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Environmental Protection

University of the Pacific; McGeorge School of Law

Environmental Protection; air pollution—permits

Health and Safety Code §§ 39053.3, 39053.5, 42301.10, 42301.11, 42301.12, 42400.4 (new); §§ 40507, 40752, 42300, 42301, 42350, 42400, 42400.3, 42402, 42402.3 (amended).
AB 2288 (Quackenbush); 1993 STAT. Ch. 1166

Under existing law the air pollution control officer[1] of a district must enforce all orders, regulations, and rules prescribed by the air district board.[2] Existing law also authorizes every air district board to establish, by regulation, a permit system for stationary sources of air pollution.[3] Chapter 1166 requires the air pollution control officer to additionally enforce permit conditions imposed on stationary sources and authorizes air pollution control officers to enforce an applicable air quality implementation plan.[4]

Existing law also authorizes any person to apply for a variance[5] from a specified statute or from rules and regulations of the district, but not

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1. *See* CAL. HEALTH & SAFETY CODE §§ 40750-40753 (West 1986) (providing for the appointment and specifying the duties of air pollution control officers); *cf.* KY. REV. STAT. ANN. §§ 77.085, 77.145, 77.165, 77.215 (Baldwin 1992) (providing for the qualifications, duties, and authority of air pollution control officers); MICH. COMP. LAWS ANN. § 336.13 (West 1992) (providing for the appointment of air pollution control officers).

2. CAL. HEALTH & SAFETY CODE § 40752(b) (amended by Chapter 1166); *see id.* §§ 40800-40809 (West 1986 & Supp. 1993) (establishing the powers, duties, and composition of air district boards); Simmons & Cutting, *A Many Layered Wonder: Nonvehicular Air Pollution Control Law In California*, 26 HASTINGS L.J. 109, 115-24 (1974) (discussing the history and functions of air pollution control districts).

3. CAL. HEALTH & SAFETY CODE § 42300(a) (amended by Chapter 1166); *see id.* § 42301 (amended by Chapter 1166) (providing the requirements of a permit system established pursuant to Health and Safety Code § 42300); *id.* § 39002 (West 1986) (stating that local and regional authorities have the primary responsibility for control of air pollution from all sources other than vehicular sources); *see also* 56 Op. Cal. Att'y Gen. 531, 531-32 (stating that California's air pollution control districts presently are authorized to regulate complex sources of air pollution for the purpose of denying authority to construct such sources where the emissions indirectly generated by such sources would prevent the attainment or maintenance of federal or state air quality standards); Lisa Trankley, *Stationary Source Air Pollution Control in California*, 26 UCLA L. REV. 893, 900-04 (1979) (discussing the structure and general characteristics of air pollution control districts); *cf.* 42 U.S.C. § 7411(a)(3) (Supp. II 1990) (defining the term stationary source to mean any building, structure, facility, or installation which emits or may emit any air pollutant).

4. CAL. HEALTH & SAFETY CODE § 40752(d) (amended by Chapter 1166); *id.* § 42301.10 (enacted by Chapter 1166) (stating that an air pollution control officer may include in any permit, emission limits, standards, and other requirements that ensure compliance with all Federal Clean Air Act requirements); *see* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2288, at 1 (Aug. 25, 1993) (stating that Chapter 1166 essentially conforms the California Clean Air Act to Title V of the Federal Clean Air Act with regard to permit requirements for stationary sources of air pollution); *cf.* 42 U.S.C. § 7661a-f (1988 & Supp. II 1990) (providing the permit programs and requirements under Title V of the Federal Clean Air Act).

5. *See* CAL. HEALTH & SAFETY CODE §§ 42350-42364 (West 1986 & Supp. 1993) (providing for the application for a variance and the requirements that must be satisfied before a variance is granted).

from the requirement for a permit to build, erect, alter, or replace a stationary source.[6] Chapter 1166 prohibits the granting of a variance, or an abatement order which has the effect of a variance, from the requirement for a permit to operate or use a stationary source.[7]

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Environmental Protection; air pollution—trip reduction plans

Health and Safety Code § 40927 (new and repealed); § 40422 (amended).
SB 883 (Leslie); 1993 STAT. Ch. 563

Existing law requires air pollution control districts and air quality management districts (AQMD)[1] to include transportation control measures[2] in their plans to attain and maintain state ambient air quality standards.[3] Under existing law, the Lewis-Presley Air Quality

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6. *Id.* § 42350 (amended by Chapter 1166); *see id.* § 42301(d) (amended by Chapter 1166) (authorizing the issuance of a permit for activities for which a variance has been granted); *See generally*, Kenneth A. Manaster, *Administrative Adjudication of Air Pollution Dispute: The Work of Air Pollution Control District Hearing Boards in California*, 17 U.C. DAVIS L. REV. 1117, 1122-32 (1984) (discussing the general characteristics of applications for variances).

7. CAL. HEALTH & SAFETY CODE § 42350(b)(2) (amended by Chapter 1166).

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1. *See* CAL. HEALTH & SAFETY CODE § 40002 (West Supp. 1993) (stating that every county in the state shall have a county air pollution control district, unless the county is included in a larger regional district); *see, e.g., id.* §§ 40200-40234 (West 1986 & Supp. 1993) (describing the Bay Area AQMD); *id.* §§ 40400-40719 (West 1986 & Supp. 1993) (establishing the South Coast AQMD); *id.* §§ 40950-41082 (West 1986 & Supp. 1993) (regarding the Sacramento Metropolitan AQMD); *id.* §§ 41100-41133 (West 1986 & Supp. 1993) (establishing the San Joaquin Valley AQMD); *id.* §§ 41200-41267 (West 1986 & Supp. 1993) (describing the Mojave Desert AQMD).

2. *See id.* § 40233(d) (West Supp. 1993) (defining transportation control measures as any strategy to reduce vehicle trips, use, miles traveled, and idling or traffic congestion for the purposes of reducing motor vehicle emissions).

3. *Id.* §§ 40918(c), 40919(d), 40920(c), 40920.5(a) (West Supp. 1993); *see id.* § 40918(c) (West Supp. 1993) (requiring moderate air pollution districts to include transportation control measures in their attainment plans to substantially reduce the rate of increase in passenger vehicle trips and miles traveled if the district has a population of 50,000 or more); *id.* § 40919(d) (West Supp. 1993) (requiring serious air pollution districts to include transportation control measures to reduce the rate of increase in passenger vehicle trips and miles traveled per trip to achieve an average of 1.4 persons per vehicle by 1999, and no net increase in vehicle emissions after 1997, if the district has a population of 250,000 or more); *id.* § 40920(c) (West Supp. 1993) (requiring severe air pollution districts to include transportation control measures in their attainment plans to achieve an average 1.5 or more persons per passenger vehicle by 1999, and no net increase in vehicle emissions after 1997, if the district has a population of 250,000 or more); *id.* § 40920.5(a) (West Supp. 1993) (requiring extreme air pollution districts to include all measures required for moderate, serious and severe areas); *see also*

Management Act,[4] the South Coast Air Quality Management District[5] is prohibited from requiring employers with less than 100 employees[6] at one location to submit a trip reduction plan.[7]

Under Chapter 563, all districts, except those which meet certain criteria,[8] are prohibited from requiring employers with less than 100 employees at a single location to implement or submit a trip reduction plan until January 1, 1997.[9]

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id. § 39014 (West 1986) (defining ambient air quality standards as specified concentrations and durations of air pollutants to undesirable effects established by the state air resources board, or where applicable, by the federal government); CAL. CODE REGS. tit. 17, § 70200 (1993) (setting forth the table of ambient air quality standards). *See generally* 42 U.S.C.S. §§ 7401-7642 (Law. Co-op. 1989 & Supp. 1993) (setting forth the federal Clean Air Act).

4. *See* CAL. HEALTH & SAFETY CODE §§ 40400-40540 (West 1986 & Supp. 1993) (setting forth the Lewis-Presley Air Quality Management Act).

5. *See id.* § 40410 (West 1986) (establishing the South Coast Air Quality Management District (SCAQMD)); *id.* § 40412 (West 1986) (stating that the SCAQMD is the sole, exclusive agency with responsibility for comprehensive air control in the South Coast District).

6. *See* ASSEMBLY FLOOR ANALYSIS OF SB 883, at 2 (Sept. 1, 1993) (indicating that supporters of Chapter 563 argue that smaller businesses lack the resources to prepare and implement trip reduction plans and that small worksites lack the necessary number of employees for such plans to be effective). *But see id.* (indicating that opponents to Chapter 563 argue that reducing vehicle miles traveled is an effective method of reducing emissions and that commuters to businesses with less than 100 employees are significant contributors to the problem); *id.* (stating that opponents to Chapter 563 contend that prohibiting air quality districts from using trip reduction plans for smaller employers would create an undue burden on larger employers).

7. CAL. HEALTH & SAFETY CODE § 40454 (West Supp. 1993); *see* ASSEMBLY FLOOR ANALYSIS OF SB 883, at 2 (Sept. 1, 1993) (defining trip reduction plan as a document an employer files with an air district which shows how the employer intends to reduce the number of vehicle miles traveled by employees to and from work). *See generally The Dirty Half-Dozen*, L. A. TIMES (Orange County), June 5, 1992, at B2 (providing a list of the six most severe air pollution penalties assessed by the South Coast Air Quality Management District in February 1992, including penalties of $12,500 and $9,000 for failure to submit a trip-reduction plan and failure to offer employee-trip reduction incentives).

8. *See* CAL. HEALTH & SAFETY CODE § 40927 (c)(1)-(5) (enacted by Chapter 563) (stating that Chapter 563 does not apply to districts which meet all of the following criteria: (1) The district board, as of January 1, 1993, consisted solely of a county board of supervisors; (2) the district has adopted a plan, which includes an employer-based trip reduction regulation which affects employers of fewer than 100 employees at a single worksite, before January 1, 1994; (3) the district has made specific findings that the trip reduction regulation is essential to ensure effective implementation of transportation control measures to improve air quality and that failure to adopt the rule would result in at least a 50% loss in the district's potential to reduce vehicle trips under its adopted plan; (4) the regulation was adopted on or before January 1, 1994; and (5) the state board has approved the district's plan).

9. *Id.* § 40927 (enacted by Chapter 563).

Environmental Protection; Air Toxics "Hot Spots" Information and Assessment Act—reporting

Health and Safety Code §§ 44344, 44391 (amended).
AB 1060 (Costa); 1993 STAT. Ch. 1041

Under existing law, the Air Toxics "Hot Spots" Information and Assessment Act of 1987,[1] operators[2] of facilities[3] which release,[4] or may potentially release, hazardous substances[5] into the air must submit an emissions inventory plan[6] to the appropriate air pollution control district or air quality management district.[7] The district must review the data contained in the emissions inventory plan and categorize the facilities to

1. *See* CAL. HEALTH & SAFETY CODE §§ 44300-44394 (West Supp. 1993 & amended by Chapter 1041) (setting forth the Air Toxics "Hot Spots" Information and Assessment Act of 1987). Other states have adopted similar forms of air pollution regulation. *See, e.g.*, ARIZ. REV. STAT. § 49-476.01 (Supp 1993) (providing that any source of air contaminants may be required to monitor, sample, or perform other studies to quantify emissions of air contaminants or levels of air pollution reasonably attributable to that source); COLO. REV. STAT. §§ 25-7-101 to -135 (Supp 1993) (describing the Colorado Air Pollution Prevention and Control Act); LA. REV. STAT. § 30:2060 (West Supp. 1993) (setting forth the Toxic Air Pollutant Emission Control Program); MO. REV. STAT. § 643.600 (1988) (establishing the Kansas-Missouri Air Quality Compact); N.H. REV. STAT. ANN. § 125-I:3 (1990) (establishing the Air Toxic Control Program); UTAH CODE ANN. §§ 19-2-101 to -127 (1991) (setting forth the Air Conservation Act); WASH. REV. CODE §§ 70.94.010 to .990 (1992) (setting forth the Washington Clean Air Act). *See generally* 42 U.S.C.S. §§ 7401-7671(q) (Law. Co-op. 1989 & Supp. 1993) (setting forth the Federal Clean Air Act); James M. Strock, et al., *Integrated Pollution Control: A Symposium: Article: Integrated Pollution Prevention: Cal-EPA's Perspective*, 22 ENVTL. L. 311 (1992) (providing an overview of California's environmental regulatory structure and the creation of the California-Environmental Protection Agency); Pat Paquette, *Protecting the Environment - But at a Cost*, CAL. J., Apr. 1992, at 45 (discussing the background of the California Air Toxics "Hot Spots" Act and some of the problems and concerns that have arisen since its enactment).

2. *See* CAL. HEALTH & SAFETY CODE § 44307 (West Supp. 1993) (defining operator as the person who owns or operates a facility).

3. *See id.* § 44304 (West Supp. 1993) (defining facility as every structure, appurtenance, installation, and improvement on land which is associated with a source of air releases or potential releases of a hazardous material).

4. *See id.* § 44303 (West Supp. 1993) (defining release as any activity that may cause the issuance of air contaminants and that results from the routine operation of a facility or that is predictable, including continuous and intermittent releases and predictable process upsets or leaks).

5. *See id.* § 44321 (West Supp. 1993) (providing an illustrative list of substances that present a threat to public health).

6. *See id.* § 44342 (West Supp. 1993) (setting forth the minimum requirements for emissions inventory plans); *see also* CAL. CODE REGS., tit. 17, §§ 93310-93315 (1992) (describing emission inventory criteria and guidelines).

7. CAL. HEALTH & SAFETY CODE § 44340(a) (West Supp. 1993).

determine which of the facilities must submit a health risk assessment to the district.[8]

Prior law provided that the emissions inventory plan must be updated by the operator every two years.[9] Under Chapter 1041, the emissions inventory plan shall be updated every four years.[10]

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8. *Id.* § 44360(a) (West Supp. 1993); *see id.* § 44360 (West Supp. 1993) (providing that the district shall categorize facilities as either high, intermediate, or low priority, based on a consideration of the potency, toxicity, quantity, and volume of hazardous materials released from the facility, the proximity of the facility to potential receptors including hospitals, schools, worksites, and residences, and any other factors the district deems significant); *see also id.* § 44306 (West Supp. 1993) (defining health risk assessment as a comprehensive analysis to evaluate and predict the dispersion of hazardous substances in the environment, the potential for exposure to humans, and to quantify the health risks associated with those levels of exposure); *id.* § 44362(b) (West Supp. 1993) (permitting the district to order the operator of the facility to provide notice to all exposed persons if there is a significant health risk associated with the emissions from the facility). *See generally* Paquette, *supra* note 1, at 46-47 (discussing the public notification aspect of the Air Toxics "Hot Spots" Information and Assessment Act); Cass. R. Sunstein, *Essay: Informing America: Risk, Disclosure and the First Amendment,* 20 FLA. ST. U. L. REV. 653, 661-62 (1993) (discussing the Emergency Planning and Community Right to Know Act set forth at 42 U.S.C. §§ 9601-9622).

9. 1987 Cal. Stat. ch. 1252, sec. 1 at 4449 (enacting California Health & Safety Code § 44344); *see also* CAL. CODE REGS., tit. 17, § 93350 (1992) (regarding biennial updates). *See generally* Paquette, *supra* note 1, at 46 (discussing the costs involved in complying with the requirements of the "Hot Spots" Act).

10. CAL. HEALTH & SAFETY CODE § 44344 (amended by Chapter 1041); *see id.* (specifying that emissions inventories shall be updated every four years, except as provided in California Health and Safety Code § 44391); *see also id.* § 44391(a) (amended by Chapter 1041) (specifying that if the district determines that there is a significant risk associated with the emissions from a facility, the operator must conduct an airborne toxic risk reduction audit and develop a plan to implement measures to reduce the emissions from the facility to below the risk level within five years); *id.* § 44391(g) (amended by Chapter 1041) (stating that the district must find the audit and plan satisfactory within three months, but that if the district determines that the audit and plan are not satisfactory, the audit and plan will be remanded to the facility for revisions); *id.* § 44391(h) (amended by Chapter 1041) (requiring that progress on the emission reductions must be reported to the district in the emissions inventory updates and that the emissions inventory updates must be prepared as required by the audit and plan approved by the district); *id.* § 44392 (West Supp. 1993) (setting forth the minimum requirements for the airborne risk toxic reduction audit and development of plan).

Environmental Protection; environmental impact reports

Government Code § 65941 (amended); Health and Safety Code § 42302.1 (amended); Public Resources Code §§ 21159, 21159.4 (new); §§ 21080, 21081, 21082.2, 21168.9, 21177 (amended).
SB 919 (Dills); 1993 STAT. Ch. 1131

Under existing law, the California Environmental Quality Act (CEQA),[1] all development projects[2] approved or planned by a lead agency[3] require the preparation of an environmental impact report (EIR)[4] if these projects may have a significant effect[5] on the environment and are not enumerated among specified exceptions.[6] Under CEQA, a lead agency

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1. *See* CAL. PUB. RES. CODE §§ 21000-21178.1 (West 1986 & Supp. 1993) (setting forth the provisions of CEQA); *see also* Selina Bendix, *A Short Introduction to the California Environmental Quality Act*, 19 SANTA CLARA L. REV. 521, 521-39 (1979) (offering a general overview of CEQA); Sean Stuart Varner, Comment, *The California Environmental Quality Act (CEQA) After Two Decades: Relevant Problems and Ideas for Necessary Reform*, 19 PEPP. L. REV. 1447, 1450-83 (1992) (providing thorough coverage of CEQA history, function, manner of implementation and present status, as well as comparing the Act to corresponding regulatory schemes on the federal level and in other states). *See generally* ASSEMBLY SELECT COMMITTEE ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL BILL OF RIGHTS 7 (1970) (recommending the legislative adoption of CEQA and of an Environmental Bill of Rights); *id.* at 47 (proposing a tentative draft of the bill of rights).

2. *See* CAL. PUB. RES. CODE § 21065 (West 1986) (defining project); Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 262, 502 P.2d 1049, 1059, 104 Cal. Rptr. 761, 771 (1972) (expanding the meaning of project to include issuance of permits, leases, and other entitlements); CAL. CODE REGS. tit. 14, § 15378 (1990) (adopting the expanded definition of project); *see also* CEQA TASK FORCE, CALIFORNIA CHAPTER, AMERICAN PLANNING ASSOCIATION/ASSOCIATION OF ENVIRONMENTAL PROFESSIONALS, STREAMLINING CEQA: AN ACTION AGENDA ES-4 (1993) (hereinafter CEQA TASK FORCE) (copy on file with the *Pacific Law Journal*) (advocating that the definition of project be clarified to exclude activities that do not affect the physical environment).

3. *See* CAL. PUB. RES. CODE § 21067 (West 1986) (defining lead agency as the public entity which has the principal responsibility for carrying out or approving a project that may have a significant effect on the environment); CAL. CODE REGS. tit. 14, § 15367 (1990) (defining lead agency); *see also* CALIFORNIA ENVIRONMENTAL LAW HANDBOOK § 13.3.1 (Richard J. Denney, Jr. & Michael A. Monahan, eds., 5th ed. 1991) (discussing the role of lead agencies in the CEQA review process).

4. *See* CAL. PUB. RES. CODE § 21061 (West 1986) (defining an EIR as an informational document that provides public agencies and the public in general with details about the effect which a proposed project is likely to have on the environment, lists ways in which the significant effects of such a project might be minimized, and indicates alternatives to the project); CAL. CODE REGS. 14, § 15362 (1990) (defining EIR); *see also* CALIFORNIA ENVIRONMENTAL LAW HANDBOOK, *supra* note 3, § 13.5.1 (discussing types of EIRs); *id.* § 13.5.2 (discussing the contents of EIRs).

5. *See* CAL. PUB. RES. CODE § 21068 (West 1986) (defining significant effect); CAL. CODE REGS. tit. 14, § 15382 (1990) (defining significant effect).

6. CAL. PUB. RES. CODE §§ 21100, 21151 (West 1986); *see id.* § 21100 (West 1986) (asserting that all state agencies, boards, and commissions shall prepare an EIR on any project they propose to carry out or approve which may have a significant effect on the environment); *id.* § 21151 (West 1986) (asserting that all local agencies shall prepare an EIR on any project they propose to carry out or approve which may have a significant effect on the environment); County of Inyo v. Yorty, 32 Cal. App. 3d 795, 809, 108 Cal. Rptr. 377, 387 (1973) (holding that a local agency must prepare an EIR on any project which has the potential of affecting the environment significantly); *see also* CAL. PUB. RES. CODE § 21080(b)(1)-(15) (amended by Chapter 1131)

must consider the substantial evidence[7] in the record in order to determine whether a project may impact the environment in any significant manner.[8] If the substantial evidence in the record contains a fair argument over the proposed project's significant effect, then the preparation of an impact report becomes warranted.[9] Chapter 1131 implements a more limited interpretation of substantial evidence, restricting it to facts, reasonable assumptions predicated upon facts, and expert opinions supported by facts.[10] Chapter 1131 also requires that the lead agency analyze the

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(listing types of projects exempt from the EIR preparation requirement); *id.* § 21080.1 (West 1986) (assigning to a lead agency the responsibility of determining whether an EIR shall be required for a project); CAL. CODE REGS. tit. 14, § 15004(a) (1990) (insisting that every lead or responsible agency consider a final EIR or negative declaration before granting any approval of a project subject to CEQA); *cf.* 42 U.S.C. §§ 4321-4370c (1988 & Supp. II 1990) (codifying the National Environmental Policy Act of 1969); David G. Burleson, Comment, *NEPA at 21: Over the Hill Already?*, 24 AKRON L. REV. 623, 623-38 (1991) (tracing the history of NEPA from its "meteoric rise" to its "decline" in light of Supreme Court decisions, and concluding with suggestions for possible remedies for the "present anemic condition" of the federal environmental statute); CALIFORNIA ENVIRONMENTAL LAW HANDBOOK, *supra* note 3, § 13.1 (exploring the relationship of CEQA to NEPA); *cf. also* MASS. GEN. LAWS ANN., ch. 30, §§ 61-62H (West 1992); N.Y. ENVTL. CONSERV. LAW §§ 8-0101 to 8-0117 (McKinney 1984 & Supp. 1993); WIS. STAT. ANN. § 1.11 (West 1986 & Supp. 1992) (establishing environmental quality acts); Claire L. McGuire, *Emerging State Programs to Protect the Environment: "Little NEPAs" and Beyond*, 5 ENV. AFFAIRS 567, 576-90 (1976) (discussing different types of state programs designed to remedy environmental degradation neglected by traditional methods); Mark A. Pridgeon et al., *State Environmental Policy Acts: A Survey of Recent Developments*, 2 HARV. ENV. L. REV. 419, 420-47 (1977) (discussing different state offshoots of NEPA); Jeffrey T. Renz, *The Coming of Age of State Environmental Policy Acts*, 5 PUB. LAND L. REV. 31, 32-54 (1984) (analyzing state case law that has emerged from judicial interpretations of environmental protection acts).

7. *See* CAL. CODE REGS. tit. 14, § 15384(a) (1990) (defining substantial evidence as enough relevant information and reasonable inferences from the information that a fair argument can be made to support a conclusion).

8. CAL. PUB. RES. CODE § 21082.2(a) (amended by Chapter 1131); *County of Inyo*, 32 Cal. App. 3d at 809, 108 Cal. Rptr. at 387; *see* Marin Mun. Water Dist. v. KG Land Cal. Corp., 235 Cal. App. 3d 1652, 1661, 1 Cal. Rptr. 2d 767, 773 (1991) (requiring that both primary and secondary consequences be considered when determining whether a project may have a significant environmental impact); *id.* (defining primary or direct consequences as those that are immediately related to the project); *id.* (defining secondary consequences as those that are "several steps removed from the project in a chain of cause and effect"); Uhler v. City of Encinitas, 227 Cal. App. 3d 795, 804, 278 Cal. Rptr. 157, 161 (1991) (ruling that in the absence of substantial evidence of significant environmental effects, public controversy does not require the preparation of an EIR); *see also* CALIFORNIA ENVIRONMENTAL LAW HANDBOOK, *supra* note 3, § 13.4.2 (discussing the means by which significant environmental impact is determined).

9. No Oil, Inc. v. City of Los Angeles, 13 Cal. 3d 68, 75, 529 P.2d 66, 70, 118 Cal. Rptr. 34, 38 (1974); *see id.* (establishing the fair argument test); *see also* Friends of "B" St. v. City of Hayward, 106 Cal. App. 3d 988, 1002, 165 Cal. Rptr. 514, 522-23 (1980) (implementing the fair argument standard). *See generally* Larry Barker, *Impact Reports Should Address Social & Economic Issues*, L.A. DAILY J., Dec. 24, 1992, at 7 (proposing that social and economic concerns be considered when determining a development project's significant effects on the environment).

10. CAL. PUB. RES. CODE § 21082.2(c) (amended by Chapter 1131); *see id.* (elaborating that argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment do not constitute substantial evidence); *see also* Mary Beth Barber, *Compromising on CEQA*, 24 CAL. J. 35, 37 (Oct. 1993) (imparting that legislators' hopes in raising the threshold for a significant impact

substantial evidence in light of the whole record.[11] Chapter 1131 extends the mandate for EIR preparation even to otherwise exempted projects if the substantial evidence in the record suggests its need.[12]

Under existing law, a public agency[13] is barred from approving or implementing a project if there are findings of one or more significant effects that the project may have on the environment.[14] Existing law exempts an agency from this restriction if the agency can establish that mitigation[15] measures or alternatives set forth by the EIR are superseded by pressing economic, social, or other considerations.[16] Chapter 1131 adds legal and technological considerations to the factors that must be taken into account, along with considerations of potential employment opportunities for highly-trained workers.[17]

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determination is to curtail meritless CEQA cases which are initiated solely as delay tactics); Ed Mendel, *Bill to Ease Regulations Gets an OK*, SAN DIEGO UNION-TRIB., Sept. 8, 1993, at A1 (quoting California Manufacturers Association (CMA) Vice-President Anne Kelly as endorsing the new standard, since under the old one mere speculation and unsubstantiated opinion would suffice to subject a project to lengthy hearings).

11. CAL. PUB. RES. CODE § 21082.2(a) (amended by Chapter 1131).

12. *Id.* § 21080(d) (amended by Chapter 1131).

13. *See id.* § 21063 (West 1986) (defining public agency); CAL. CODE REGS. tit. 14, § 15379 (1990) (defining public agency).

14. CAL. PUB. RES. CODE § 21081 (amended by Chapter 1131); CAL. CODE REGS. tit. 14, § 15091(a) (1990).

15. *See* CAL. CODE REGS. tit. 14, § 15370 (1990) (defining mitigation).

16. CAL. PUB. RES. CODE § 21081(c) (amended by Chapter 1131); *see* CAL. CODE REGS. tit. 14, § 15021(b) (1990) (stating that an agency may consider economic, environmental, legal, social, and technological factors in deciding whether changes in a project are feasible); *id.* § 15043 (1990) (allowing a public agency to approve a project, despite its significant effects on the environment if: (1) The agency decides that there is no feasible way to lessen or avoid the significant effect; and (2) specifically identified benefits of the project outweigh the policy of reducing or avoiding its impacts); *see also* Kings County Farm Bureau v. City of Hanford, 221 Cal. App. 3d 692, 731, 270 Cal. Rptr. 650, 669 (1990) (asserting that an inadequate discussion of alternatives in an EIR amounts to abuse of agency discretion); *id.* (clarifying that the environmentally best alternative identified by an EIR need not be adopted if: (1) Mitigation measures reduce environmental damage to acceptable levels; or (2) other considerations render alternatives infeasible); Towards Responsibility in Planning v. City Council, 200 Cal. App. 3d 671, 684-85, 246 Cal. Rptr. 317, 324 (1988) (upholding defendant city's decision to rezone properties from agricultural to campus/industrial upon a showing by the city that the alterations would result in environmental and economic benefits, including new jobs and a stronger tax base); City of Del Mar v. City of San Diego, 133 Cal. App. 3d 401, 417, 183 Cal. Rptr. 898, 908-09 (1982) (determining that defendant city did not abuse its discretion when it considered and rejected alternative project proposals in light of social and economic realities in the region). *See generally* Laurel Heights Improvement Ass'n v. University of Cal., 47 Cal. 3d 376, 403, 764 P.2d 278, 290, 253 Cal. Rptr. 426, 438 (1989) (holding that under CEQA, an EIR must discuss both project alternatives and mitigation measures).

17. CAL. PUB. RES. CODE § 21081(c) (amended by Chapter 1131); *see* Letter from Anne Kelly, Vice-President, California Manufacturers Association, to Robert Presley, Chair, California Senate Committee on Appropriations 2-3 (Sept. 7, 1993) (copy on file with the *Pacific Law Journal*) (stressing the importance of figuring highly-trained jobs into the equation for project approvals in the state). Kelly argues that CEQA's purpose of environmental preservation carries a mandate to provide satisfying living conditions for Californians, adding that this goal cannot be realized without jobs. *Id.*

Under existing law, when a lead agency is formulating criteria to determine when a development application is complete, the agency cannot effectively demand the informational equivalent of an EIR to deem the application complete.[18] Chapter 1131 extends the prohibition to responsible agencies.[19] Furthermore, Chapter 1131 forbids both types of agencies from setting proof of compliance with CEQA as a prerequisite.[20]

Existing law provides that when a public agency is legally challenged for non-compliance with CEQA, a court must judge whether the agency's actions find support in the substantial evidence, as reflected in the whole record.[21] Chapter 1131 mandates that a court make specific findings before being able to order the suspension of project activity by a public agency or a real party when an action has been brought.[22] Chapter 1131 also blocks the commencement of proceedings under CEQA, unless the litigant has informed the public agency of the allegations of non-compliance and has objected to the project during the public comment period, or at least before the close of the public hearing.[23]

COMMENT

Chapter 1131, along with Chapter 1130, functions as a prominent component of the Legislature's environmental reform package, which is the product of a compromise between California's business and environmental

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18. CAL. GOV'T CODE § 65941(b) (amended by Chapter 1131); *see id.* § 65942 (West Supp. 1993) (elaborating on the methodology by which the completeness of an application is decided).

19. *Id.* § 65941(b) (amended by Chapter 1131); *see* CAL. CODE REGS. tit. 14, § 15381 (defining responsible agency); *see also* CALIFORNIA ENVIRONMENTAL LAW HANDBOOK, *supra* note 3, § 13.3.2 (discussing the role of responsible agencies in the CEQA review process).

20. CAL. GOV'T CODE § 65941(b) (amended by Chapter 1131).

21. CAL. PUB. RES. CODE § 21168 (West 1986); *see* Sacramento Old City Ass'n v. City Council, 229 Cal. App. 3d 1011, 1018, 280 Cal. Rptr. 478, 482 (1991) (recognizing that courts of review, while demanding strict adherence to procedural provisions, usually defer to substantive judgments of agencies); *id.* (deeming it wrong for courts to overturn discretionary decisions in order to substitute their own opinions as to public policy); *see also* CALIFORNIA ENVIRONMENTAL LAW HANDBOOK, *supra* note 3, § 13.6 (discussing judicial review of alleged CEQA violations in agency actions).

22. CAL. PUB. RES. CODE § 21168.9(a)(2) (amended by Chapter 1131).

23. *Id.* §§ 21177(a)-(b) (amended by Chapter 1131); *see* CAL. CODE REGS. tit. 14, § 15202 (1990) (discussing public hearings); Russian Hill Improvement Ass'n v. Board of Permit Appeals, 44 Cal. App. 3d 158, 171, 118 Cal. Rptr. 490, 498 (1974) (highlighting the importance of public input in the EIR process); CALIFORNIA ENVIRONMENTAL LAW HANDBOOK, supra note 3, § 13.5.3 (discussing the public comment process); *see also* CEQA TASK FORCE, *supra* note 2, at ES-7 (recognizing a problem with legal challenges that are abused as maneuvers to halt or delay projects, motivated by non-environmental factors). *See generally* Maria E. Camposeco, *Flood of Students Expected*, SACRAMENTO BEE, Oct. 15, 1993, at B1 (recounting comments made at a public hearing in Placer County over the draft EIR of four "newtown" developments that may affect the local educational infrastructure).

interests.[24] Passage of the reform package comes at a time of great economic hardship in the state, and the new law serves as one response in the efforts to reverse the downturn.[25] Chapter 1131 specifically aims to dispense with the massive paperwork, the monetary demands, and the expenditure of resources that usually accompany the preparation of EIRs.[26] As such, Chapter 1131 and its companion legislation seek to dissuade businesses from leaving California, while attracting new industry to the state.[27]

Earlier versions of Chapter 1131 attempted to severely trim CEQA's reach, dispensing with the fair argument standard and creating several new

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24. *See* George Skelton, *Capitol Journal: Last Chance for a Good Impression*, L.A. TIMES, Sept. 9, 1993, at A3 (reporting that late-night negotiations between manufacturers, environmentalists, unions, and legislators yielded the unexpected agreement to overhaul CEQA); *see also* Barber, *supra* note 10, at 35-36 (quoting Assembly Member Byron Sher in calling the set of reform bills a "balanced package").

25. *See* Letter from Senator Ralph Dills, Chair, California Senate Committee on Governmental Organizations, to Governor Pete Wilson (Sept. 16, 1993) (copy on file with the *Pacific Law Journal*) (depicting Chapter 1131 as a remedy to California's job crisis and business flight); Mendel, *supra* note 10 (listing reorganization of environmental regulation among legislative measures, such as sweeping workers' compensation reform and business tax incentives, to make the state's economy more competitive); *see also* Letter from Anne Kelly to Robert Presley, *supra* note 17, at 1 (pointing out California's loss of hundreds of thousands of jobs during the course of the past three years and focusing on the need for streamlined regulatory processes to facilitate the flourishing of business); Nina Munk, *Self-Inflicted Wounds*, FORBES, Sept. 13, 1993, at 71 (asserting that California has caused its own economic problems, creating an atmosphere that is inhospitable to business at the prodding of environmentalists, thus losing much of its manufacturing base as a result).

26. *See* Dan Morain, *Bills to Help Businesses Advance Rapidly*, L.A. TIMES, Sept. 9, 1993, at A3 (reporting that an EIR may exceed years in preparation time, $1 million in cost, and several inches in thickness); *see also* Mendel, *supra* note 10 (quoting CMA Vice-President Anne Kelly in claiming that all amendments to CEQA over the past 20 years have amounted to increased burdens for business). Kelly observes that the reform package is the first legislative enactment "that does not set us backward and begins to shift the pendulum the other way." *Id. But see* Telephone Interview with Jennifer Jennings, General Counsel, Planning and Conservation League (Oct. 21, 1993) (notes on file with the *Pacific Law Journal*) (stating that consultants often produce lengthy EIRs because project proponents and lead agencies do not exercise proper control over them). Jennings opines that a massive number of pages may be used to "hide the ball," as judges may be more impressed with the effort invested in longer documents than in shorter pieces. *Id.* But the amount of work that goes into an EIR does not necessarily attest to its substance. *Id.* Finally, in some instances, the sheer magnitude of the projects simply necessitates a voluminous review. *Id. See generally* Jamie Beckett, *Stockton Judge Hears Suit Over S.F. Airport; Concern About Construction Centers on Traffic*, S.F. CHRON., Sept. 28, 1993, at A15 (revealing that a 1,000-page report was produced and that 80 public meetings were held to allow for public comment on the $2.4 billion expansion plan of San Francisco's International Airport); Kevin Fogan, *Shelter Is Warm, Dry — And Empty; Concord Residents Went to Court to Close It Down*, S.F. CHRON., Oct. 12, 1993, at A17 (indicating that a shut-down homeless shelter could have remained open for an additional two months had the county not been forced to spend $35,000 to prepare an EIR on the facility).

27. *See* Dan Bernstein, *Groups Agree to Revamp Environmental Law*, SACRAMENTO BEE, Sept. 8, 1993, at A3 (quoting Assembly Member Doris Allen as predicting the revitalization of California business and the creation of new jobs as a result of the reform); *see, e.g.*, Robert B. Gunnison & Greg Lucas, *Environmental Law Change Agreed On, State Senate Approves Under-18 Bike Helmet Law*, S.F. CHRON., Sept. 8, 1993, at A13 (revealing that the environmental reform will facilitate a $45 million expansion of operations for the New United Motor Manufacturing, Inc., in Fremont, California, as it exempts that entity from certain air district regulations). The expansion will create 150 new jobs. *Id. But see* Munk, *supra* note 25, at 74 (conveying doubt that the recovery of the state's lost manufacturing base will be an easy task).

exemptions from environmental review.[28] Strong opposition from environmentalists, however, led to the deletion of provisions from the final text of the bill that cut most deeply into CEQA.[29]

In light of the revisions, groups such as the Audubon Society, the Planning and Conservation League, and the Sierra Club dropped their opposition to the bill, but refrained from endorsing its adoption.[30] Meanwhile, despite the enactment of environmental reform, some industry representatives and business-oriented legislators remain unsatisfied, finding the modifications insufficient.[31] As such, the environmental reform

28. *See* S.B. 919, 1993-1994 Calif. Leg. Reg. Sess. § 3 (Apr. 28, 1993) (amending CAL. PUB. RES. CODE § 21080.7) (eliminating an EIR requirement for any modification or expansion of an existing commercial or industrial facility upon certain findings); *id.* § 6 (enacting CAL. PUB. RES. CODE § 21082.2) (discarding the fair argument standard of environmental review).

29. *See* Barber, *supra* note 10, at 36 (reporting that environmentalists "abhorred" the earlier versions of Chapter 1031 because they "slashed holes" in CEQA by creating business exemptions). "Environmentalists' fears were quelled when many of the objectionable exemptions were removed." *Id.*; *see also* Jon Matthews, *Senate OKs Bill Limiting Key Environmental Law*, SACRAMENTO BEE, June 10, 1993, at A6 (quoting Senator Tom Hayden as calling the early versions of SB 919 "shocking"); *id.* (quoting Senator Herschel Rosenthal as arguing that gutting CEQA is not going to cure California's economy). Hayden and Rosenthal were the sole voters against Chapter 1131 in its revised form. SENATE DAILY J., Sept. 10, 1993, at 3440.

30. *See* Bernstein, *supra* note 27 (reporting that key environmental groups adopted a neutral stance as a result of concessions from supporters of the reform package); *see also* Telephone Interview with Linda Barr, Legislative Representative, Sierra Club of California (Nov. 2, 1993) (notes on file with the *Pacific Law Journal*) (maintaining that the reform package, in its final form, was "watered down" enough for the Sierra Club to withdraw its opposition); *id.* (clarifying that the Club still refrained from supporting the package, as it did nothing to strengthen CEQA). *But see California Makes It Harder to Challenge Developers*, CHI. TRIB., Oct. 18, 1993, at 8 (stating that some environmental organizations, including the California Public Interest Research Group (CALPIRG) and Greenpeace, opposed the compromise); Telephone Interview with Mary Raftery, Environmental Policy Analyst, CALPIRG (Nov. 4, 1993) (notes on file with the *Pacific Law Journal*) (maintaining that "CEQA needs to be strengthened, not weakened").

31. *See Governor's Statement on SB 919*, Oct. 10, 1993, at 1 (copy on file with the *Pacific Law Journal*) (regarding the environmental reform package as falling below expected levels of change); *see also* Bernstein, *supra* note 27 (quoting California Chamber of Commerce Vice-President Allan Zaremberg as calling the changes modest and expressing disappointment that the reform bills did not eliminate EIR requirements in cases where review is conducted for environmental permits).

package may be used as a springboard for renewed efforts at redefining CEQA in future legislative sessions.[32]

AK

Environmental Protection; environmental quality—master environmental impact reports

Public Resources Code §§ 21087.5, 21155, 21168.3 (repealed); §§ 21064.5, 21156, 21157, 21157.1, 21157.5, 21157.6, 21157.7, 21158, 21158.5, 21159.1, 21159.2, 21159.3, 21159.9 (new); §§ 21003, 21080.1, 21080.3, 21080.7, 21081.6, 21087, 21090, 21091, 21092, 21092.3, 21100, 21151.5, 21152, 21167.1, 21167.4, 21167.6, 21167.8 (amended).
AB 1888 (Sher); 1993 STAT. Ch. 1130

Under existing law, the California Environmental Quality Act (CEQA)[1] requires a lead agency[2] to prepare an environmental impact

32. *See Governor's Statement on SB 919*, *supra* note 31, at 1 (declaring an imperative that the Legislature revisit the environmental reform issue); Barber, *supra* note 10, at 37 (noting the likelihood that another CEQA reform package may be presented in 1994, since Chapters 1130 and 1131 only skim the surface of changes that industry representatives would like to see); *see also* Interview with Arthur Terzakis, Senior Consultant, California Senate Committee on Governmental Organizations, in Sacramento, California (Oct. 20, 1993) (on file with the *Pacific Law Journal*) (forecasting new environmental reform measures in response to the Governor's encouragement); *id.* (naming the renewal of certain state leases, signed 30-40 years prior to CEQA's enactment, as one issue that might be revisited). Terzakis observes that, historically, legislative activity lessens during an election year. *Id.* Yet, with the onset of term limits, what was true in the past may not necessarily apply to the present. *Id. But see* Telephone Interview with Jennifer Jennings, *supra* note 26 (anticipating further attempts at reform legislation, but downplaying any cause for worry). Jennings says that the Governor announced environmental reform as a priority during the past year; however, he did little to address it. *Id.*; Telephone Interview with Linda Barr, *supra* note 30 (noting that major changes to CEQA in 1994 are unlikely, because the reform package was the result of consensus). Nevertheless, Barr states that the Sierra Club will be on guard for any new proposals to alter CEQA. *Id.*

1. *See* CAL. PUB. RES. CODE §§ 21000-21178.1 (West 1986 & Supp. 1993) (setting forth the provisions of CEQA).

2. *See id.* § 21067 (West 1986) (defining lead agency as a public agency that has the principal responsibility for carrying out or approving a project that may have a significant impact on the environment).

report (EIR)[3] or a negative declaration[4] for any project[5] that might have a significant effect on the environment.[6]

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3. *See id.* § 21061 (West 1986) (defining environmental impact report as an informational document to be considered by every public agency prior to its approval or disapproval of a project); *see also id.* § 21063 (West 1986) (defining public agency as any state agency, board, or commission, any county, city, regional agency, public district, redevelopment agency, or other political subdivision).

4. *See id.* § 21064 (defining negative declaration); Asia Inv. Co. v. Borowski, 133 Cal. App. 3d 832, 836 n.2, 184 Cal. Rptr. 317, 320 n.2 (1982) (defining negative declaration as a written statement by a responsible public agency that the proposed project will not have a significant environmental impact and does not require the preparation of an EIR).

5. *See* CAL. PUB. RES. CODE § 21065 (West 1986) (defining project); Burbank-Glendale-Pasadena Airport Auth. v. Hensler, 233 Cal. App. 3d 577, 592, 284 Cal. Rptr. 498, 506 (1991) (defining a project under CEQA as the whole of an action which has the potential for causing physical change in the environment, and includes the activity which is being approved, and which may be subject to several discretionary approvals by governmental agencies).

6. CAL. PUB. RES. CODE § 21100 (amended by Chapter 1130); *see id.* § 21151 (West 1986) (providing that all local agencies shall prepare, or cause to be prepared by contract, an EIR on any project they intend to carry out or approve which may have a significant effect on the environment); *see also id.* § 21002.1(a) (West 1986) (stating that the purpose of the EIR is to identify the significant effects of a project on the environment); *id.* § 21060.5 (West 1986) (defining environment as physical conditions, such as land, air, water, minerals, flora, fauna, noise and objects of historic or aesthetic significance, which exist within an area that will be affected by a proposed project); *id.* § 21068 (West 1986) (defining significant effect on the environment as a substantial, adverse change in the environment); *id.* 21080.1 (West 1986) (allocating the responsibility to the lead agency to determine whether an EIR or a negative declaration is required for any project); *id.* § 21080.4 (West Supp. 1993) (tracing a lead agency's duties following a determination that an EIR is required); Sierra Club v. County of Sonoma, 6 Cal. App. 4th 1307, 1315, 8 Cal. Rptr. 2d 473, 477 (1992) (stating that an EIR must be prepared where a local agency intends to approve or carry out a project that may have a significant effect on the environment). CEQA guidelines specify that an EIR must be prepared whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact. *Id.* at 1316, 8 Cal. Rptr. 2d at 478. When there is substantial evidence of such an impact, contrary evidence is not adequate to dispense with the EIR requirement. *Id.* at 1316-17, 8 Cal. Rptr. 2d at 478; Rio Vista Farm Bureau Center v. County of Solano, 5 Cal. App. 4th 351, 374, 7 Cal. Rptr. 2d 307, 317 (1992) (providing that EIR requirements must be sufficiently flexible to encompass vastly different projects with varying levels of specificity); Marin Mun. Water Dist. v. KG Land California Corp., 235 Cal. App. 3d 1652, 1661, 1 Cal. Rptr. 2d 767, 773 (1991) (specifying that both primary and secondary environmental consequences must be considered in determining whether a project may have a significant effect on the environment); Mann v. Community Redevelopment Agency, 233 Cal. App. 3d 1143, 1149, 285 Cal. Rptr. 9, 12 (1991) (stating that the EIR is the heart of CEQA and is intended to alert the public and appropriate officials of environmental changes before reaching an ecological point of no return); Uhler v. City of Encinitas, 227 Cal. App. 3d 795, 804, 278 Cal. Rptr. 157, 161 (1991) (stating that absent substantial evidence of significant environmental effects, public controversy does not require the preparation of an EIR under CEQA), *review denied*, 1991 Cal. LEXIS 2167 (May 15, 1991); Plaggmier v. San Jose, 101 Cal. App. 3d 842, 853, 161 Cal. Rptr. 886, 892 (1980) (specifying that a public agency's decision to prepare an EIR invokes the agency's duty to disapprove a project as proposed, unless and until the agency has considered feasible alternatives or mitigation measures that will avoid or lessen such significant impacts). The adoption of a negative declaration dispenses with the duty to prepare an EIR since it is a decision that the proposed project will not affect the environment. *Id.*; *cf.* 42 U.S.C. §§ 4321-4370(c) (1988 & Supp. II 1990) (codifying the National Environmental Policy Act of 1969); *id.* § 4332 (1988) (requiring an environmental impact statement for any federal action or proposed legislation that may significantly affect the quality of the human environment); Aberdeen & Rockfish R.R. Co. v. Students Challenging Regulatory Agency Procedure, 422 U.S. 289, 322 (1975) (specifying that an accurate description of a project is necessary in order to decide what type of environmental impact statement needs to be prepared under the provisions of NEPA); Oregon Envtl. Council v. Kunzman, 817 F.2d 484, 492 (9th Cir. 1987) (stating that an environmental impact statement ensures that federal agencies have sufficient information to decide whether to proceed with the action

Chapter 1130 authorizes a master environment impact report (MEIR)[7] to be prepared for specified projects.[8] The preparation and certification of the MEIR allows for the limited review of subsequent projects described as being within the scope of the MEIR.[9] Chapter 1130 allows a focused

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in light of potential environmental consequences); Ogden Envtl. Services v. San Diego, 687 F. Supp. 1436, 1452 (S.D. Cal. 1988) (explaining that the State Department of Health Services' issuance of a negative declaration precluded the City from requiring the submission of an EIR for the burning of hazardous materials at an incineration facility); Sierra Club v. Department of Transp., 664 F. Supp. 1324, 1336 (N.D. Cal. 1987) (specifying that the purpose of NEPA is to educate the public and to ensure that there are informed decisions regarding environmental risk in proposed projects). *See generally* Selina Bendix, *A Short Introduction to the California Environmental Quality Act*, 19 Santa Clara L. Rev. 521 (1979) (offering a general overview of CEQA).

7. *See* CAL. PUB. RES. CODE § 21156 (enacted by Chapter 1130) (stating that a MEIR will evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects to the greatest extent feasible).

8. *Id.* § 21157(a) (enacted by Chapter 1130). A MEIR may be prepared for: (1) A general plan, element, general plan amendment, or specific plan; (2) a project that consists of smaller individual projects; (3) a rule or regulation to be implemented by subsequent projects; (4) projects to be carried out according to a development agreement; (5) public and private projects pursuant to a redevelopment plan); or (6) a state highway project or mass transit project that is subject to multiple stages of review or approval. *Id.*

9. *Id.* § 21157.1 (enacted by Chapter 1130); *see id.* (listing requirements for the lead agency to follow during the limited review of subsequent projects described in the MEIR); *id.* § 21157.5(a) (enacted by Chapter 1130) (requiring a proposed mitigated negative declaration to be prepared for any proposed subsequent project if an initial study has identified potentially new or additional significant effects on the environment not analyzed in the MEIR, and if the feasible mitigation measures or alternatives will be incorporated to revise the proposed subsequent project before the negative declaration is released for public review). The lead agency must prepare an EIR, or a focused EIR, pursuant to California Public Resources Code § 21158, if there is substantial evidence that the proposed project may have a significant effect on the environment and a mitigated negative declaration is not prepared. *Id.* § 21157.5(b) (enacted by Chapter 1130); *id.* § 21157.6 (enacted by Chapter 1130) (prohibiting a MEIR to be used if certification occurred more than 5 years prior to the filing of an application for a subsequent project); *id.* § 21157.7 (enacted by Chapter 1130) (providing that the lead agency must prepare a supplemental EIR, mitigated negative declaration, or a focused EIR, if a later approved project which was not identified in the MEIR as an anticipated subsequent project makes substantial changes or provides new information not known at the time the MEIR was certified); *see also* Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 573, 801 P.2d 1161, 1173, 276 Cal. Rptr. 410, 422 (1990) (prohibiting a local agency from ignoring regional needs and cumulative impacts); Sutter Sensible Planning Inc. v. Board of Supervisors, 122 Cal. App. 3d 813, 821, 176 Cal. Rptr. 342, 346 (1981) (providing that when an EIR has been prepared, no subsequent or supplemental EIR shall be required by the lead agency unless one or more of the following events occur: (1) There is a finding that substantial changes are proposed or will occur in the project which requires major revisions in the EIR; and (2) new information that becomes available which was not known and could not have been known at the time the EIR was certified); *cf.* Kleppe v. Sierra Club, 427 U.S. 390, 409-10 (1976) (providing that a comprehensive impact statement may be necessary in some cases for an agency to meet the policy of environmental protection as prescribed by NEPA); City of Tenakee Springs v. Clough, 915 F.2d 1308, 1312 (9th Cir. 1990) (stating that when several actions have cumulative or synergistic environmental effects, NEPA requires the environmental consequences to be included in an environmental impact statement (EIS)); South Louisiana Envtl. Council, Inc. v. Sand, 629 F.2d 1005, 1015 (5th Cir. 1980) (stating that NEPA may require a comprehensive EIS in situations where several proposed actions are pending at the same time, while cumulative impact statements are only required when the action is a proposed action). *See generally* Daniel J. Curtin, Jr. & Ann. R. Danforth, *Amendments are Proposed for the CEQA Guidelines*, DAILY J., Aug. 10, 1993, at 5 (specifying that CEQA encourages public agencies to recycle previous EIR's to limit the need for later duplicative environmental reviews). The absence of a clear procedure for implementing the recycling process may explain why it is used so rarely. *Id. See* James P. Sweeney, *Compromise Reached on CEQA Reform Bills*

EIR[10] to be utilized by a lead agency where it finds that the analysis in the MEIR of cumulative impacts,[11] growth inducing impacts, and irreversible significant effects, is adequate for the subsequent project.[12]

Existing law requires each local agency[13] to establish a time limit, not to exceed one year, for the completion and certification of an EIR, and a time limit of 105 days for the completion of a negative declaration.[14] Chapter 1130 specifies that when a draft EIR, EIR, focused environmental impact, or negative declaration is prepared under a contract, the lead agency must execute the contract within forty-five days of the time the project application is received and accepted by the local agency.[15]

Under existing law, actions or proceedings brought to enforce compliance with the Act are given preference over other civil actions.[16] Chapter 1130 requires an appellate court to commence hearings on a CEQA appeal within one year of the filing of the appeal.[17] In addition, superior courts in all counties with a population of more than 200,000 are to designate one or more judges to develop expertise in CEQA and other

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Would Streamline Environmental Review, SAN DIEGO UNION-TRIB., July 14, 1993, at A3 (stating that AB 1888 would allow agencies to prepare a MEIR that could be used as a broad background document for smaller projects); Michael Zischke, *A Simpler Environment; Reforms to California's Environmental Quality Act Should Seek Elimination of Delays and Abuses*, THE RECORDER, Sept. 24, 1992, at 8 (stating that despite the courts' move toward a more conservative interpretation of CEQA, delay tactics are still prevalent, which tends to overshadow legitimate environmental issues).

10. *See* CAL. PUB. RES. CODE § 21158(a) (enacted by Chapter 1130) (defining a focused EIR as an EIR on a subsequent project identified in a MEIR).

11. *See* Laupheimer v. State, 200 Cal. App. 3d 440, 460-62, 246 Cal. Rptr. 82, 92-93 (1988), *review denied*, (June 29, 1988); (stating that the term cumulative impact is not specifically found in CEQA, but the judicially recognized function of the concept is to assure that potential environmental impacts will not be minimized by chopping a large project into many smaller ones). The court specifies that CEQA's specific cumulative impact provisions constitute recognition of the abstract significance of cumulative impacts to an environmental inquiry, and that in this abstract sense, significant cumulative impacts must be considered in the course of any environmental inquiry subject to CEQA's broad policy goals. *Id.*

12. CAL. PUB. RES. CODE § 21158(a) (enacted by Chapter 1130); *see id.* § 21159.1 (enacted by Chapter 1130) (providing additional examples of when the focused environmental impact report may be utilized).

13. *See id.* § 21062 (West 1986) (defining local agency as any public agency other than a state agency, board, or commission).

14. *Id.* § 21151.5(a) (amended by Chapter 1130); *see id.* (providing that these time limits will apply only to those circumstances in which the local agency is the lead agency for the project).

15. *Id.* § 21151.5(c) (amended by Chapter 1130); *see id.* § 21082.1 (West Supp. 1993) (providing that any draft EIR, EIR, or negative declaration shall be prepared directly by, or under contract to, a public agency).

16. *Id.* § 21167.1(a) (amended by Chapter 1130); *see* 7 B.E. WITKIN, CALIFORNIA PROCEDURE, *Trial* § 70 (3d ed. 1985 & Supp. 1993) (providing that some statutes authorize departure from the normal process of assigning cases for trial in the order for which they are filed by giving preference in trial to certain actions and special proceedings). This priority requirement is recognized in Superior Court Rules 217(a)(iii), 221, and Municipal Court Rule 510(a), which govern setting the case for pretrial and trial. *Id. See generally* CAL. CIV. PROC. CODE § 36 (West Supp. 1993) (providing that a party may petition for a preference if certain requirements are met).

17. CAL. PUB. RES. CODE § 21167.1(a) (amended by Chapter 1130).

related land use and environmental laws so that actions and proceedings will be resolved in a timely manner.[18]

MBB

Environmental Protection; forfeiture of any device or apparatus used in the unlawful taking of specified mammals

Fish and Game Code § 12157 (amended); Food and Agriculture Code § 21856 (new).
SB 332 (Mello); 1993 STAT. Ch. 772

Under existing law, the court may order forfeiture[1] of any device or apparatus that is used by a person convicted of unlawfully taking, possessing, killing, or slaughtering birds, mammals, fish, reptiles, or amphibia without the consent of the owner.[2] Chapter 772 allows a court

18. *Id.* § 21167.1(b) (amended by Chapter 1130). *See generally* Morris County Fair Housing Council v. Boonton Township, 507 A.2d 768, 774 (N.J. Super. Ct. 1985) (providing an example of a specific area of law in which multiple judges were appointed to hear all related rulings in a specific area in order to develop expertise in the subject matter, thereby providing a degree of consistency to the trial court decisions).

1. *See* United States v. Eight Rhodesian Stone Statues, 449 F. Supp. 193, 193 n.1 (9th Cir. 1978) (defining forfeiture as a divestiture to the sovereign, without compensation, of property used in a manner contrary to the laws of the sovereign).

2. CAL. FISH & GAME CODE § 12157(a) (amended by Chapter 772); *see id.* § 12157(g) (West Supp. 1993) (stating that for purposes of this section, a plea of nolo contendere, or forfeiture of bail constitutes a conviction); *see also* Eileen M. Diepenbrock, *California Forfeiture Statute: A Means for Curbing Drug Trafficking*, 15 PAC. L.J. 1035, 1045-46 (1984) (noting that California forfeiture provisions have shifted from an *in rem* proceeding in which the property is forfeited only by a showing of probable cause independent of the defendant's guilt at trial, to an *in personam* proceeding where the property is seized only after the defendant is convicted); *cf.* 21 U.S.C. §§ 848, 853 (1988) (describing the federal *in personam* proceedings for continuing criminal behavior); 21 U.S.C. § 881(h) (1988) (stating that all right, title, and interest in property involved in the illegal sale or possession of controlled substances shall vest in the United States upon commission of the act giving rise to forfeiture); CAL. FISH & GAME CODE § 8630 (West Supp. 1993) (providing that an *in rem* proceeding for illegal use of nets for violating certain fishing laws is allowed); CONN. GEN. STAT. ANN. § 54-36h(5)(b) (West Supp. 1993) (describing Connecticut's forfeiture laws regarding the illegal sale or exchange of controlled substances or money laundering as civil suits in equity); FLA. STAT. ANN. § 372.317 (West 1988) (stating that the proceedings and the judgment of forfeiture for the illegal use of nets, traps or fishing devices shall be *in rem* and shall be primarily against the property itself). *But see* Austin v. United States, 113 S. Ct. 2801, 2812 (1993) (holding that even an *in rem* forfeiture of a mobile home for possession of only two ounces of cocaine violates the cruel and unusual punishment of the 8th amendment). *See generally* Diepenbrock, *supra*, at 1055-56 (advising that California forfeiture statutes go back to *in rem* proceedings because it is more historically consistent and it is more effective in preventing the continuance of criminal activity than an *in personam* proceeding).

to order forfeiture of any device or apparatus, including vehicles, used in the unlawful taking of other specified mammals.[3]

Under existing law, in a civil proceeding for the wrongful taking, possessing, harboring, or transporting of cattle, for the driving of cattle off their usual range, or for the killing or slaughter of cattle without the consent of the owner or the person in lawful possession of the cattle, the victim is entitled to restitution up to four times the value of the cattle, plus additional expenses.[4] Chapter 772 would additionally authorize a court to order forfeiture of the apparatus and devices used for this violation upon conviction of the person tried.[5]

PLJ

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3. CAL. FISH & GAME CODE § 12157(b)-(c) (enacted by Chapter 772); *see id.* § 12157(c) (enumerating other specified mammals as deer, elk, antelope, feral pigs, European wild boars, black bears, and brown or cinnamon bears); ASSEMBLY COMMITTEE ON AGRICULTURE, COMMITTEE ANALYSIS OF SB 332, at 2 (July 12, 1993) (stating that the specific reference to large game mammals and the option of vehicle forfeiture reflects the author's intent to create a significant deterrent in cases where an illegal poacher stands to receive substantial gain from the sale of the game being poached); *see also* CAL. FISH & GAME CODE § 12157(c) (enacted by Chapter 772) (stating that the court considers certain elements in determining if a forfeiture order is appropriate such as: (1) Gravity of the illegal act; (2) degree of culpability of the violator; (3) property being considered for forfeiture; and (4) other penalties being imposed); *cf.* Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 693 (1974) (Douglas, J., dissenting) (stating that a vehicle may be forfeited if used to facilitate the possession of even a minute amount of controlled substance). *But see* CAL. HEALTH & SAFETY CODE § 11470(e)(1) (West 1991) (providing that forfeiture of a vehicle used in the violation of controlled substances is not applicable if the vehicle is a community property asset of a person who is a registered owner of the vehicle other than the defendant, and the vehicle is the only one available to the defendant's immediate family).

4. CAL. FOOD & AGRIC. CODE § 21855 (amended by Chapter 772).

5. *Id.* § 21856 (enacted by Chapter 772); *see* ASSEMBLY COMMITTEE ON AGRICULTURE, COMMITTEE ANALYSIS OF SB 332, at 2 (July 12, 1993) (questioning whether such forfeiture bills contain the appropriate procedural safeguards to protect the interest of innocent third parties). *See generally* Michael F. Zeldin and Roger G. Weiner, *Innocent Third Parties and Their Rights in Forfeiture Proceedings*, 28 AM. CRIM. L. REV. 843 (1991) (describing the protections for community property owners of real property and creditors in federal forfeiture proceedings).

Environmental Protection; household hazardous waste—small quantity generators

Health and Safety Code § 25201 (amended).
SB 796 (Wright); 1993 STAT. Ch. 1203

Health and Safety Code §§ 25174.7, 25205.1, 25205.7 (amended).
SB 922 (Calderon); 1993 STAT. Ch. 1145

Health and Safety Code § 25158.1 (repealed); §§ 25218, 25218.1, 25218.2, 25218.3, 25218.4, 25218.5, 25218.6, 25218.7, 25218.8, 25218.9, 25218.10 (new); §§ 25158, 25163, 25200.10, 25158.1 (amended).
SB 1091 (Killea); 1993 STAT. Ch. 913

Existing law sets forth guidelines regulating owners and operators of hazardous waste facilities.[1] However, existing law exempts certain household hazardous waste collection facilities[2] from manifest[3] and

1. *See* CAL. HEALTH & SAFETY CODE § 25158(a) (amended by Chapter 913) (requiring the filing of a notification statement whenever there has been a substantial change in the information provided on the previously filed notification statement for the generating, treating, storing, or disposing of hazardous waste); *see also id.* § 25163 (amended by Chapter 913) (setting forth regulations governing the transportation of hazardous waste); 40 C.F.R. § 264.75 (1992) (listing standards for owners and operators of hazardous waste treatment, storage, and disposal facilities); *cf.* 42 U.S.C. §§ 6901-6991i (1988 & Supp. II 1990)) (setting forth provisions of the Resource Conservation and Recovery Act (RCRA)); *id.* § 6921 (1988) (requiring the EPA to identify and monitor a list of hazardous wastes); *id.* § 6922(a)(4) (1988) (requiring hazardous waste generators to inform transporters, storers, and disposers of the hazardous character of their waste); *id.* § 6924 (1988) (stating that the hazardous waste may be stored, or disposed of, only at sites whose operators have satisfied relevant EPA regulations). *See generally* Note, *Development in the Law — Toxic Waste Litigation*, 99 HARV. L. REV. 1458, 1470-71 (1986) (stating that RCRA tracks hazardous wastes through the production cycle from creation to disposal); *Review of Selected 1982 California Legislation*, 14 PAC. L.J. 357, 635-40 (1983) (reviewing the law governing the management and control of hazardous waste); *Review of Selected 1979 California Legislation*, 11 PAC. L.J. 259, 527-30 (1980) (stating guidelines regarding the transportation of hazardous waste).

2. *See* CAL. HEALTH & SAFETY CODE § 25218.1(f) (enacted by Chapter 913) (defining household hazardous waste collection facility as a facility operated by a public agency, or its contractor, for the purpose of collecting, handling, treating, storing, recycling, or disposing of household hazardous waste; its operation may include accepting hazardous waste from conditionally exempt small quantity generators); *see also id.* § 25218.1(e) (enacted by Chapter 913) (defining household hazardous waste as any hazardous waste generated incidental to owning or maintaining a place of residence, but which does not include any waste generated in the course of operating a business at the residence); *id.* § 25205.1(b) (amended by Chapter 1145) (defining facility as any unit or other structure, and all contiguous land, used for the treatment, storage, disposal, or recycling of hazardous waste, for which a permit or a grant of interim status has been issued by the department for that activity pursuant to California Health and Safety Code §§ 25200-25205).

3. *See id.* § 25160(a) (West 1992) (defining manifest as a shipping document which contains all the information required by the department and is signed by a generator of hazardous waste).

permit requirements.[4] Furthermore, existing law imposes fees upon persons applying for permits to manage hazardous waste, but exempts from the fees variances[5] issued to a public agency to transport wastes for purposes of operating a household hazardous waste collection facility,

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4. *Id.* § 25163(g) (amended by Chapter 913); *see id.* (stating that any person transporting household hazardous waste, or a conditionally exempt small quantity generator transporting hazardous waste to an authorized hazardous waste collection facility, is exempt from both the hazardous waste transportation regulations listed in California Health and Safety Code § 25163(a),(e) and the manifest requirements as listed in § 25160(d)(1)); *see also id.* § 25163(c) (amended by Chapter 913) (exempting persons transporting less than 5 gallons, or less than 50 pounds of hazardous waste from manifest requirements pursuant to California Health and Safety Code § 25160(a),(e) if certain conditions are met); *id.* § 25201(c) (amended by Chapter 1203) (providing that a hazardous waste facilities permit is not required for a recycle-only household hazardous waste collection facility operated in accordance with California Health and Safety Code § 25218.8(b)). A hazardous waste facilities permit is not required for a facility that meets the requirements set forth in California Water Code § 13263.2. *Id.* § 25201(d) (amended by Chapter 1203). Environmental Defense Fund v. Wheelabrator Tech., 725 F. Supp. 758, 773 (S.D.N.Y. 1989) (holding that a facility may accept hazardous waste from a small quantity generator without subjecting itself to regulation as a hazardous waste disposal facility); Steven Ferrey, *The Toxic Time Bomb: Municipal Liability for the Cleanup of Hazardous Waste*, 57 GEO. WASH. L. REV. 197, 212 (1988) (stating that municipal landfills have received a large percentage of hazardous wastes prior to 1980 from unregulated small quantity hazardous waste generators); Wade L. Hopping & William D. Preston, *The Water Quality Assurance Act of 1983-Florida's "Great Leap Forward" Into Groundwater Protection and Hazardous Waste Management*, 11 FLA. ST. U. L. REV. 599, 614 (1983) (commenting on how small generators of hazardous waste generally did not know or understand federal and state hazardous waste management requirements, which has led to hazardous waste being disposed of with normal garbage in municipal or private solid waste landfills); *cf.* 42 U.S.C. § 6925(a) (1988) (requiring each person owning, or operating an existing facility, or planning to construct a new facility for treatment, storage, or disposal of hazardous waste, to obtain a permit); FLA. STAT. ch. 403.727 (1992) (setting forth violations and penalties for transporting hazardous waste to a facility without a permit); *EPA Memo Says Household Hazwaste Exempt From Subtitle C Management*, HAZARDOUS WASTE NEWS, Sept. 1, 1992, *available in* LEXIS, Nexis Library, Currnt File (stating that collection programs managing both conditionally exempt small quantity generator waste and household hazardous waste are not subject to the full RCRA standards); *Household Hazardous Waste Collection Regulations Clarified*, PESTICIDE & TOXIC CHEMICAL NEWS, Aug. 26, 1992, *available in* LEXIS, Nexis Library, Currnt File (clarifying RCRA to allow state-approved household hazardous waste collection programs to mix such waste with conditionally exempt small quantity generator waste). *See generally* CAL. PUB. RES. CODE § 40000(d) (West Supp. 1993) (stating that California's continual generation of solid waste, coupled with diminishing landfill space, constitutes an urgent need for state and local agencies to enact and implement an aggressive new integrated waste management program); Geo-Tech Reclamation Industries, Inc. v. Hamrick, 886 F.2d 662, 666 (4th Cir. 1989) (commenting that the state may regulate the location and operation of solid waste disposal facilities in order to eliminate the harmful effects such facilities may have on the surrounding environment); City of Dublin v. County of Smiting, 14 Cal. App. 4th 264, 270, 17 Cal. Rptr. 2d 845, 847-48 (1993) (stating that the goal of the California Integrated Waste Management Act of 1989 is to improve procedures for solid waste management and to specify responsibilities of local government to develop and implement such programs), *review denied*, 1993 Cal. LEXIS 3055 (Cal. June 3, 1993).

5. *See* CAL. HEALTH & SAFETY CODE § 25143 (West Supp. 1993) (providing the conditions under which the Department may grant a variance); *id.* § 25205.7(a) (amended by Chapter 1145) (allowing the board to assess a fee, variance, or a permit modification for any application for a new hazardous waste facilities permit); *cf.* 42 U.S.C. § 6924(h)(2) (1988) (providing that with variances from land disposal prohibitions, the administrator may establish an effective date different from the effective date which would otherwise apply based on the earliest date which adequate alternative treatment, recovery, or disposal capacity would be available).

which receives household hazardous waste, or hazardous waste from conditionally exempted small quantity generators.[6]

Chapter 913 enables the Department of Toxic Substances Control[7] (Department) to permit a household hazardous waste collection facility to accept hazardous waste from conditionally exempt small quantity generators (CESQG)[8] and would authorize a public agency[9] or its contractor to charge the CESQG for the costs incurred in handling their hazardous waste.[10] Chapter 913 also exempts a person, or a CESQG, transporting household hazardous waste to an authorized household hazardous waste collection facility from the dual requirements of registration as a hazardous waste transporter and possession of a manifest.[11] Furthermore, hazardous waste transported to a household hazardous waste collection facility shall be transported by the individual or a CESQG who generated the waste, a curbside,[12] or door-to-door household[13] hazardous waste[14] pickup service.[15] Hazardous wastes that

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6. CAL. HEALTH & SAFETY CODE § 25205.7(l)(1) (amended by Chapter 1145); *see id.* § 25205.7(l)(2)-(3) (amended by Chapter 1145) (stating that permanent household hazardous waste collection facilities, and public agencies for which a variance issued to conduct a collection program for agricultural waste, are also exempted from fee requirements); *see also id.* § 25174.1(a)-(b) (West 1992) (providing for a disposal fee for each person or operator of a facility who disposes of hazardous waste); *id.* § 25205.5 (West Supp. 1993) (imposing annual generator fees); *cf.* GA. CODE ANN. § 12-8-95.1 (1992) (providing for fees for large and small quantity generators of hazardous waste); OKLA. STAT. ANN. tit. 63, § 1-2053(F) (West Supp. 1993) (providing for fee reductions to induce hazardous waste treatment).

7. *See* CAL. HEALTH & SAFETY CODE § 25111 (West 1992) (defining Department as the Department of Toxic Substances Control).

8. *See id.* § 25218.1(a) (enacted by Chapter 913) (defining CESQG as a business concern which meets the criteria specified in 40 C.F.R. § 261.5); *see also* 40 C.F.R. § 261.5(a) (1992) (providing that a generator is a conditionally exempt small quantity generator if in a calendar month he generates no more than 100 kilograms of hazardous waste).

9. *See* CAL. HEALTH & SAFETY CODE § 25218.1(i) (enacted by Chapter 913) (defining public agency as a state or federal agency, county, city, or district).

10. *Id.* § 25218.3(a),(c) (enacted by Chapter 913); *see id.* § 25174.7(a)(2) (amended by Chapter 1145) (exempting operators of a household hazardous waste collection facility from fee requirements set forth in California Health and Safety Code §§ 25174.1, 25205.5); *cf.* N.Y. PUB. AUTH. LAW § 1285-g(7)(c) (McKinney Supp. 1993) (providing for a sliding fee schedule to offset the costs of a small quantity hazardous waste generator audit program developed to identify and evaluate the potential for reducing the amount of, and/or toxicity of, hazardous waste generated at such facilities).

11. CAL. HEALTH & SAFETY CODE § 25163(g) (amended by Chapter 913); *see id.* § 25218.5(e)(3) (enacted by Chapter 913) (specifying that a door-to-door household hazardous waste collection program or household hazardous waste residential pickup service is exempt from the manifest requirements, pursuant to California Health and Safety Code § 25160). In place of a manifest, a receipt shall be issued for all hazardous waste collected from an individual residence, and a copy shall be retained for at least three years by the public agency. *Id.*

12. *See id.* § 25218.1(b) (enacted by Chapter 913) (defining curbside household hazardous waste collection program as a service authorized by a public agency which collects recyclable household hazardous waste materials).

13. *See id.* § 25218.1(d) (enacted by Chapter 913) (defining household as a single detached residence or a single unit of a multiple residence unit and all appurtenant structures).

are exempt from specified fee requirements, include those that are generated, or disposed of, by a public agency, or its contractor, operating a household hazardous waste collection facility, including hazardous waste received from CESQG's.[16]

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14. *See id.* § 25218.1(e) (enacted by Chapter 913) (defining household hazardous waste as hazardous waste generated incidentally to owning or maintaining a place if residence).

15. *Id.* § 25218.5(a) (enacted by Chapter 913); *see id.* § 25218.1(c) (enacted by Chapter 913) (defining door-to-door household hazardous waste collection program or household hazardous waste residential pickup service as a program operated by a public agency that collects household hazardous waste from individual residences); *id.* § 25218(b)-(c) (enacted by Chapter 913) (establishing conditions to be met for individuals transporting household hazardous waste generated by that person and a CESQG transporting hazardous waste generated by the CESQG to a household hazardous waste collection facility); *id.* § 25218.5(d)-(e) (enacted by Chapter 913) (listing conditions governing the operation of a curbside household hazardous waste collection program, door-to-door household hazardous waste collection program, or a household hazardous waste residential pickup service). *See generally* Carl. R. Bartone, *Waste Management: Institutional and Management Approaches to Solid Waste Disposal in Large Metropolitan Areas*, WASTE INFO. DIG., May, 1992 (providing an example of a model waste program which has adapted to increasing waste disposal needs by developing eight transfer stations, a refuse-derived fuel plant, a regional municipal solid waste landfill, an ash landfill, a residential recycling program which includes curbside service and a household hazardous waste transfer facility); Kurt Pitzer, *West Valley Focus: Homes Sending Less Trash to Landfills*, L.A. TIMES, May 26, 1993, at B3 (claiming that the amount of trash sent to landfills has declined by one third after implementation of a curbside recycling effort); Kasey Vannett, *Weekend Brings 500 to Collection Site Bearing Toxic Waste*, WASH. POST, July, 15 1993, at J3 (illustrating an example of a household hazardous waste collection administered by the Department of Public Works).

16. *Id.* § 25218.6 (enacted by Chapter 913). The exempted fees are set forth in the California Health and Safety Code §§ 25170-25179 and §§ 25205.1-25206. *Id.*

Environmental Protection; medical waste transporters and generators—fees

Health and Safety Code §§ 25021.7, 25049.1, 25060.1, 25060.4, 25181.5 (new); §§ 25034.8, 25040.5, 25059, 25061, 25062, 25064, 25079.3, 25081, 25094, 25096, 25097 (amended).
SB 1151 (Committee on Toxics and Public Safety Management); 1993 STAT. Ch. 813

Existing law, the Medical Waste Management Act of 1990 (Act),[1] requires the Department of Health Services (DHS)[2] to issue permits[3] for off-site[4] medical waste[5] treatment facilities.[6] The Act requires local enforcement agencies[7] to regulate the generation,[8] hauling,[9] treatment,[10] containment,[11] and storage[12] of medical waste.[13]

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1. *See* CAL. HEALTH & SAFETY CODE §§ 25015-25099.3 (West 1992) (encompassing the Act); *cf.* 42 U.S.C. § 6992a-i (1992) (comprising the Demonstration Medical Waste Tracking Program, designed as an experimental program of regulating medical waste).

2. *See* CAL. HEALTH & SAFETY CODE §§ 100-117.5 (West 1990 & Supp. 1993) (providing for the organization and provisions of the Department of Health Services); *see also* Lewis Food Co. v. State Department of Public Health, 110 Cal. App. 2d 759, 243 P.2d 803 (1952) (holding that it is a fair and reasonable exercise of the sovereign power of the state to conserve and protect the health of its citizenry).

3. *See* CAL. HEALTH & SAFETY CODE § 25024.5 (West 1990) (defining medical waste permit as a permit issued by the enforcement agency to a medical waste treatment facility).

4. *See id.* § 25025.5 (West 1990) (defining off-site as any location which is not on-site); *see id.* § 25025.8 (West Supp. 1993) (defining on-site as a medical waste treatment facility, or common storage facility, on the same or adjacent property as the generator of the medical waste being treated).

5. *See id.* § 25023.2 (West Supp. 1993) (defining medical waste as waste generated or produced as a result of: (1) Diagnosis, treatment, or immunization of humans or animals; (2) research pertaining to the diagnosis, treatment, or immunization of humans or animals; and (3) production or testing of biologicals, biohazardous waste, or sharps waste).

6. *Id.* § 25070 (West Supp. 1993); *see id.* § 25025 (West 1990) (defining medical waste treatment facility); *cf.* ARK. CODE ANN. § 20-32-107 (Michie 1992) (mandating that transporters of commercial medical waste must obtain a permit); ILL. ANN. STAT. ch. 415, para. 5/56.5 (1993) (providing that medical waste transporters must be permitted); R.I. GEN. LAWS § 23-19.12-8 (Supp. 1992) (making it illegal to transport medical waste without a permit).

7. *See* CAL. HEALTH & SAFETY CODE § 25023 (West 1990) (defining local agency as the local health department of a county which has elected to adopt a local ordinance to administer and enforce the Act).

8. *See id.* § 25024 (West Supp. 1993) (defining medical waste generator).

9. *See id.* § 25021.8 (West 1990) (defining hazardous waste hauler as a person registered as a hazardous waste hauler under the Hazardous Waste Haulers Act); *id.* §§ 25167.1-25169.3 (West 1992) (comprising the Hazardous Waste Haulers Act).

10. *See id.* § 25027.8 (West 1990) (defining treatment as any method, technique, or process designed to change the biological character or composition of any medical waste so as to eliminate its potential for causing disease).

11. *See id.* § 25021 (West Supp. 1993) (defining container as the rigid container in which medical waste is placed prior to transporting for purposes of storage or treatment).

12. *See Id.* § 25027 (West 1990) (defining storage as the holding of medical wastes at a designated accumulation area).

Existing law requires that all medical waste transported to off-site medical waste treatment facilities be transported by a registered hazardous waste transporter.[14] Under existing law, hazardous waste transporters must maintain tracking documents of all medical waste transported for treatment or disposal.[15] Chapter 813 requires registered hazardous waste transporters and providers of medical waste mailback systems[16] to provide specific information to the DHS.[17]

Under existing law, small quantity generators[18] are required to register with the local enforcement agency if they are using on-site steam

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13. *Id.* §§ 25031, 25033, 25034, 25034.8 (West 1992); *see id.* (providing for the implementation and administration of a medical waste management program by local agencies); *id.* § 25096 (West 1992) (providing that, if an enforcement agency brings an action to enjoin the violation or threatened violation of the Act in the superior court in the county where the violation occurred or is about to occur, the court, if finding the allegations to be true, will issue an order enjoining the continuance of the violation); *id.* § 25096.1 (West 1992) (specifying that the criminal penalty for a violation of the Act is a $1000 fine; and if a compliance order is violated, the responsible party will be charged with a misdemeanor); *id.* § 25097 (West 1992) (mandating that a subsequent violation of the Act within three years of a prior conviction will result in imprisonment in the county jail for not more than one year, imprisonment in state prison up to three years, or a fine of not less than $5000 but not more than $25,000, or both); *cf.* 40 C.F.R. § 259.42 (1989) (regulating the storage requirements of medical waste prior to transport, treatment, destruction, or disposal); N.Y. ENVTL. CONSERV. LAW § 27-1505 (Consol. 1993) (providing containment and storage requirements for medical wastes). *See generally* Scott Allen, *Dealing With Our Medical Debris; To Avoid Burying the Problem, Hospitals Turning to Technology*, BOSTON GLOBE, Nov. 2, 1992, at 35 (outlining the medical waste challenge facing hospitals and the new technologies developing to handle that waste).

14. CAL. HEALTH & SAFETY CODE § 25062(a) (West Supp. 1993); *see id.* § 25021.8 (West 1992) (defining hazardous waste hauler as a person registered as a hazardous waste hauler under the Hazardous Waste Haulers Act); *id.* §§ 25167.1-25169.3 (West 1992) (comprising the Hazardous Waste Haulers Act).

15. *Id.* § 25063 (West Supp. 1993); *see id.* (providing that tracking documents must include: (1) The name, address, telephone number and registration number of the transporter; (2) the type and quantity of medical waste transported; (3) the name, address and telephone number of the generator; (4) the name, address, telephone number, permit number and the signature of an authorized representative of the waste facility; and (5) the date the waste was removed from the generator facility, the date the waste was received at the transfer station and the date the waste was received at the treatment facility).

16. *See id.* § 25094(b) (amended by Chapter 813) (defining a provider of medical waste mailback systems as a person who sends medical waste generated in this state to an out-of-state facility for treatment and disposal).

17. *Id.* § 25060.4 (enacted by Chapter 813); *see id.* § 25060.4(a) (enacted by Chapter 813) (requiring hazardous waste transporters to provide their business name, address, telephone number; the name of the owner, operator and contact person; and the vehicle manufacturer name, model year, vehicle identification number, and license plate number); *see id.* § 25060.4(c) (enacted by Chapter 813) (requiring providers of medical waste mail back systems to provide a list of all medical waste generators services during previous 12 months); *see id.* § 25060.4(d) (mandating that hazardous waste transporters and providers of medical waste mail back systems submit an updated list indicating any changes to the most recent list every three months).

18. *See id.* § 25026.8 (West 1990) (defining small quantity generator as a medical waste generator that generates less than 200 pounds of medical waste per month); *cf. Michigan Conducts First Study of What Small Medical Waste Generators Produce*, MEDICAL WASTE NEWS, August 13, 1992, Vol. 4 (detailing the study of small generators of medical waste in Michigan and reporting that small generators have little problem disposing of their medical wastes).

sterilization, incineration, or microwave technology to treat medical waste.[19] Under Chapter 813, when DHS is the enforcement agency, it will impose and collect a $25 annual medical waste generator fee for small quantity generators.[20]

Existing law prohibits storage of biohazardous waste[21] or sharps waste[22] onsite above a specified temperature for more than a specified number of days.[23] Chapter 813 mandates that any person generating twenty pounds or more of medical waste must not store biohazardous or sharps waste onsite above 0° Centigrade (32° Fahrenheit) for more than seven days.[24] Under Chapter 813, a generator of less than twenty pounds of biohazardous waste per month must not store onsite biohazardous waste above 0° Centigrade (32° Fahrenheit) for more than thirty days.[25]

Existing law provides set fees to be charged by the DHS for large quantity generators,[26] transfer stations,[27] off-site medical waste treatment facility permits,[28] and the evaluation of alternative treatment tech-

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19. CAL. HEALTH & SAFETY CODE § 25040 (West 1990); *see supra* note 13 and accompanying text (discussing the penalties for violations of the Act); *see also* Karen Pallarito, *The Burning Question; More Hospitals Are Facing Concerns About Incineration, Considering Alternatives for Disposing of Their Waste*, MOD. HEALTHCARE, March 29, 1993, at 36 (detailing the problems of incineration of medical wastes, new laws restricting incineration, and disposal options for medical waste generators); Ronald Rosenberg, *Biomedical Waste Systems: Sees Growth in Medical Waste*, BOSTON GLOBE, June 7, 1992, at 36 (reporting on the creation of a medical waste disposal firm in response to the growing concern for contamination of improperly disposed medical waste).

20. CAL. HEALTH & SAFETY CODE § 25049.1 (enacted by Chapter 813).

21. *Id.* § 25020.5 (West 1992); *see id.* (defining biohazardous waste as laboratory waste; human or animal specimen cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories, and wastes from the production of bacteria, viruses, or the use of spores, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures).

22. *Id.* § 25026.5 (West 1992); *see id.* (defining sharps waste as any device having acute rigid corners, edges, or protuberances capable of cutting or piercing, including hypodermic needles, syringes, blades, and needles with attached tubing, and broken glass items).

23. *Id.* § 25081(d) (amended by Chapter 813); *see supra* note 13 and accompanying text (discussing the penalties for violations of the Act).

24. CAL. HEALTH & SAFETY CODE § 25081(d)(1) (amended by Chapter 813) (adding the 20 pound requirement as the quantity level which invokes the storage time limitation).

25. *Id.*

26. *See id.* § 25022.8 (West 1992) (defining large quantity generator as a medical waste generator that generates 200 or more pounds per month of medical waste).

27. *See id.* § 25027.5 (West 1990) (defining transfer station as any off-site location where medical waste is loaded, unloaded, or stored during the normal course of transportation of the medical waste).

28. *See id.* § 25079.3 (West 1992) (specifying the fees for off-site treatment facilities as $10,000 for autoclave; and $15,000 for incinerator or other approved technology; in addition DHS will charge an application fee of $100 per hour spent processing the application but fee will not exceed $50,000); *see* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 147 (1981) (defining autoclave as an airtight chamber than can be filled with steam under pressure or surrounded by another chamber for the steam and that is used for sterilizing, cooking, or other purposes requiring moist or dry temperatures above 212° F without boiling).

nologies.[29] Chapter 813 levies an additional annual medical waste treatment facility inspection and permit fee, as specified.[30]

JCB

Environmental Protection; regulation of solid waste disposal

Public Resource Code § 43022 (new); §§ 43600, 43601, 43602, 43604, 43610 (amended).
AB 1827 (Sher); 1993 STAT. Ch. 289
(Effective July 30, 1993)

Under existing law, any person[1] owning or operating[2] a solid waste landfill[3] must submit evidence to the California Integrated Waste Management Board[4] that the person has the financial ability[5] to provide for the cost of closure,[6] and for a specified number of years of postclosure[7] maintenance.[8] Under Chapter 289, the number of years an

29. *See id.* § 25059 (amended by Chapter 813) (specifying the registration and annual permit fees for large quantity generators).

30. *Id.*; *see id.* (mandating a $300 fee for acute care facilities with 1 to 99 beds, $500 for acute care facilities with 100 to 250 beds, and $1,000 for acute care facilities with 251 or more beds). For facilities other than acute care facilities, the annual medical waste treatment facility inspection and permit fee is $300. *Id.*

1. *See* CAL. PUB. RES. CODE § 40170 (West Supp. 1993) (defining person as an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any entity).

2. *See id.* § 40160 (West Supp. 1993) (defining operator of a disposal site).

3. *See id.* § 46027 (West Supp. 1993) (defining solid waste landfill as a disposal facility that accepts Class III solid waste material as defined in the California Code of Regulations); CAL. CODE REGS. tit. 23, § 2533 (defining a class III solid waste landfill).

4. *See* CAL. GOV. CODE § 12812 (West Supp. 1992) (including the California Integrated Waste Management Board as one of the agencies constituting the California Environmental Protection Agency).

5. *See* 40 C.F.R. § 258.74(a)-(j) (1992) (listing financial assurance criteria).

6. *See* CAL. HEALTH & SAFETY CODE § 25208.2(d) (West 1992) (defining close the impoundment as the permanent termination of all hazardous waste discharge operations at a waste management unit, and any operations necessary to prepare the waste management unit for post closure maintenance, which are conducted pursuant to the federal Resource Conservation and Recovery Act of 1976); 42 U.S.C. §§ 6901-6982 (1988) (enacting the federal Resource Conservation and Recovery Act of 1976); *see also* CAL. PUB. RES. CODE § 46022 (West Supp. 1993) (defining closure plan as a plan proposed by the owner or operator of a solid waste landfill to close the landfill in accordance with permit conditions required by the board).

7. *See* CAL. HEALTH & SAFETY CODE § 25878 art. 2(O) (West Supp. 1993) (defining the post closure period as that period of time after completion of closure of a disposal facility during which the licensee must implement necessary maintenance to assure the stability of the facility); *see also* CAL. PUB. RES. CODE § 46026 (West Supp. 1993) (defining post closure plan as a plan prepared by the owner or operator of a solid waste landfill specifying how to maintain the landfill for at least 30 years after closure).

owner or operator must demonstrate financial ability for a postclosure maintenance plan is increased from fifteen to thirty years.[9]

Existing state law regulates the disposal[10] of solid waste.[11] Chapter 289 prohibits the open burning[12] of solid waste at any solid waste landfill with the exception of the infrequent burning of agricultural waste,

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8. CAL. PUB. RES. CODE § 43600 (amended by Chapter 289); *see id.* §§ 40000-49000 (West Supp. 1993) (enacting The California Waste management Act of 1989 encompassing the regulation of solid waste disposal); *id.* § 43501 (West Supp. 1993) (setting forth closure plan maintenance requirements); *see also* 42 U.S.C. §§ 6901-6982 (1988) (enacting the Resource Conservation and Recovery Act of 1976, which sets forth requirements for the regulation of solid waste landfills and authorizes the Environmental Protection Agency to approve state hazardous waste programs which conform with federal guidelines); *id.* § 6901(a)(4) (1983) (stating that, while regulation of solid waste disposal is a function of the state, the federal government must provide guidelines for state practices because waste disposal is a national concern); *id.* § 6904(a) (1983) (requiring the states to implement the federal provisions for regulation of solid waste landfills); *id.* § 6928(a)(1) (West Supp. 1993) (stating that, where any owner or operator of a solid waste landfill does not comply with federal standards, the federal government may enforce the provisions of the Resource Conservation and Recovery Act by bringing a civil action in district court, by issuing an order to comply, or both); In the Matter of Frazier, No. WQ 93-4, 1993 Cal. ENV LEXIS 1 at *1 (State Water Res. Cntrl. Bd. Feb., 1993) (reviewing a closure and postclosure plan of Hamilton Air Force Base Landfill, at the request of residents affected by the closure plan, to decide if the plan to cap the landfill should be replaced by a plan to treat hot spots, and concluding that the closure plan to cap the landfill should minimize any infiltration of surface water so that the hot spots alternative was not necessary); Southern California Edison Co., No. 87-09-022, 1987 Cal. PUC LEXIS 192 at *4 (Cal. Pub. Ut. Comm. Sept. 10, 1987) (noting that the purpose of the Resource Conservation and Recovery Act is to assure that, once a landfill has been shut down, it will not pose a threat to human health or the environment; and, noting that, if closure is improper, the federal government will take over by providing cleanup at the expense of those parties who used the landfill); *cf.* ME. REV. STAT. ANN. tit. 38, § 1310-C (1992) (providing for the state implementation of the provisions of the Resource Recovery and Conservation Act of the federal government); MO. ANN. STAT. § 260.226 (Vernon 1991) (regulating solid waste landfill closure). *See generally* John J. Dougherty, *Planning Helps Prevent Liability-related Problems*, ELECT'L. WD., Mar. 1993, at 46 (informing companies, which have to choose a landfill facility for disposal of hazardous waste, to limit their liability by choosing a facility that can show proof of financial assurance to implement its closure plan according to federal law); William L. Kovacs & Anthony A. Anderson, *Symposium on Waste Management Law and Policy: Failure of the Current Waste Management Policy: States as Market Participants in Solid Waste Disposal Services — Fair Competition or the Destruction of the Private Sector*, 18 ENVTL. L. 779, 780-815 (1988) (discussing the problems with the federal government regulating the states in the area of solid waste landfill requirements).

9. CAL. PUB. RES. CODE § 43600(a), (amended by Chapter 289); *see id.* § 43600(b) (amended by Chapter 289) (ordering compliance of solid waste landfills with 40 C.F.R. § 258.71(a) (1992)); *id.* § 43610(a) (amended by Chapter 289) (exempting specified types of cities located in Kings County from postclosure maintenance funding requirements); *see also* 40 C.F.R. § 258.71(a) (1992) (requiring solid waste landfill owners or operators to demonstrate financial ability for postclosure maintenance); 42 U.S.C. § 6929 (1988) (permitting the state to retain authority over the regulation of its sanitary landfills only if it does not permit regulations which are less stringent than federal law).

10. *See* CAL. PUB. RES. CODE § 40192 (West 1988) (defining disposal for the purposes of sanitary landfills).

11. *Id.* §§ 40000-49000 (West Supp. 1993); *see* § 40191(a)-(c) (West Supp. 1993) (defining solid waste); City of Dublin v. County of Alameda, 14 Cal. App. 4th 264, 269, 17 Cal. Rptr. 2d 845, 849 (1993) (stating that the California Integrated Waste Management Act of 1989 expresses a need for a comprehensive solid waste management program while simultaneously encouraging local control over solid waste disposal, and holding that a local initiative regulating solid waste disposal should not be foreclosed by the Act).

12. *See* 40 C.F.R. 240.101(r) (1992) (defining open burning).

silvicultural wastes, landclearing debris, diseased trees, or the debris from emergency cleanup operations.[13]

JSE

Environmental Protection; solid and hazardous wastes and substances

Health and Safety Code § 25357.5 (new); §§ 25160, 25186.1, 25356.1, 25358.1, 25359.2, 25367 (amended); Public Resources Code § 44100 (amended).
SB 1092 (Killea); 1993 STAT. Ch. 1283

Existing law requires generators of hazardous waste[1] to provide hazardous waste transporters[2] with a manifest[3] required by the Department of Toxic Substances Control (Department).[4] Under prior law, when transporting hazardous waste out of state, hazardous waste generators had to complete a standard manifest, or the recipient state's manifest, and sign and attach a one page out-of-state manifest cover form.[5] Chapter 1283 deletes the requirement of attaching the one page out-of-state manifest cover form.[6]

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13. CAL. PUB. RES. CODE § 43022(a) (enacted by Chapter 289); *see id.* § 43022(b) (enacted by Chapter 289) (ordering state compliance with 40 C.F.R. § 241.205-3(a) (1992)); 40 C.F.R. § 241.205-3(a) (1992) (prohibiting the open burning of solid waste at any solid waste facility).

1. *See* CAL. HEALTH & SAFETY CODE § 25205.1(e) (West Supp. 1993) (defining generator as a person who generates volumes of hazardous waste on or after July 1, 1988 in the amounts specified in California Health and Safety Code § 25205.5(b)); *id.* § 25117 (West 1992) (defining hazardous waste).

2. *See id.* § 25169.1(h) (West 1992) (providing that no person shall transport hazardous waste within California unless the vehicle displays a certificate of compliance showing that it has been inspected within the last 12 months).

3. *See id.* § 25160(a) (amended by Chapter 1283) (defining manifest as a shipping document originated and signed by the hazardous waste generator that includes all applicable information required by federal and state regulations).

4. *Id.* § 25160 (amended by Chapter 1283); *see id.* § 25111 (West 1992) (defining department as the Department of Toxic Substances Control); *see also* CAL. CODE REGS. tit. 22, § 66262.20 (1993) (providing general requirements for obtaining manifests and transporting hazardous substances); *id.* § 66263.11 (1993) (listing registration requirements for hazardous waste transporters); *Review of Selected 1990 California Legislation*, 22 PAC. L.J. 557 (1991) (analyzing the change in definition of manifest); *cf.* 49 C.F.R. § 171.1 (1991) (setting forth federal regulations governing the transportation of hazardous materials).

5. 1990 Cal. Stat. Ch. 1054, sec. 1, at 3827 (amending CAL. HEALTH & SAFETY CODE § 25160).

6. CAL. HEALTH & SAFETY CODE § 25160(b)(2) (amended by Chapter 1283); *see id.* (requiring that the generator complete its own manifest or manifest required by the receiving state and submit a copy to the Department within 30 days of transport).

Existing law requires that proceedings for the denial, suspension, or revocation of a permit,[7] registration, or certificate under the hazardous waste control program[8] be addressed by specified proceedings governing administrative adjudication.[9] Chapter 1283 instead requires that the proceedings to determine whether to issue, modify, or deny a permit, registration, or certificate be conducted by regulations set forth by the Department.[10]

Under existing law, the Department, State Water Resources Control Board or regional water quality control board[11] shall prepare or approve remedial action plans.[12] The remedial action plan is not required if the action is taken at the site, the total cost of the removal action[13] is less than $400,000, and the Department makes a determination after appropriate testing and analysis that the removal action has adequately abated conditions.[14] Chapter 1283 adds that a remedial action plan is not required for a site if it is already listed on the National Priority List[15] and the Department or the regional board concur with the remedy selected by the Environmental Protection Agency pursuant to the Comprehensive

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7. *See id.* § 25180.1 (West Supp. 1993) (defining permit as including matters deemed to be permits according to the California Health and Safety Code § 25198.6(c)); *id.* § 25198.6(c) (West Supp. 1993) (providing that federal or tribal permits are permits under state law); *see also id.* § 25201 (West Supp. 1993) (setting forth when a permit is required).

8. *See id.* §§ 25100-25250 (West 1992 & Supp. 1993) (stating the provisions of the Hazardous Waste Control Act). *See generally* IT Corp. v. Solano County Bd. of Supervisors, 1 Cal. 4th 81, 91, 820 P.2d 1023, 1028-29, 2 Cal. Rptr. 2d 513, 518-19 (1991) (stating that the Hazardous Waste Control Act directs the Department of Health Services to adopt standards and regulate the management of hazardous waste through the permit system).

9. CAL. HEALTH & SAFETY CODE § 25186.1 (amended by Chapter 1283); *see id.* § 25186.1(a) (amended by Chapter 1283) (providing that, except as specified in § 25186.2, proceedings for the denial, suspension, or revocation of a permit, registration, or certificate shall be conducted pursuant to California Government Code §§ 11500-11529, and in the event of conflict, the Government Code shall prevail).

10. CAL. HEALTH & SAFETY CODE § 25186.1(b) (amended by Chapter 1283).

11. *See id.* § 25356.1(a) (amended by Chapter 1283) (defining regional board as a California regional water quality control board); CAL. WATER CODE § 13100 (West 1992) (creating the State Water Resources Control Board and the California regional water quality control boards).

12. *Id.* § 25356.1(c) (amended by Chapter 1283); *see id.* § 25322 (West 1992) (defining remedial action); *cf.* 42 U.S.C. § 9601(24) (1988) (defining remedial action under CERCLA).

13. *See* CAL. HEALTH & SAFETY CODE § 25323 (West 1992) (defining removal action); *cf.* 42 U.S.C. § 9601(23) (1988) (defining remove and removal under CERCLA).

14. CAL. HEALTH & SAFETY CODE § 25356.1(h)(2) (amended by Chapter 1283).

15. *See* 33 U.S.C. § 1321(d) (Supp. II 1990) (establishing the National Contingency Plan for removal of discharged oil and hazardous substances); 42 U.S.C. § 9605(a) (1988) (setting forth criteria for creating the national priority list for hazardous waste response targets under the National Contingency Plan).

Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).[16]

Existing law provides that a potentially responsible party named in the final remedial action plan must seek judicial review of the plan by filing a petition for writ of mandate within thirty days of a final remedial action plan being issued by the Department, and any other person who has a right to judicial review must do so within one year after the final plan is issued.[17] In addition, existing law states that the court is required to uphold the remedial action plan if the plan is based upon substantial evidence.[18] Chapter 1283 provides that any judicial review regarding the adequacy of any response action shall be limited to the administrative record.[19]

Existing law requires a person dealing with hazardous substances to furnish information to any departmental agent.[20] Chapter 1283 allows the

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16. CAL. HEALTH & SAFETY CODE § 25356.1(h)(3) (amended by Chapter 1283); *see* 42 U.S.C. §§ 9601-75 (1988 & Supp. II 1990) (setting forth the provisions of CERCLA). *But see* New York v. General Elec. Co., 592 F. Supp. 291, 303, (N.D.N.Y. 1984) (providing that under CERCLA, cooperative agreements and the national priorities list are irrelevant for purposes of liability, because by authorizing state claims for cost recovery and natural resources damages, 42 U.S.C. § 9607(a)(4)(A) provides the state with an essential tool to respond to sites that will never be addressed with Superfund money).

17. CAL. HEALTH & SAFETY CODE § 25356.1(g) (amended by Chapter 1283).

18. *Id.* § 25356.1(g)(2) (amended by Chapter 1283); *see* 42 U.S.C. § 9621(f)(3)(B)(ii) (1988) (providing that if the state does not concur in the President's selection of a remedial action then the state must establish on the administrative record that the President's finding is not supported by substantial evidence, and the remedial action shall be modified to conform to such standard, requirement, or limitation); United States v. Colorado, 990 F.2d 1565, 1580-81 n.20 (10th Cir. 1993) (providing that under CERCLA a court may modify the remedial action if substantial evidence does not support the President's finding). *But see* 42 U.S.C. § 9613(j)(2) (1988) (establishing an arbitrary and capricious standard under CERCLA when considering objections raised in any judicial action under this chapter); United States v. Northeastern Pharmaceutical & Chem. Co., 810 F.2d 726, 748 (8th Cir. 1986) (following the arbitrary and capricious standard under CERCLA).

19. CAL. HEALTH & SAFETY CODE § 25357.5(a) (enacted by Chapter 1283); *see id.* § 25357.5(b)-(c) (enacted by Chapter 1283) (providing that, in a selection of a response action not in accordance with the law, the court shall limit damages not inconsistent with the National Contingency Plan, or if procedural errors by the Department are raised as a defense, the court may impose damages only if the errors are serious and of central relevance to the action); *cf.* 42 U.S.C. § 9613(j)(1) (1988) (limiting judicial action or judicial review of any issue regarding the adequacy of a response action under CERCLA to the administrative record); *Colorado*, 990 F.2d at 1580-81 n.20 (stating that when the President waives applicable or relevant and appropriate requirements (ARAR's) with respect to federal facilities, the state may seek judicial review in federal court limited to the administrative record); United States v. Akzo Coatings of America, Inc., 719 F. Supp. 571, 581 (E.D. Mich. 1989) (finding that pursuant to 42 U.S.C. 9613(j), judicial review of issues concerning the adequacy of response actions is limited to the administrative record and the response action will be upheld unless the court finds that the selected response was arbitrary and capricious, or not in accordance with the law).

20. CAL. HEALTH & SAFETY CODE § 25358.1(b) (amended by Chapter 1283); CAL. PUB. RES. CODE § 44100(b) (amended by Chapter 1283); *see id.* (requiring persons dealing in solid waste to provide, under penalty of perjury, any non-privileged technical or monitoring program or other reports the enforcement agency may specify under the California Integrated Waste Management Act of 1989); CAL. HEALTH & SAFETY CODE § 25316 (West 1992) (defining hazardous substance); *cf.* 42 U.S.C. § 9601(14) (1988) (defining hazardous substance under CERCLA). *See generally* City of Dublin v. County of Alameda, 14 Cal. App. 4th 264, 271, 17

departmental agent to require any potentially responsible party,[21] or one commercially related to a potentially responsible party to furnish the requested information regarding the hazardous substance.[22] Chapter 1283 additionally allows the departmental agent to enter a nonresidential area[23] at a reasonable time if there is a reasonable belief that there may be a release or a threatened release of a hazardous substance.[24] The entry is conditioned upon the owner's consent or an inspection warrant[25] unless there is an emergency giving rise to an immediate public health threat.[26]

Cal. Rptr. 2d 845, 848 (1993) (recognizing that the California Integrated Waste Management Act establishes deadlines for Source Reduction and Recycling Elements (SRRE's) and countywide plans, and failure to submit an adequate or timely plan may result in sanctions).

21. *See* CAL. HEALTH & SAFETY CODE § 25323.5 (West 1992) (defining responsible party or liable person as any person described under 42 U.S.C. § 9607(a)).

22. CAL. HEALTH & SAFETY CODE § 25358.1(b) (amended by Chapter 1283); *cf.* ARIZ. REV. STAT. ANN. § 49-288(b) (1993); GA. CODE ANN. § 12-8-70(d) (1992); MONT. CODE ANN. § 75-10-707(2) (1993); OR. REV. STAT. § 465.250(1) (1992); PA. STAT. ANN. tit. 35, § 6020.503(A)-(B) (1993) (requiring a person who has or may have information relevant to the release or threatened release of a hazardous substance to furnish the requested information).

23. *See* CAL. HEALTH & SAFETY CODE § 25358.1(d) (amended by Chapter 1283) (listing nonresidential areas where any officer or employee of the department may enter in accordance with California Health and Safety Code § 23358.1(h)).

24. *Id.* § 25358.1(d) (amended by Chapter 1283); *cf.* 42 U.S.C. § 6927(a) (1988) (providing that an authorized agent may enter at reasonable times to inspect any place where hazardous wastes are or have been located); ARIZ. REV. STAT. ANN. § 49-288(b)-(c) (1993) (providing the director or a designated agent may enter a facility after reasonable notice at a reasonable time to a facility where there is a release or threatened release of hazardous substances); MICH. COMP. LAWS § 299.612a(2)(b)(ii)(A) (Supp. 1993) (providing that if conduct or causes lead to the determination that the property is a facility and that their may be a release or threat of release of hazardous substances, then the state or local unit of government shall conduct an environmental assessment which includes an on-site inspection of the property); PA. STAT. ANN. tit. 35, § 6020.503(c) (1993) (listing circumstances where the state officials may enter a site or other place or property with regard to hazardous waste inspections); UTAH CODE ANN. § 19-6-304 (1991) (providing that the department may enter and inspect property where there is reason to believe that there are hazardous materials or substances being released); WASH. REV. CODE § 70.105D.030(1)(a) (1991) (allowing the department to investigate potentially liable persons if there is a reasonable basis to believe of a release or threatened release of a hazardous substance, and the department gives reasonable notice before entering the property); National-Standard Co. v. Adamkus, 881 F.2d 352, 360 (7th Cir. 1989) (stating that the main purpose of an inspection and sampling visit is to detect the presence of hazardous wastes and that the EPA's broad inspection authority is tempered by its need to show probable cause and obtain a search warrant when consent is not obtained).

25. *See* CAL. CIV. PROC. CODE § 1822.50 (West 1982) (defining an inspection warrant as an order in writing, directing the state or a local official to conduct any inspection required or authorized by state or local law); *see also id.* § 1822.51 (West Supp. 1993) (describing the requirements for the issuance of an inspection warrant).

26. CAL. HEALTH & SAFETY CODE § 253588.1(h) (amended by Chapter 1283); *see id.* (stating that consent may also be given by the owner's authorized representative); *cf.* 42 U.S.C. § 9604(e) (1988) (allowing a warrant to be used to enter property under CERCLA if there is a reasonable cause to believe that there may be a release or threat of release of a hazardous substance); GA. CODE ANN. § 12-8-70(b) (1992) (providing that a warrant must be obtained in the event a person does not consent to an inspection); MONT. CODE ANN. § 75-10-707(5) (1993); OR. REV. STAT. § 465.250(3) (1992) (stating that the director may issue an order directing compliance if consent is not obtained); Koppers Indus., Inc. v. EPA, 902 F.2d 756, 758 (9th Cir. 1990) (granting the EPA a warrant to enter a facility on the basis the EPA had a reason to believe that there had been a release

MBB

Environmental Protection; unified hazardous waste program

Government Code §§ 15363.5, 15363.6 (amended and renumbered).
AB 1732 (Brulte); 1993 STAT. Ch. 1153
(Effective October 10, 1993)

Health and Safety Code §§ 25204.6, 25404, 25404.1, 25404.2, 25404.3, 25404.4, 25404.5, 25404.6, 57000, 57001, 57002, 57003, 57004, 57005 (new); § 39661 (amended).
SB 1082 (Calderon); 1993 STAT. Ch. 418

Existing law has established numerous boards, offices, and departments within the California Environmental Protection Agency[1] (Cal-EPA) that impose standards designed to protect water quality and to regulate hazardous waste.[2] Chapter 418 requires the Cal-EPA and the departments under its jurisdiction to implement quality government programs to achieve

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of hazardous substances).

1. *See* CAL. GOV'T CODE § 12812 (West 1992) (providing that the California Environmental Protection Agency consists of the State Air Resources Board, the Office of Environmental Health Hazard Assessment, the California Integrated Waste Management Board, the State Water Resources Control Board, regional water quality control boards, and the departments of Pesticide Regulation and Toxic Substances Control).

2. *See* CAL. FOOD & AGRIC. CODE § 11451 (West Supp. 1993) (providing that the Department of Pesticide Regulation is within the Cal-EPA); *id.* § 11454 (West Supp. 1993) (stating that the Department of Pesticide Regulation has the same powers, duties, and responsibilities that are vested within the Department of Food and Agriculture in relation to pesticide regulation); CAL. HEALTH & SAFETY § 58000 (West Supp. 1993) (providing that the Department of Toxic Substances Control is within the Cal-EPA); *id.* § 58004 (West Supp. 1993) (stating the Department of Toxic Substances Control has all the duties and responsibilities under the jurisdiction of the Toxic Substances Control Program of the State Department of Health Services); *id.* § 59000 (West Supp. 1993) (providing that the Office of Environmental Health Hazard Assessment is within the Cal-EPA); *id.* § 59004 (West Supp. 1993) (setting forth the functions and responsibilities of the Office of Environmental Health Hazard Assessment relating to the assessment of human health risks of chemicals); CAL. PUB. RES. CODE § 40052 (West Supp. 1993) (stating that the purpose of the Integrated Waste Management Program is to provide for more efficient and cost-effective solid waste management plan); *id.* § 40400 (West Supp. 1993) (providing that the California Integrated Waste Management Board is within the Cal-EPA); CAL. WATER CODE § 174 (West 1971) (setting forth the legislature's intent to establish the Water Resources Control Board to regulate water resources within the state); *id.* § 13100 (West 1992) (providing that the Water Resources Control Board and the regional water quality boards are within the Cal-EPA); *see also* 44 Op. Cal. Att'y Gen. 126, 126 (1964) (providing that the State Water Quality Control Board is authorized to coordinate water quality activities of state agencies).

specified goals.[3] In addition, Chapter 418 requires the Cal-EPA and each board, department, and office within the agency to submit an annual report on the attainment of their performance objectives and continuous quality improvement efforts to the Governor and Legislature, as part of the budget process.[4] These agencies are also required to implement a fee accountability program.[5] Chapter 418 requires the Cal-EPA to conduct a

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3. CAL. HEALTH & SAFETY CODE § 57000(b) (enacted by Chapter 418); *see id.* (stating that the quality government programs are designed to increase the levels of environmental protection and the public's satisfaction through improvements to the quality, efficiency, and cost effectiveness of state programs which implement and enforce state and federal environmental protection statutes). Chapter 418 requires the Secretary for Environmental Protection to create an advisory group comprised of state and local, government, business, environmental, and consumer representatives experienced in quality management to assist in the implementation of cost-effective regulatory programs. *Id.* The Secretary must also establish a quality management program for use by local agencies charged with implementing air quality, water quality, toxics, solid waste, and hazardous waste laws and regulations. *Id. See also* CAL. GOV'T CODE § 16050 (West 1992) (establishing the State Environmental Quality Study Council); *id.* § 16051 (West 1992) (providing that the composition of the council shall consist of representatives from various state agencies along with seven public members appointed by the governor); *id.* § 16080 (West 1992) (setting forth the council's mandatory duties); *id.* § 16081 (West 1992) (setting forth the council's discretionary powers); *cf.* 33 U.S.C. §§ 1251-1387 (1988 & Supp. II 1990) (codifying the Clean Water Act); 42 U.S.C. §§ 4321-4370 (1988 & Supp. II 1990) (codifying the National Environmental Policy Act (NEPA)); *id.* § 4342 (1988) (creating the Council on Environmental Quality in the Executive Office of the President which shall be composed of three members appointed by the President); *id.* § 4344 (1988) (providing that the duties of the Council are to assist and advise the President on environmental programs); *id.* §§ 6901-6992k (1988 & Supp. II 1990) (codifying the Resource Conservation and Recovery Act); *id.* §§ 7401-7671q (1988 & Supp. II 1990) (codifying the Clean Air Act); *id.* §§ 9601-9675 (1988 & Supp. II 1990) (codifying the Comprehension Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)); National Helium Corp. v. Morton, 455 F.2d 650, 656 (10th Cir. 1971) (stating that in order for the Council established by NEPA to carry out its duties, the Council must be apprised of agency actions having environmental consequences so it may use the information to coordinate the reporting of government activities so as to aid policy makers). *But see* Oregon Envtl. Council v. Kunzman, 714 F.2d 901, 905 (9th Cir. 1983) (stating that one agency cannot rely on another's examination of environmental effects under the National Environmental Policy Act of 1969). *See generally* James E. Krier, *Environmental Watchdogs: Some Lessons from a "Study" Council*, 23 STAN. L. REV. 623, 628 (1971) (stating that the Environmental Quality Study Council performs ombudsman-like functions, which includes the responsibility to identify shortcomings in governmental structure, and to recommend better approaches).

4. CAL. HEALTH & SAFETY CODE § 57000(c) (enacted by Chapter 418); *see* CAL. GOV'T CODE § 13320 (West 1992) (requiring each state agency and court for which an appropriation has been made to submit a complete and detailed budget); *id.* § 13308(a) (West 1992) (requiring the Director of Finance to provide the Legislature with an estimate of the General Fund revenues and workload budget for the ensuing fiscal year); *see also* CAL. CONST. art. IV, § 12(b) (amended 1974) (providing that the Governor may require a state agency, officer, or employee to furnish information that is deemed necessary to prepare a budget). *See generally* Chemical Mfrs. Ass'n v. EPA, 919 F.2d 158, 167 (D.C. Cir. 1990) (stating that the EPA is entitled to considerable latitude in drawing conclusions from scientific and technological research in passing it's regulations).

5. CAL. HEALTH & SAFETY CODE § 57001(a) (enacted by Chapter 418); *see id.* (requiring that each office, board, and department within the Cal-EPA, on or before December 31, 1995, to implement a fee accountability program designed to encourage efficient and cost-effective operation of the programs, and to ensure that the amount of each fee is not more than reasonably necessary to fund the efficient operation of the programs for which the fees are assessed); *id.* § 57001(b) (enacted by Chapter 418) (establishing the standards for determining the appropriate fee structure); *id.* § 57001(d) (enacted by Chapter 418) (providing a list of fees to which this section applies). The fees include: (1) The fee assessed pursuant to the California Food and

study regarding the purposes for which the revenue derived from fines and penalties is directed.[6]

Chapter 418 requires the Director of Environmental Health Hazard Assessment (Director) to convene an advisory committee consisting of scientists not employed by the agencies under the Cal-EPA, to conduct a comprehensive review of the policies, methods, and guidelines followed for the identification and assessment of chemical toxicity.[7] This committee's purpose is to make recommendations concerning these policies to the Director and the Secretary of Environmental Protection (Secretary of EP).[8] Each one of these agencies is required to evaluate

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Agricultural Code § 13146(d); (2) the surface impoundment fees assessed pursuant to the California Health and Safety Code § 25208.3; (3) the fee assessed pursuant to the California Health and Safety Code § 43203 regarding the verification of the compliance for new vehicles emissions; (4) the fee assessed pursuant to the California Health and Safety Code § 44380; (5) the fee assessed pursuant to the California Public Resources Code § 43212 to recover the costs of the California Integrated Waste Management Board; (6) the fee assessed pursuant to the California Public Resources Code § 43508 to recover costs for the review of closure plans; (7) the water rights permit fees assessed pursuant to Chapter 8 of the California Water Code §§ 1525-60; (8) the fee assessed pursuant to the California Water Code § 13260 regarding waste discharge requirements, and the fee assessed pursuant to the California Water Code § 12360 for National Pollution Discharge Elimination System permits; and (9) the costs assessed pursuant to the California Water Code § 13304 regarding the implementation and enforcement of cleanup and abatement orders. CAL. HEALTH & SAFETY CODE § 57001(d) (enacted by Chapter 418).

6. CAL. HEALTH & SAFETY CODE § 57002 (enacted by Chapter 418); *see id.* (providing that the study shall survey state, regional, and local agencies charged with implementing air and water quality, toxics, solid waste, and hazardous waste laws and regulations to determine how much revenue is generated from the fines, and to what purposes the revenue is directed and to what extent the funds support the agency's state, regional, and local operations). *See generally* Liquid Chem. Corp. v. Department of Health Servs., 227 Cal. App. 3d 1682, 1704-05, 279 Cal. Rptr. 103, 114-15 (1991) (stating that the operator of a fertilizer manufacturing company violated the Hazardous Waste Control Act and was personally liable for a $250,000 fine).

7. CAL. HEALTH & SAFETY CODE § 57004(a) (enacted by Chapter 418).

8. *Id.* § 57004(b) (enacted by Chapter 418); *see id.* (stating that the purpose of the comprehensive review is to determine whether or not any changes should be made to ensure the state's policies, methods, and guidelines for the identification and assessment of chemical toxicity are based on current scientific knowledge and practices employed by the National Academy of Sciences, the EPA, and other similar bodies); *see also id.* § 57003(a) (enacted by Chapter 418) (stating that the boards, departments, and offices within the agency must convene a public workshop to discuss the guidelines of the proposed chemical risk assessment policies). This workshop will ensure that sound scientific methods and practices are used in the evaluation of toxic chemicals. *Id.* Following the workshop, the agency shall revise the guidelines, policies, or health evaluations, to reflect any changes, and circulate it for public comment for at least 30 days. *Id.*; *cf.* 42 U.S.C. § 4344(a) (1988) (allowing the Counsel on Environmental Quality to hire officers and employees which are necessary to carry out its functions under NEPA); *id.* § 4345 (1988) (providing that the Council may consult with the Citizens' Advisory Committee on Environmental Quality and representatives from science, industry, agriculture, labor, conservation organizations, and other groups as it deems advisable). *See generally* Lombardo v. Handler, 397 F. Supp. 792, 802 (D.C. Cir. 1975) (holding that the National Academy of Sciences is not a government controlled corporation, nor is it like an administrative agency, but it compiles information while conducting studies pursuant to contractual agreements with federal agencies), *cert. denied*, 431 U.S. 932 (1977).

whether there is a less costly alternative before adopting any major regulations.[9]

Chapter 1153 requires the Secretary of Trade and Commerce[10] to advise the Governor and Legislature on the problems and concerns of the business community, including the impact and expected impact, of governmental policies and regulations which may adversely affect economic development.[11]

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9. CAL. HEALTH & SAFETY CODE § 57005(a) (enacted by Chapter 418); *see id.* (providing that the evaluation of alternatives to the proposed regulation is to be submitted to the board, department, or office pursuant to California Government Code § 11346.53(a)(2)); *id.* § 57005(b) (enacted by Chapter 418) (defining major regulation as any regulation that will have an economic impact on the state's business enterprises in an amount exceeding ten million dollars); *see also* CAL. GOV'T CODE § 11346.53(a)(1) (West Supp. 1993) (providing that state agencies, when proposing to adopt or amend any administrative regulation, must assess the possible adverse economic impact on businesses and individuals); CAL. PUB. RES. CODE § 21002 (West 1986) (declaring that public agencies should not approve projects if there are feasible alternatives that would substantially lessen the significant environmental effects of such projects); Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 566, 801 P.2d 1161, 1168, 276 Cal. Rptr. 410, 417 (1990) (specifying that an environmental impact report for any project subject to CEQA review must consider a reasonable range of alternatives to the project which: (1) Offer substantial environmental advantages over the project proposal; and (2) may be feasibly accomplished in a successful manner considering the economic, environmental, social and technological factors); City of Del Mar v. City of San Diego, 133 Cal. App. 3d 401, 417, 183 Cal. Rptr. 898, 908-09 (1982) (holding that the City did not abuse it's discretion under CEQA by rejecting as infeasible various alternatives to a community planning area project because of the social and economic realities in the region); *cf.* 42 U.S.C. § 4332(c) (1988) (providing that NEPA requires all agencies of the Federal Government to include the environmental impact and alternatives to the proposed action on every recommendation or report on proposals for legislation and other major federal actions); North Buckhead Civic Ass'n v. Skinner, 903 F.2d 1533, 1541 (11th Cir. 1990) (remarking that an environmental impact statement is satisfactory if the treatment of alternatives, when considered against the rule of reason is sufficient to permit a reasoned choice); Robinson v. Knebel, 550 F.2d 422, 425 (8th Cir. 1977) (stating that the duty to develop alternatives is subject to the rule of reason and the discussion of alternatives does not need to be exhaustive if the environmental impact statement presents sufficient information for a reasoned choice of alternatives).

10. *See* CAL. GOV'T CODE § 15311 (amended and renumbered by Chapter 1153) (stating that the Trade and Commerce Agency consists of the California State World Trade Commission and the Department of Commerce); *id.* § 15363.6 (amended and renumbered by Chapter 1153) (listing the responsibilities of the Secretary of Trade and Commerce); *see also id.* § 12800 (West Supp. 1993) (including the Trade and Commerce agency within the state government); *id.* § 12801 (West 1992) (stating that each agency is under the supervision of an executive officer known as the secretary).

11. *Id.* § 15312(g) (amended and renumbered by Chapter 1153); *see id.* § 15363.6(e) (amended and renumbered by Chapter 1153) (stating that the Secretary of Trade and Commerce will serve as the Governor's principal staff adviser on economic development); *see also* CAL. PUB. RES. CODE §§ 21000-21178.1 (West 1986 & Supp. 1993) (setting forth the provisions of CEQA); Sierra Club v. County of Sonoma, 6 Cal. App. 4th 1307, 1315, 8 Cal. Rptr. 2d 473, 477 (1992) (stating that an EIR must be prepared where a local agency intends to approve or carry out a project that may have a significant effect on the environment), *review denied*, 1992 Cal. LEXIS 4394 (Sept. 27, 1992); Mann v. Community Redev. Agency, 233 Cal. App. 3d 1143, 1149, 285 Cal. Rptr. 9, 12 (1991) (stating that the EIR is the heart of CEQA and is intended to alert the public and appropriate officials of environmental changes before reaching an ecological point of no return); Marin Mun. Water Dist. v. KG Land Cal. Corp., 235 Cal. App. 3d 1652, 1661, 1 Cal. Rptr. 2d 767, 773 (1991) (specifying that both primary and secondary environmental consequences must be considered in determining whether a project may have a significant effect on the environment); *cf.* 42 U.S.C. §§ 4321-4370(c) (1988 & Supp. II 1990) (codifying the National Environmental Policy Act of 1969); *id.* § 4332(c) (1988) (requiring an environmental impact statement for any federal action or proposed legislation that may significantly affect the quality of the human

Chapter 418 requires the Secretary of EP to implement regulations for a unified hazardous waste regulatory program to consolidate the administration of statutory requirements for the regulation of hazardous materials.[12] Chapter 418 authorizes any city or other local agency which has been designated as an administering agency to apply to the Secretary of EP to become the certified unified program agency to implement the unified program within it's jurisdictional boundaries.[13]

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environment); Oregon Environmental Council v. Kunzman, 817 F.2d 484, 492 (9th Cir. 1987) (providing that an environmental impact statement ensures that federal agencies have sufficient information to decide whether to proceed with the action in light of potential environmental consequences); Sierra Club v. Department of Transp., 664 F. Supp. 1324, 1336 (N.D. Cal. 1987) (specifying that the purpose of NEPA is to educate the public and to ensure that there are informed decisions regarding environmental risk in proposed projects).

12. CAL. HEALTH & SAFETY CODE § 25404(b) (enacted by Chapter 418); *see id.* (providing that the Secretary for Environmental Protection must develop a consolidated hazardous waste regulatory program on or before January 1, 1996, after an appropriate number of public hearings and close consultation with the Director of the Office of Emergency Services, the State Fire Marshall, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, and affected business and public interests, including environmental organizations); *id.* § 25404(c) (enacted by Chapter 418) (setting forth the regulatory requirements that the unified program will consolidate); *id.* § 25404.1(a)(1) (enacted by Chapter 418) (specifying that all aspects of the unified program related to the adoption and interpretation of statewide standards are to be the responsibility of the state agency which has that responsibility under existing law). For underground storage tanks, the responsible agency will be the State Water Resources Control Board, while the Department of Toxic Substances Control has responsibility for variances issued, and for determinations whether or not a waste is hazardous. *Id.*; *see id.* § 25204.6(a) (enacted by Chapter 418) (providing that on or before January 1, 1995, the Secretary for Environmental Protection must develop a hazardous waste facility regulation and permitting consolidation program); *cf.* ILL. ANN. STAT. ch. 415, para. 5/2(b) (Smith-Hurd 1993) (stating that the purpose of the state's Environmental Protection Act is to establish a unified, state-wide program to protect and enhance the environment); County of Cook v. John Sexton Contractors Co., 389 N.E.2d 553, 555 (Ill. 1979) (providing that the Illinois General Assembly expressed its concern over environmental damage by declaring the need for a state-wide program to address environmental problems); Carlson v. Village of Worth, 343 N.E.2d 493, 498-99 (Ill. 1975) (affirming that the purpose of the act was to establish a unified state-wide system of environmental protection).

13. CAL. HEALTH & SAFETY CODE § 25404.1(b)(2) (enacted by Chapter 418); *see id.* § 25404.1(b)(1)-(2) (enacted by Chapter 418) (providing that each county must apply to be certified as a unified program on or before January 1, 1996, and any city or other local agency which, as of December 31, 1995, has been designated as an administering agency pursuant to California Health and Safety Code § 25502, or has assumed the responsibility for the implementation of Chapter 6.7 pursuant to California Health and Safety Code § 25283, may apply to the secretary to become a unified program agency to implement the unified program); *id.* § 25404.2(a) (enacted by Chapter 418) (listing the duties of the certified unified program agency in each jurisdiction). These duties include: (1) The implementation of a program to consolidate permits pursuant to California Health and Safety Code § 25404(c); (2) the consolidation and coordination of any local or regional regulations, ordinances or requirements pertaining to hazardous waste; (3) the implementation of a single unified inspection and enforcement program; and (4) the coordination of the unified inspection program with other federal, state, regional, and local agencies which affect facilities regulated by the unified program. *Id.*; *see id.* § 25404.3 (enacted by Chapter 418) (setting forth procedures and guidelines for a certification application to implement the unified program); *id.* § 25404.4(a) (enacted by Chapter 418) (allowing the Secretary of EP to review the ability of the certified implementing agency in carrying out it's duties, and to withdraw the certification if the agency fails to meet its obligations). Before withdrawing an agency's certification, the secretary must notify the agency of the Secretary's intent to withdraw certification and provide a reasonable time for the agency to correct the deficiencies specified in the notification. *Id.* § 25404.4(b) (enacted by Chapter 418).

Chapter 418 requires each certified unified program agency to institute a single fee system, which will include a surcharge to be deposited in the newly created Unified Program Account.[14]

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14. *Id.* § 25404.5(a)-(b) (enacted by Chapter 418); *see id.* § 25404.5(a) (enacted by Chapter 418) (listing fees that the single fee system will replace). The Secretary of EP may adjust the amount of the surcharge collected by the different certified unified program agencies to reflect the different cost incurred by the state in supervising the implementation of such unified programs. *Id.* § 25404.5(b) (enacted by Chapter 418). The Unified Program Account funds will be appropriated by the Legislature to any state agency for the purposes of implementing the unified hazardous waste program. *Id.*