

## California Legislative Update: Fall 1992

By Holly Damiani

After finally reaching an agreement on the budget, the California Legislature dealt with a number of environmental bills languishing in committee or stalled on the floor. While Governor Wilson's timber plan failed, more major forest proposals are anticipated, as this is a perennially controversial topic. This update covers legislation on: wetlands, coastal protection, oil spills, waste and hazardous materials management, and air pollution. All measures were enacted this summer or fall, except where noted.

### Forest Issues

**Governor Wilson's Timber Plan:** What originally was a group of four forest bills collapsed into one by late August. Three bills died, but parts of them were incorporated into the one remaining bill, AB 641. That bill was defeated in the assembly by a vote of 45 to 20.

AB 641 proposed designating watersheds sensitive to timber harvesting and establishing maximum harvest limits within the watersheds. Some areas of old growth forests would be protected by the plan, but large areas were opened up to intensive logging. The bill's major problem was a complex definition of sustained yield, which, according to the Sierra Club, would have allowed logging of up to 68% of the forest within the next twenty years. Although the bill did contain some reforms and protections, these were outweighed by the massive destruction the bill would authorize. Forest protection versus logging interests is always a controversial topic, therefore similar legislation is expected to be reintroduced.

AB 2469 was also defeated. This bill would have prevented the state from entering into contracts that called for the use of tropical hardwoods or tropical hardwood products. Twenty-five percent of all tropical forest destruction is due to international trade in tropical hardwoods. The U.S. is the third largest importer of these woods. This bill was vetoed by the Governor.

AB 3756 requires timber companies to identify stands of Pacific Yew and prohibits cutting the yew except for research purposes relating to taxol or the treatment of cancer patients with taxol.

### Coastal Protection

AB 10 and AB 854 together constitute the California Coastal Sanctuary Act of 1992. The Act creates a coastal sanctuary which includes all state water subject to tidal influence from the proposed Monterey Bay Sanctuary north to the Oregon border, excluding the Sacramento-San Joaquin Delta east of the Carquinez Bridges. The bills prohibit the state from entering into new contracts for oil and gas unless three conditions are satisfied: The President finds a severe energy supply interruption and orders distribution of the Strategic Petroleum Reserve; the governor determines the resources of the sanctuary will contribute significantly to alleviating the interruption; and the legislature amends the act. AB 854 contains some exceptions to new leases if the oil within the sanctuary is to be drained by wells on adjacent lands.

AB 1449 changes the civil fine for undertaking development in violation of a coastal development permit or plan from a flat fee of \$10,000 to a sliding fee of \$500 to \$30,000. Intentional violations are subject in addition to fines of \$1000 to \$15,000 per day for so long as

the violation persists.

AB 3459 prohibits ex parte communications between members of the California Coastal Commission and any interested parties, including an applicant before the commission, a person with a financial interest before the commission, or a representative acting on behalf of any organization attempting to influence a commission member on a matter before the commission. The bill also requires the permit applicant to disclose all parties who will be paid for communicating with the commission or its staff.

### Oils Spills

AB 2912 establishes a uniform oil response fee of not more than \$.025 barrel for each barrel of petroleum products or crude oil to fund the Oil Spill Response Trust Fund, and would allow the fee to be less if the fund will reach the designated amount within four months. Current law sets the fee at \$.025 no matter what the amount in the fund.

AB 3173 makes several minor changes in the state interagency oil spill act. The most important change is to allow funds to be used when there is danger of an imminent spill, instead of waiting for the spill to happen.

SB 1480 requires the administrator under the Oil Prevention and Response Act to analyze the system of liability and financial responsibility for transport, storage and handling of oil in state marine waters and report to the Legislature and Governor by June 30, 1993.

### Solid Waste

AB 2661 requires the Departments of Forestry and Fire Protection, the Department of Parks and Recreation and the Department of General Services to reuse waste straw along with other waste products. The idea is to cut down on the amount of waste straw going to land fills.

### Hazardous Materials

AB 961 requires all medical waste to be transported in vehicles and containers certified pursuant to provisions regulating hazardous waste haulers, places new restrictions on storage of biohazardous waste and requires sharps to be rendered noninfectious prior to disposal.

AB 1772 reorganizes the Department of Toxic Substances Control's permitting program. It creates a five tiered system for authorization to handle hazardous waste. Two tiers already existed under RCRA equivalent permit and permit by rule. The three new tiers deal with standardized permits for non-RCRA waste, conditional exemptions, and conditional authorizations.

SB 1469 is designed to limit the amount of waste being exported from California by reducing in state disposal fees significantly. Other fees are raised to make up for the loss. The bill also requires the Integrated Waste Management Department to submit to the legislature by July 1 of next year a plan to change the fee structure to reflect the amount of work actually being done by the department in a particular area. This will probably result in fee increases.

SB 2056 changes the current law which allows the state to recover punitive treble damages from anyone who without cause ignores a state order requiring remedial action under the state's superfund account. The bill eliminates the word punitive and allows a private culpable party to recover treble damages in a contribution action under the Act, with half the treble damages going to the state.

SB 2057 changes the definition of hazardous waste from discarded material to "any solid, liquid, semisolid, or contained gaseous discarded material. It also exempts from regulation chlorofluorocarbons and hydrochlorofluorocarbons that are being recycled or are used in fire extinguishers. The bill also makes it unlawful to release a hazardous substance unless authorized by permit and allows the Department to seek a temporary restraining order or injunction preventing such a release.

### Air Pollution

AB 1572 changes penalties for air pollution violations to \$1000 per day when a party is strictly liable and \$10,000 per day for general civil liability. Only one type of fine may be imposed. A new penalty of up to \$50,000 or imprisonment in county jail, or both is added for willful violations.

AB 2728 requires the State Air Resources Board to identify various toxic air contaminants and establish control measures with reference to federal law. The state board may adopt contaminants in addition to those contained in federal law. SB 1731 requires health risk assessments to be prepared according to guidelines established by the Office of Environmental Health Hazards.

### Miscellaneous

AB 2787 allows cancellation of the registration of any pesticide if the registrant fails to submit required data or if the pesticide is required to be registered under federal law and has not been. Any pesticide that is canceled or suspended may not lawfully be manufactured, delivered or sold.

SB 1264 is aimed at SLAPP (Strategic Litigation Against Public Participation) suits. The bill provides that any cause of action arising from a person exercising his or her right of free speech in connection with a public issue shall be subject to a special motion to strike unless the court determines that there is a probability the plaintiff will prevail. If the motion to strike is granted, the defendant is entitled to attorney fees and costs. If the court finds the motion to strike was frivolous the plaintiff is entitled to attorney fees and costs.