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THE 2021 ENVIRONMENTAL LEGISLATIVE UPDATE: A RETURN TO NORMALCY

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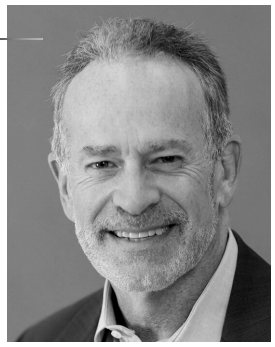

INTRODUCTION

As the 2021 legislative session began, the democratically controlled California legislature welcomed a more politically aligned federal administration and a more environmentally friendly U.S. Environmental Protection Agency. California's 2021 legislative session was characterized by a return to a level of normalcy, setting aside the unusual mid-term effort to recall Governor Newsom. Governor Newsom resoundingly beat back the challenge despite the sour mood of the electorate, which was driven by the pandemic and another dystopian fire season.

The internecine quarrels that plagued the California legislature during the last legislative session gave way to a more typical legislative outcome in 2021, with a total of 2,369 new laws introduced and 836 landing on the Governor's desk—twice as many as the prior legislative session. The governor approved 99% of the environmental bills including: major reform at the Department of Toxic Substances Control (DTSC); significant modifications to the hazardous waste generator requirements, revamping the program to collect mercury-containing thermostats; perfluoroalkyl or polyfluoroalkyl substances (PFAS) restrictions; and "truth in advertising" relating to green claims. The governor additionally signed a package of YIMBY (Yes in My Back Yard) laws making it easier to up-zone land uses to generate more housing in California. Finally, the legislature delivered new laws designed to advance offshore wind (OSW), electrify off-road engine equipment, elevate penalties for health and safety violations, streamline local permitting of electric vehicle charging infrastructure, and authorize water agencies to capture and treat stormwater. Except for budget-related urgency laws that passed by a supermajority (which took effect on the date of signing), the enacted laws became effective on January 1, 2022.

REVIEW OF LEGISLATION

HAZARDOUS WASTE

For years, an embattled DTSC has faced criticism from the non-governmental organization (NGO) community, claiming it was too closely tied to industry and failed to protect the public from exposure to hazardous materials and waste. Conversely, the regulated community has alleged that DTSC has been overly strict and byzantine, and responsible for permit backlogs for treatment, storage and disposal facilities (TSDFs).

In an attempt to reform the agency, the legislature created an independent review panel which, in 2018, completed a three-year

evaluation of the barriers impacting agency performance and improving DTSC effectiveness, assessing TSDF permitting, hazardous waste enforcement, public outreach and transparency, and fiscal management and accountability. In 2021, many of these recommendations were codified in SB 158 (Committee on Budget and Fiscal Review) which was signed by the governor with a supermajority in both houses. This new law focuses on: (1) reviewing and monitoring DTSC's strategic plan and reorganization; (2) auditing remediation cost recovery; (3) adding personnel to improve permit backlogs and business operations; (4) improving enforcement; and (5) increased programmatic funding.

DTSC's statutory obligations have grown significantly since 1991 without any budgetary increase because most of the fees that support DTSC's programs had not been updated since 1998. SB 158 provides additional funding to close the historical structural budgetary deficits that have plagued the agency for years, and resulted in workload deficits that impacted programs and activities. In addition to making a one-time general fund allocation of $500 million to address brownfields, SB 158 makes significant adjustments to the Hazardous Waste Control Account fee structures for hazardous waste generators and handlers.

SB 158 also establishes a five-member Board of Environmental Safety within DTSC. The Board is empowered to, among other functions, review and approve annual priorities and adopt agency performance metrics; develop long-term goals for DTSC's programs; address appeals of DTSC hazardous waste facility permit decision; and convene public hearings on DTSC's permit and remediation decisions. The Board is also authorized to recommend action on jurisdictional matters such as, for example, environmental justice and fee structures. This new law additionally creates an Office of the Ombudsperson to address recommendations and complaints from the public and the regulated community, and to offer assistance to the public.

Beginning in March 2025, DTSC must also address programmatic reforms by triennially updating a state hazardous waste management plan. This plan must include waste reduction goals to reduce the risk of exposure to communities threatened by releases of hazardous waste. The plan must additionally provide updates to DTSC's Pollution Prevention Program and recommend revised criteria for determining which wastes are to be regulated as hazardous waste. The hazardous waste management plan must strengthen financial assurance requirements to manage corrective actions for TSDFS. The plan must also establish accelerated timelines for DTSC to complete TSDF permit renewals, while also providing for accountability for missed deadlines.

Permit applications for TSDF permits expiring before January 1, 2025 must be submitted to DTSC at least 180 days before the permit lapses. Within 90 days of receiving a permit application for a TSDF, the agency must publish on its website the estimated timeline for reviewing the application. DTSC must also issue its permit decision no later than one year of the permit's end date. In the event DTSC fails to issue a timely hazardous waste facilities permit decision, it must publish a public report explaining the basis for the delay along with a proposed schedule for making that permit decision.

SB 158 additionally provides for permit extensions for existing hazardous waste facilities where the owner or operator submits a renewal application before the expiration of the permit and the application is deemed complete. In that event, the lapsed hazardous waste facility permit would be extended until DTSC approves the renewal application or where the permit renewal application is denied, provided all applicable rights of appeal have been exhausted.

The U.S. Environmental Protection Agency's Hazardous Waste Generator Improvement Rule reorganized and modified regulations governing hazardous waste management. Among many other changes, AB 698 (Committee on Environmental Safety and Toxic Materials) replaces the "conditionally exempt small quantity generator" hazardous waste category with the "very small quantity generator" category while recasting the amount of hazardous waste and which wastes are to be included in calculating the monthly threshold limits determining generator status. AB 698 provides the statutory authority to harmonize the California Hazardous Waste Control Law with significant amendments to the federal Resource Conservation and Recovery Act regulating the generation of hazardous waste.

AB 698 additionally establishes explicit labeling information that must include the chemical state of a hazardous waste. This new law additionally establishes rules allowing a small quantity generator (SQG) of hazardous waste to avoid more stringent requirements governing large quantity generators where, in a given month, the generator exceeds the SQG monthly threshold limit. Under AB 698, SQGs are entitled to exceed the minimum monthly thresholds twice in a calendar year provided the generator manages this "Episodic Hazardous Waste" and complies with specified labeling and record keeping requirements pertaining to the

episodic event(s). These statutory changes set in motion a forthcoming rulemaking effort by DTSC to implement these changes in Title 22 of the California Code of Regulations.

CLEAN UP

AB 1024 (Santiago) was prompted by delays and cost overruns associated with the lead and arsenic cleanup in the community impacted by Exide—the former lead battery recycling facility in Vernon, California—where lead and arsenic releases were brought to light by a recent audit. To address transparency, accountability, and funding challenges, AB 1024 requires DTSC to establish performance milestones for the Exide cleanup, including posting cleanup-related information on its internet website.

Local health officers are authorized to oversee cleanup of contaminated sites pursuant to a voluntary agreement for any sites where neither DTSC nor a regional water quality control board (RWQCB) serve as a lead agency. According to Assembly Member Quirk, there have been many instances where cleanup operations managed by local health agencies have resulted in inconsistent oversight, under-qualified personnel, and site cleanup closures that failed to meet DTSC and RWQCB cleanup standards. AB 304 is intended to address these deficiencies by helping ensure that local health officers overseeing cleanup operations have the necessary expertise to manage a remedial action. Local health officers must notify DTSC and the relevant RWQCB of their intent to oversee a voluntary local cleanup, which leaves the state agencies with 30 days to determine whether to nonetheless retain oversight over the project.

HAZARDOUS MATERIALS

AB 480 (Carillo) responds to notorious chemical releases in the state, including a hexavalent chromium releases in the cities of Paramount and Long Beach, and a large fire and release of magnesium in Maywood, California. In the event of a hazardous material, hazardous substance, or hazardous waste spill or release, this new law authorizes a Unified Program Agency (UPA, sometimes known as a Certified Unified Program Agency or CUPA) to investigate whether a release poses an imminent and substantial endangerment to public health. If the UPA reasonably concludes that such endangerment exists, it may compel a responsible party to "immediately suspend or discontinue the activity causing or contributing to the release, spill, escape, or entry of the hazardous material, hazardous waste, or hazardous substance." Prior to this law, CUPAs were not authorized to order the suspension of the dangerous condition or activity; only district attorneys had the ability to seek a court injunction to enjoin the condition or activity. AB 480 additionally revises the time frame by which a chemical release to the environment must be reported to the relevant CUPA, and to the state Office of Emergency Services (OES). Prior to enactment of this new law, businesses handling hazardous materials were required to, upon discovery, immediately report releases or threatened releases to the relevant CUPA and the OES. This new law establishes a different reporting timeframe for "unregulated" facilities that must notify the CUPA and OES "upon discovery of the actual release that results in an emergency response." In addition, the hazardous materials handler must provide emergency response personnel access to facilities where there is a release or threatened release of a hazardous material, hazardous waste, or hazardous substance at the facility.

Prior to enactment of AB 332 (Committee on Environmental Safety and Toxic Materials), the rules governing the management of treated wood waste (TWW) lapsed. TWW has undergone a treatment process with chemical preservatives to protect against pests and environmental damage. This new law re-authorizes earlier standards which allowed TWW generators to manage their waste under more relaxed "alternative management standards" instead of as hazardous waste. The new law invalidates all variances granted by DTSC prior to AB 332.

The Mercury Thermostat Collection Act [Stats. 2008, AB 2347 (Ruskin)] established a mercury thermostat collection and recycling program administered by thermostat manufacturers. The program came under fire for its subpar performance with respect to alerting contractors, service technicians, and homeowners about the program to collect out-of-service thermostats. AB 707 (Quirk) revises the Mercury Thermostat Collection Act by, among other things, requiring thermostat manufacturers to fully fund DTSC's oversight of the program, and mandating a more effective education and outreach campaign, plus a $30 incentive to motivate consumer return of mercury thermostats to convenient and accessible collection locations throughout the state, including in rural, disadvantaged, and low-income communities. Manufacturers must engage a qualified third party to implement a state-wide "convenient, cost-effective, and efficient" mercury thermostat program.

The California legislature is taking a national lead regulating PFAS. Known as "forever chemicals," PFAS are extremely persistent and do not degrade in the environment. They

are believed to cause chronic health impacts ranging from increased cholesterol levels, changes in liver enzymes, and increased risk of high blood pressure in pregnant women. Two new bills continue the trend of prohibiting PFAS in products and builds on legislation from last year [Stats. 2020, SB 1044 (Allen)] which bans the use of PFAS in fire-fighting foam. AB 1200 (Ting) intends to fill a gap in federal regulation regarding consumer disclosure of PFAS risk. This new law is intended to ban the sale and distribution of cookware containing PFAS beginning on January 1, 2023. Manufacturers must use least toxic alternative when replacing PFAS in plant-based food packaging. AB 1200 further advances "truth in advertising" by prohibiting cookware manufacturers from claiming their product is free of "any specific chemical" on a designated list under specified circumstances.

AB 652 (Friedman) responds to data revealing that exposure to PFAS poses particular adverse health impacts for children and infants. AB 652 prohibits, on or after July 1, 2023, the sale and distribution of new juvenile products that contain regulated PFAS. Additionally, manufacturers of juvenile products must use the least toxic alternative when replacing PFAS chemicals.

SOLID WASTE

A few other laws also expand the authority under the California Unfair Competition Law (California Business and Professions Code Section 17200 *et seq.*) to regulate false and misleading statements regarding recyclability and composability. SB 343 (Allen) tackles consumer confusion surrounding what types of plastic are in fact recyclable by clarifying when the plastic resin identification coding (RIC) system or "chasing arrows" recycling symbol may be displayed on a product or package. The bill analysis for SB 343 states that most consumers assume that products with the chasing arrows symbol can be recycled, when according to the Department of Resources Recycling and Recovery (CalRecycle), only plastics with the code #1 and #2 are typically recycled. Single-use plastic with resin types #3-7 end up being landfilled, or incinerated, or they become ocean plastic, collecting in large floating plastic patches in the seas. This new law amends the California Unfair Competition Law to align with the Federal Trade Commission's "Green Guides," which govern false and misleading "green" claims. SB 343 prohibits the sale, distribution, or importation into California of products and packages that make a deceptive or misleading claim regarding the recyclability of a product or packaging. This new law provides that the misuse of the chasing arrows symbol constitutes false and misleading greenwashing subject to a misdemeanor penalty. The chasing arrows symbol is permitted only on products and packaging that is considered recyclable, and where the plastic material is "collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60% of the population of the state." Ultimately, this new law could shift labeling practices of businesses that manufacture resins # 3–7, thereby impacting single-use food packaging, shipping materials, toys, and bags, among other plastic products.

AB 1201 (Ting) builds upon recent California law by prohibiting "any untruthful, deceptive, or misleading environmental marketing claim" and by specifically establishing requirements for use of terms such as "compostable" and "biodegradable." This new law is intended to ensure that products and packaging that are labeled as compostable are in fact capable of being composted. AB 1201 aligns California's environmental advertising laws with the Federal Trade Commission's "Green Guide" direction which ensure that claims of degradability reflect the availability of composting infrastructure in the state. Specifically, this new law prohibits the sale of products labeled as "compostable, "home compostable," "biodegradable," "degradable," "decomposable," or "soil biodegradable" unless the product or package is in fact "recyclable pursuant to statewide recyclability criteria and is of a material type and form that routinely becomes feedstock used in the production of new products or packaging." Finally, products containing PFAS must not be labeled as "compostable."

AB 881 (Lorena Gonzalez) is another law intended to overcome consumer confusion surrounding plastic recycling. Much of the plastic intended for recycling ends up being burned, landfilled, or exported to countries ill-equipped to manage it and keep it from becoming ocean plastic. Exported plastic waste can no longer be considered "recycled," for purposes of meeting landfill diversion targets under the Integrated Waste Management Act (IWMA) of 1989. AB 881 is intended to promote transparency by classifying exported mixed plastic waste as "disposal," under the IWMA unless the mixture includes only polyethylene, polypropylene, or polyethylene terephthalate and the export is destined for separate recycling of each material.

AB 818 (Bloom) is intended to educate consumers on the impacts of disposing non-flushable wipes to the sanitary sewer where they can damage sewer infrastructure and result in sanitary sewer overflow events. According to Assembly Member Bloom, "wet products that do not break

down can catch on tree roots or other obstructions in residential sewer laterals and cause costly and dangerous backups for property owners." The new law requires manufacturers of nonwoven disposable wipes to label the wipes clearly "Do Not Flush" by July 1, 2022. It also requires creation of a consumer education and outreach program. AB 818 authorizes imposition of a civil penalty of up to $2,500 per day with a maximum penalty of $100,000 per violation.

SB 310 (Rubio) enacts the Cancer Medication Recycling Act, which establishes a voluntary cancer drug repository and distribution program. The program will collect unused cancer medications, which will be distributed between patients of "participating practitioners" (i.e., physicians).

CEQA, LAND USE, AND HOUSING

SB 8, SB 9, and SB 10 are YIMBY (Yes In My Back Yard) laws promoting up-zoning, part of the "Building Opportunities For All" Senate Housing Package. SB 8 is designed to address California's extreme housing shortage.SB 8 (Skinner) extends the sunset for the Housing Crisis Act of 2019 [Stats. 2019, SB 330 (Skinner)], which was set to sunset in 2025, for five more years (until 2030). Among other things, the Housing Crisis Act prohibits local governments from reducing land use intensity below what was permitted prior to that law (January 1, 2018). This includes measures to reduce height, density, floor area ratio, increased open space, or lot size requirements, among others. In addition to extending the life of the Act, SB 8 adjusts developers' obligations to relocate occupants whose homes are being demolished.

SB 9 (Atkins) allows for a local land use approval, without discretionary California Environmental Quality Act (CEQA) review for no more than two units (i.e., a duplex) in a single-family residential land use zone. This new law also requires cities and counties to ministerially approve a subdivision of a parcel zoned for residential use into two parcels, as long as the lot split does not require demolition or alteration of a house that is subject to affordable housing rent restrictions. Eligible housing projects must be located within a portion of an urbanized area or urban cluster, as designated by the United States Census Bureau. For unincorporated areas, eligible projects must be entirely within the boundaries of an urbanized area or urban cluster. Finally, SB 10 (Wiener) authorizes local governments to zone any parcel for up to ten residential units per parcel, at a height specified by the local government ordinance for parcels located in a transit-rich area or an urban infill site. Under this new law, a local ordinance or amendment to a general plan effectuating this policy is not considered a project under CEQA. Unlike SB 9 (see above), which is limited to single-family residential land use zones, SB 10 applies to all residential zoning.

SB 478 (Weiner) was introduced to combat efforts by cities that, despite zoning for multi-family units, undermine these uses by hyper-restrictive zoning standards (establishing floor area ratios and lot size requirements) that make it difficult to design, build, and fund such units. This new law is intended to overcome the dearth of units zoned for 3-10 units—often referred to as the "missing middle housing." According to the bill analysis for SB 478: "[W]ith these abusive requirements on the books, multi-family buildings are so infeasible, the end result is the development of a large single-family home instead. As a result, cities use this loophole to prohibit multi-family housing otherwise authorized by local or state zoning law, and only build single family homes." This new law establishes minimum standards on floor area ratios for land already zoned for 3-10 buildings, thus allowing "development of 3-10-unit buildings in places already approved for them."

AB 1398 (Bloom) adjusts the local government process for updating a Housing Element for purposes of planning new housing and demonstrating that the community can accommodate its share of its region's projected housing needs. AB 1398 is designed to expedite the timeframe by which new housing must be built, by revising the penalty for failure to adopt a housing element in a timely way. The bill replaces the prior provision allowing non-compliant local governments to update their housing element approximately every four years. Under this new law, a local government that fails to adopt its housing element within 120 days of the statutory deadline (in existing section 65588) are permitted just one year to complete any required rezonings, instead of the prior timeframe of three years and 120 days.

Traditionally, developers receive density bonus incentives in exchange for building more affordable housing units than otherwise required. SB 728 (Hertzberg) is intended to extend the benefits of the density bonus law to qualified nonprofit housing organizations.

In an effort to increase public access, public involvement, and transparency, AB 819 (Levine) modernizes the process for filing CEQA documents, including notices of determination, notices of exemption, draft environmental impact reports, proposed negative declarations, and proposed mitigated negative declarations. Under the new law, lead agencies must electronically file and post these documents online.

The Jobs and Economic Improvement Through Environmental Leadership Act [Stats. 2011, AB 900 (Buchanan)] established streamlined CEQA judicial review procedures for "environmental leadership development projects" that meet especially high environmental standards and also provide significant jobs and investment. That law offered de novo Court of Appeal jurisdiction and mandated a court decision within 270 days. AB 900 lapsed on January 1, 2021; SB 7 (Atkins) revives this law, while also expanding its applicability to include infill housing developments that will result in a minimum investment of $15 million where at least 15% of the homes are affordable.

CLIMATE CHANGE, ENERGY, AND WILDFIRE

With sea level potentially rising seven feet by the end of the century, the non-partisan Legislative Analyst's Office (LAO) portends monumental consequences for the over-25 million Californians living in coastal counties. The Federal Emergency Management Agency estimates that near-term investment in coastal resilience and adaptation could significantly soften the economic losses compared to waiting, and provide a six-fold return on investment. SB 1 (Atkins) establishes the California Sea Level Rise Mitigation and Adaptation Act of 2021, and creates the California Sea Level Rise State and Regional Support Collaborative at the Ocean Protection Council. This Collaborative is authorized to develop a comprehensive program to evaluate and manage the impacts of sea level rise. Specifically, this new law requires the California Coastal Commission to consider sea level rise in its coastal resource planning and management policies. The Collaborative must also share state and regional information with local, regional, and other state agencies for coastal planning, development, and mitigation.

AB 72 (Petrie-Norris) establishes the Coastal Adaptation Permitting Act of 2021, which directs the Natural Resources Agency (NRA) to enhance agency coordination and otherwise more efficiently review permit applications for coastal adaptation projects that use natural infrastructure.

Building upon Governor Newsom's executive order (N-82-20) to protect 30% of California lands and waters by 2030, SB 27 (Skinner) creates the California Carbon Sequestration and Climate Resilience Project Registry. The Registry will include a list of projects eligible for funding to mitigate California's greenhouse gas (GHG) emissions. This new law also directs several state agencies, including, among others, the NRA, the California Environmental Protection Agency, the Air Resources Board (ARB), and the Department of Food and Agriculture to establish the Natural and Working Lands Climate Smart Strategy. The Climate Smart Strategy will focus on carbon capture in the context of rangelands, forests, woodlands, wetlands, grasslands, shrubland, farmland, riparian areas, and urban green space. The new law requires the ARB to add carbon sequestration targets for 2030 and beyond to its existing climate change scoping plan, which identifies carbon reduction strategies, targets, and timelines.

Manufacturing cement in California accounts for just under 2% of the state's carbon footprint. According to Senator Becker, cost-effective technologies and processes are available to significantly reduce GHG emissions from concrete and cement, including carbon capture, utilization, and storage, replacing the conventional Portland cement clinker with supplementary cementitious materials that produce less CO2, replacing coal and petroleum coke with natural gas or a low carbon fuel, and energy efficiency (e.g., waste heat recovery). SB 596 (Becker) requires the ARB to establish a strategy, by July 1, 2023, to reduce lifecycle GHG emissions from concrete and cement used in California by 40% (from 2019 levels) by 2030, and to achieve carbon neutrality no later than 2045.

AB 525 (Chiu) responds to barriers to developing and delivering offshore wind (OSW) power electricity generation off the California coast to help meet the state goal of 100% clean energy by 2045 [see Stats. 2018 (SB de León)]. This new law is aimed at reducing constraints to deploying utility-scale OSW energy in California; the new law obligates the State Energy Resources Conservation and Development Commission (CEC) to evaluate constraints and develop strategies to clear them.

More than 2.5 million acres burned last year across California in major fires including the Caldor Fire and the nearly 1-million-acre Dixie Fire. AB 642 (Friedman) builds on SB 1260 [Stats. 2018, SB 1260 (Jackson)], which previously authorized the California Department of Forestry and Fire Protection (CAL FIRE) to expand prescribed burning to include, among other things, limiting liability for partners and assisting air districts in determining whether to issue air quality burn permits. AB 642 augments the SB 1260 prescribed burning policy by leveraging the expertise of tribal organizations and cultural practitioners, and creates a cultural burning liaison at CAL FIRE.

AIR QUALITY

According to ARB, the largest Small Off-Road Engines (SORE) contributors to smog-forming emissions in its

jurisdiction are generators, followed by leaf blowers, lawn mowers, riding mowers, trimmers, chainsaws, and pressure washers. According to Assembly Member Berman, "operating the best-selling gas-powered commercial leaf blower for one hour emits air pollutants comparable to driving a 2017 Toyota Camry from Los Angeles to Denver." AB 1346 (Berman) requires new SORE offered for sale in California to be zero-emission by 2024 unless ARB establishes a later time based on feasibility.

AB 970 (McCarty) is another step in advancing California's goal of deploying 1.5 million zero-emission vehicles by 2025 and 5 million by 2030 (Executive Order B-48-18). This new law builds upon recent laws designed to expedite land use approvals of electric vehicle (EV) charging stations in California. Municipalities must now deem EV charging applications complete five business days after an application was submitted (for up to 25 EV charging stations) and ten business days for over 25 EV stations. Municipalities must approve applications within 20 business days (for up to 25 EV stations) or 40 business days for 25 EV stations or more after the application was deemed complete if all are true: (1) The municipality has not administratively approved the application; (2) The building official has not made a finding (substantial evidence) that the project could have an adverse impact upon the public health or safety or the municipality has not required the applicant to apply for a use permit; (3) The municipality has not denied the permit; and (4) An appeal has not been made to the planning commission. Finally, EV charging station parking spaces and associated equipment count as at least one standard parking space for purposes of complying with applicable parking minimum requirements.

WATER QUALITY AND SUPPLY

As the western U.S. faces its worst megadrought in 1200 years, the Newsom administration adopted a "water resilience portfolio" which established policies, that among other things, authorize wastewater facilities in California to accept and manage stormwater and dry weather runoff. SB 273 (Hertzberg) aims to further advance Newsom's policy to preserve stormwater. Prior to the enactment of SB 273, few municipal wastewater agencies had explicit authority to capture and treat stormwater. This new law, sponsored by the California Association of Sanitation Agencies and the California Coastkeeper Alliance, offers municipal wastewater agencies the option of entering into voluntary agreements with municipal water agencies "to acquire, construct, expand, operate, maintain, and provide facilities to manage stormwater and dry weather runoff."

The Environmental Working Group, a co-sponsor of AB 100 (Holden), asserts that, ". . . most schools, childcare facilities, and homeowners are unaware that 'lead-free devices' leach lead, especially in the first few weeks of use. . . . in California, where water is a scarce resource, most consumers cannot realistically afford to keep flushing a device before using it in order to reduce the leaching lead." AB 100 continues California's effort to achieve lead-free water by helping to ensure that all drinking water fixtures sold in the state leach much lower amounts of lead by requiring "endpoint plumbing devices" to meet a performance standard of no more than one microgram per deciliter of lead. Beginning on January 1, 2023, this new law bans the sale in California of any endpoint device (e.g., faucets, fixtures, and water fountains) that does not meet the "lead free" leaching standard.

SB 776 (Gonzalez) expands the authority of the California Safe Drinking Water Act, Health and Safety Code sections 116340, 116385, 116766, and 116767, to state small water systems, which were previously exempt. The new law also authorizes the State Water Resources Control Board to authorize moneys from the Safe and Affordable Drinking Water Fund, Government Code section 11352, and provides new enforcement authority.

ENFORCEMENT

SB 606 (Gonzalez) is modeled after the "egregious penalty" standard of the federal Occupational Safety and Health Act (OSHA). An egregious penalty is imposed where an employer has displayed an unwillingness to ensure workplace safety. The federal strategy involves issuing several violations instead of one blanket violation, yielding a much higher collective penalty for larger employers and providing a disincentive to commit egregious violations. SB 606 allows the state Division of Occupational Safety and Health within the Department of Industrial Relations (Cal/OSHA) to likewise "stack penalties" where an employer has "willfully and negligently refused" to comply with health and safety standards. The new law creates a rebuttable presumption that an employer with multiple worksites has committed an "enterprise-wide" violation where: 1) the employer has a written policy or procedure that violates occupational safety or health orders; or 2) Cal/OSHA "has evidence of a pattern or practice of the same violation committed by that employer involving more than one of the employer's worksites." Where the employer fails to overcome the presumption, this new law authorizes Cal/OSHA to order enterprise-wide abatement against employer-wide policies or practices that violate the California Health and

Safety Code. For enterprise-wide violations, Cal/OSHA is authorized to issue a penalty equivalent to $123,709 for willful or repeated violations, and an injunction where an employment condition poses a "serious menace to the lives or safety of persons . . . until such condition is corrected."

SB 433 (Allen) responds to the backlog of violations of the California Coastal Act of 1976, California Public Resources Code sections 30000 et seq., that involve alleged "non-public access" violations and which include damage to environmentally sensitive habitat areas, illegal grading, filling wetlands, and unpermitted shoreline protection. According to the Coastal Commission, "[w]ith no fear of penalties, and a low chance of litigation, there is little incentive for violators to comply." SB 433 expands the authority of the Coastal Commission to impose administrative civil penalties for all violations of the Coastal Act. Administrative civil penalties, which govern non-public access violations, now come with a higher penalty maximum than the previous penalty structure.

SB 1383 [Stats. 2016, SB 1383 (Lara)] was enacted to reduce methane emissions generated from food waste. SB 1383 required the ARB to approve and implement a comprehensive short-lived climate pollutant strategy to achieve, from 2013 levels, a 40% reduction in methane and hydrofluorocarbon gases, and a 50% reduction in anthropogenic black carbon, by 2030. To implement this law, local jurisdictions must provide organic collection services, establish edible food recovery programs, educate the public, and procure specified amounts of organic material. SB 619 (Laird) is intended to assuage local jurisdictions' fear of facing penalties should they fail to meet the recently promulgated state regulations governing the program—leaving them just 14 months to develop their local organic waste management programs. SB 619 authorizes local jurisdictions facing continuous violations to submit to CalRecycle a notice of intent to comply by March 1, 2022. This submission would avoid administrative civil penalties for the violations as long as the jurisdictions follow through with the measures promised in the notice of intent to comply.

NATURAL RESOURCES

AB 315 (Stone) establishes indemnity and limited liability protection to real property owners who voluntarily allow state-funded efforts to restore fish and wildlife habitat on their real property. This includes projects involving Lake and Streambed Alteration Agreements, the Habitat Restoration and Enhancement Act, or through the State Water Resources Control Board Section 401 General Water Quality Certification for Small Habitat Restoration Projects.

SB 790 (Stern) is another new law aimed at protecting wildlife. It was designed to overcome barriers to wildlife movement such as roadways. This new law authorizes the California Department of Fish and Wildlife to approve mitigation credits for wildlife connectivity projects (e.g., a roadway overpass or underpass) to advance habitat connectivity or wildlife migration.

SB 709 (Dahle) is an urgency law intended to address the financial barriers to managing timber harvesting plans (THPs) for smaller landowners. This new law allows up to two, two-year extensions for THPs approved between January 1, 2014, and December 31, 2015, allowing additional time to complete harvesting activities and to recover initial upfront cost. The landowner must, with good cause, demonstrate that no protected species under the California Endangered Species Act or the federal Endangered Species Act exist on the logging area.

AB 63 (Petrie-Norris) amends the Marine Managed Areas Improvement Act, Public Resources Code sections 36600 et seq., and authorizes restoration and monitoring to take place in a State Marine Conservation Area. This new law will enable NGOs, universities, and local conservation groups to restore marine life within the marine preserves along California's coast.

LOOKING AHEAD: BUDGET

The Governor began the annual budgetary dance by proposing $286.4 billion for the 2022-2023 fiscal year budget. His budget envisions earmarking $22.5 billion over five years for climate change investments along with another $6.1 billion for zero emission vehicles for consumer incentives, infrastructure in low-income neighborhoods, drayage trucks and electric school bus purchases. Another $2 billion would be allocated for clean energy projects over a two-year period that would, among other things, focus on decarbonizing heavy industry, funding offshore wind infrastructure to help offset the purchase of more energy efficient appliances and energy retrofitting. The Governor also wants to direct an additional $1.2 billion for wildfire prevention and reforestation programs.

The State is enjoying an unexpected, historically large projected budget surplus of $97.5 billion thanks to a healthy state economy. This unprecedented windfall gives the

governor an opportunity to make significant investments to augment electric vehicle and water distribution infrastructure, manage wildfire, energy efficiency and weatherization, as well as to fix roads and bridges. California will also be receiving an additional $14 billion over the next five years from the federal Infrastructure Investment and Jobs Act.

LOOKING AHEAD: SELECT PENDING BILLS

The following select group of pending bills are described consistent with their status at the time this article was written. Some of the bills or their status will change between writing and publication.

CLIMATE CHANGE AND AIR QUALITY

As state legislators increasingly shun oil industry campaign donations, the political dynamics around climate, air quality, and energy policy are shifting. A working group of a dozen senators is seeking common ground on a comprehensive package of bills to address climate change. As of this writing, the legislature is currently entertaining SB 1173 (Gonzalez) which would require the Board of the Public Employees' Retirement System and the Teachers' Retirement Board of the State Teachers' Retirement System to divest from fossil fuel investments by July 1, 2027.

Other legislation is focused on transitioning the state's economy from fossil fuels and providing a "just transition" to, among other things, retrain oil industry workers facing layoffs. Twin bills by Assembly Member Boerner Horvath would address workforce development. AB 2204 would create the Office of Clean Energy Workforce and the Clean Energy Workforce Board help ease the transition. AB 1634 (Boerner Horvath) would establish the Office of Just Transition in the Labor and Workforce Development Agency to help communities and workers shift to carbon neutral employment. Finally, AB 1966 (Muratsuchi) would provide, among other financial assistance, wage replacement, wage insurance, pension guarantees, health care, retraining, and peer counseling.

The proposed Carbon Accountability Act (SB 260) is one of several bills addressing climate change. This monumental bill would require companies doing business in California with revenues over $1 billion to annually report their Scope 1, 2, 3 (direct and indirect) GHG emissions to the California Secretary of State. Other legislation attempts to advance decarbonization with SB 1297 (Cortese) directing the CEC to develop a plan to promote low-carbon materials (e.g., cement, lumber, and steal) while AB 2446 (Holden) and SB 1297 (Cortese) would direct the CEC to develop a process to reduce the carbon intensity of the construction of new buildings by 80% over the next two decades.

Senator Skinner introduced climate legislation regulating high global warming potential refrigerants and another to evaluate carbon sequestration potential. SB 1206 (Skinner) would ban the sale or distribution of bulk hydrofluorocarbons by 2025 and would require the ARB to establish rules to promote deployment of refrigerants with very low global warming potential. SB 905 (Skinner) would task the ARB with studying the geologic feasibility of carbon sequestration, while SB 1101 (Caballero) would create, within the ARB, the Carbon Capture, Utilization, and Storage Program to deploy carbon capture to accelerate commercialization of technologies for industrial and commercial applications.

The legislature is considering two bills to speed the adoption of green infrastructure for electric vehicles. Under AB 2075 (Ting) the CEC would be required to establish electric vehicle charging standards for residential and nonresidential buildings. SB 1482 (Allen) would require updating the Building Code provisions for multifamily dwellings to require minimum voltages to support on-site charging.

As California grapples with a drier climate, the legislature continues to focus on water supply resiliency. SB 1197 (Caballero) would establish a water innovation drought resiliency program to fund innovation for water use.

SOLID WASTE

Building upon last year's prolific bounty of solid waste policy, SB 54 (Allen) would ban manufacturers of single-use, disposable after January 1, 2032, unless it is recyclable or compostable while AB 2026 (Stone) would restore the at-store recycling program and seek to eliminate specified single-use plastics in the shipping of consumer products. SB 38 (Wieckowski) would establish an industry-run Beverage Container Recycling Program to replace the current California Beverage Container Recycling and Litter Reduction Act (Bottle Bill).

HAZARDOUS MATERIALS

Continuing state PFAS regulatory efforts, AB 1817 (Ting and Cristina Garcia) would prohibit the sale or distribution of

textiles containing PFAS and would require manufacturers to use the least toxic alternative when removing regulated PFAS in textiles. AB 2771 (Friedman) would ban the sale and distribution of PFAS in cosmetic products.

CONCLUSION

Thanks to a politically aligned White House and the receding pandemic, the legislature has unleashed a bevy of previously shelfed environmental initiatives reflecting pent-up demand. The deep blue California legislature could well transcend the usual election-year political dynamics and see a more prolific legislative outcome this fall.

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