) adequate recycled material is unavailable. *Id.* A manufacturer who fails to comply with Chapter 769 may face civil fine of up to \$50,000, and a criminal penalty of up to \$100,000. *Id.* § 42322(a)-(b) (enacted by Chapter 769). Rigid plastic containers that are either destined for out of state use or contain drugs or insecticide are exempt from Chapter 769. *Id.* § 42340 (enacted by Chapter 769).

Environmental Protection; recycling

Harbors and Navigation Code §§ 86, 777, 778 (amended);
Public Resources Code §§ 42900, 42901, 42905, 42910,
42911 (new).

AB 1327 (Farr); 1991 STAT. Ch. 842

Support: Californians Against Waste, Planning and
Conservation League, California Integrated Waste
Management Board, League of California Cities

Opposition: California Retailers Association

Under existing law, each county must submit to the California Integrated Waste Management Board (Board)¹ a waste management plan which includes reduction and recycling² of solid waste.³ Chapter 842 enacts the California Solid Waste Reuse and Recycling Act of 1991,⁴ requiring local agencies, by a specified date, to enact an ordinance complying with this act or to adopt a model ordinance created by the Board which provides adequate areas for collecting and loading recyclable materials in development projects.⁵

1. See CAL. PUB. RES. CODE § 40051 (West Supp. 1991) (specifying duties and powers of the California Integrated Waste Management Board).

2. See *id.* § 40180 (West Supp. 1991) (definition of recycle).

3. *Id.* § 41750 (West Supp. 1991). See *id.* § 41760 (West Supp. 1991) (describing the procedures cities and counties must use for a waste management plan's approval); § 41793 (West Supp. 1991) (stating that at least one public hearing must be held before a county plan may be approved); § 41770 (West Supp. 1991) (requiring that waste management plans be reviewed and resubmitted every 5 years); § 41800 (West Supp. 1991) (describing the procedure the Board goes through in deciding whether to approve or disapprove a county plan).

4. See *id.* § 42900 (enacted by Chapter 842) (promulgating the California Solid Waste Reuse and Recycling Act of 1991).

5. *Id.* §§ 42910, 42911 (enacted by Chapter 842). After a public hearing and consultation with the League of California Cities, County Supervisors Association of California, American Planning Association, American Institute of Architects, private and public waste services, building construction and management, and retail businesses, the Board shall submit the draft of the model ordinance to all local agencies and interested parties for review by July 1, 1992 and adopt the model ordinance by September 1, 1992. *Id.* § 42910 (enacted by Chapter 842). By January 1, 1993, all local agencies must enact their own ordinances in compliance with Chapter 842 or adopt the model ordinance. *Id.* § 42911 (enacted by Chapter 842). See *id.* § 42905 (enacted by Chapter 842) (definition of development project). Cf. IOWA CODE § 455D.15 (1989) (creating a waste volume reduction and recycling fund and stating that, unless localities comply with the requirements of a comprehensive solid waste management program, they will not receive grants from the fund).

Under existing law, all local public agencies are required to certify to the Department of Boating and Waterways (Department)⁶ that any small craft or boating facility project, which receives funding from the Department, has adequate specified facilities.⁷ Chapter 842 requires that Department-funded small craft or boating facility projects must also be certified as having adequate vessel pumpout facilities, oil recycling facilities, and recycling receptacles.⁸

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6. See CAL. HARB. & NAV. CODE § 50 (West Supp. 1991) (creating the Department of Boating and Waterways by combining several state agencies); §§ 60.2-64 (West 1978 & Supp. 1991) (describing various powers and duties of the Department of Boating and Waterways).

7. *Id.* § 86(a) (amended by Chapter 842). Under existing law, local public agencies must certify to the Department that there are adequate restroom and sanitary facilities, parking, refuse disposal, walkways, and other necessary shoreside facilities sufficient for the use and operation of all vessels using the harbor or facility, or provide written findings as to why the facility cannot certify to these conditions. *Id.*

8. *Id.* (amended by Chapter 842). Existing law provides that vessel pumpout facilities are to be operated and maintained in a manner that prevents the discharge of sewage into the waters of the state. *Id.* § 777(a) (amended by Chapter 842). Existing law also provides that every pumpout facility must have a sign stating where a violation of this provision may be reported. *Id.* § 777(b) (amended by Chapter 842). Chapter 842 revises the posting requirements, such that the sign must identify the city, county, local public health officer, or boating law enforcement officer responsible for enforcing this provision, and the phone number where a violation may be reported. *Id.*