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RECENT JUDICIAL, LEGISLATIVE AND REGULATORY DEVELOPMENTS

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The *Environmental Law Section Update* is sponsored by the Environmental Law Section of the State Bar of California and reports on recent California case law of note, as well as significant legislative and regulatory developments. This edition of the *Update* reports on cases of significance, as well as legislative and regulatory developments from April 1 through December 31, 2016. For legislative developments since that date, the status of a particular bill can be accessed at. The current legislative calendar is also included at the end of the *Update* and can also be viewed online at: http://www.calbar.ca.gov/AboutUs/Legislation/SearchforLegislation/BillTrackingSectionsandCommittees.aspx.

Please note that all case law, legislative and regulatory summaries included here are intended to provide the reader with an overview of the subject text; for those items of specific relevance to your practice, the reader is urged to review the subject text in its original and complete form.

Each edition of the *Environmental Law Section Update* is posted in the "Members Only Area" of the State Bar's Environmental Law Section website at http://www.calbar.ca.gov/enviro. Notice of the availability of the *Update* on the Environmental Law Section website is distributed by electronic mail to all State Bar Environmental Law Section members who have provided the Bar with an e-mail address. If you have not provided the Bar with your e-mail address, you can do so by setting up your *State Bar Member Profile*. When you set up your *Profile*, be sure to click on "Change my e-mail list preferences" and check the box for the Environmental Law Section's e-mail list. If you have already set up your *State Bar Profile*, but did not check the box for the Environmental Law Section's e-mail list, you can do so at any time by logging in and clicking on "Change my e-mail list preferences."

Any opinions expressed in the *Update* are those of the respective authors, and do not represent necessarily the opinions of the Environmental Law Section, or the State Bar of California. We appreciate your feedback on this publication and its relevance to your practice. Comments may be e-mailed to the Editor at cday-wilson@ci.eureka.ca.gov I would like to thank Michael Haberkorn, Anthony Todero, Anna Leonenko, Whit Manley, Danielle K. Morone, Mitchell Tsai, Amanda MacGregor Pearson, Joseph Petta, and Amy Hoyt, for their contributions to this issue of the Update. – Cyndy Day-Wilson.

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Small Off-Road Engines. In September 2016, the Air Resources Board provided notice of a November 17, 2016 public hearing to consider approving proposed amendments to the evaporative requirements for off-road equipment. Cal. Reg. Notice Register 2016, Vol. No. 40-Z, p. 1759.

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No Summaries or updates this quarter.

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No Summaries or updates this quarter.

CEQA

Recent Court Rulings

Third District holds an EIR for an infill project was inadequate because it relied on General Plan level-of-service standards to conclude the project's traffic impacts on intersections within the city core would be insignificant. *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281

A developer proposed a 336-unit residential development on an infill site in mid-town Sacramento. The city certified the EIR and approved the project. Neighbors sued. The trial court denied the petition. The neighbors appealed.

The neighbors argued the Draft EIR did not identify all the permits the project would need, citing a development agreement, revised zoning to increase the number of residential units, and a variance for driveways. The Court disagreed, noting that these approvals were described and analyzed in the Final EIR; the city provided notice of these approvals; such evolution of the project

as it moved through the entitlement process was the norm; and the neighbors failed to show prejudice with respect to this evolution.

A proposal to develop an additional tunnel to provide expanded access to the site, while discussed, was not part of the project, and did not need to be included in the project description. Instead, the city merely approved studying the feasibility of the tunnel. Although the tunnel would serve the project, the tunnel was not essential, and the project could proceed without it. The city also approved a half-street closure, in order to divert project traffic onto adjacent streets that were less congested; this "modest change" did not constitute unlawful piece-meal review. Neither did a city council motion directing staff to delete a proposed parkway and interchange from the General Plan.

The neighbors challenged the EIR's analysis of toxic air contaminants, noting the site's proximity to railroad tracks, a freeway and an old landfill. Citing the California Supreme Court's decision in *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, the Court held that CEQA does not require an EIR to analyze the effects of the existing environment on future residents of the project and concluded that the neighbors failed to cite substantial evidence that the project would exacerbate health risks.

The neighbors also argued the project was inconsistent with various General Plan policies pertaining to transportation, the environment, and noise. Those policies, however, had either been amended such that they no longer applied to the project, or the city had discretion to find the project consistent with the General Plan as a whole despite tensions with certain policies, or the policies cited by the neighbors were couched in terms such that strict compliance was not required.

The neighbors argued the EIR's traffic analysis was inadequate in various respects. The Court disagreed, with one significant exception. Specifically:

- The city properly relied on Public Resources Code section 21159.28 to streamline its analysis of the project's impact on the regional transportation network, including freeways in the region. The record supported the city's conclusion that the project was consistent with SACOG's MTP/SCS program EIR.

- The city had discretion, pursuant to its guidelines, to focus on the project's impacts on intersections, rather than on road segments.

- The re-categorization of a roadway from a "major collector" to a "local collector," and the corresponding shift in the applicable level-of-service standard, did not require recirculation of the Draft EIR because the volume of traffic remained the same.

- A traffic engineer hired by the neighbors claimed the EIR's traffic study omitted certain, key road segments, but as noted the city had discretion to focus on intersections, and in any event the neighbors failed to show prejudice in light of the fact that the traffic study analyzed intersections on these same roadways.

- The city's mitigation measures, which called for monitoring and re-timing the signal at a key intersection and required the developer to pay "fair share" fees for traffic improvements, were adequate.

The neighbors challenged the city's reliance on General Plan traffic policies to establish thresholds to determine the significance of the project's traffic impacts. Those policies differed depending on where in the city the streets were located; those in the downtown/midtown "core" could tolerate greater congestion (LOS E or F) than those located elsewhere. The EIR concluded that traffic impacts would not be significant in light of these policies. The Court held that was not good enough; the EIR had to consider whether traffic impacts would be significant, despite the project's consistency with General Plan traffic standards. The traffic study showed traffic would degrade at certain intersections from LOS E or F, and found that impact to be significant or insignificant, depending on the location of the intersection. But the "EIR contain[ed] no explanation why such increases in traffic in the core area are not significant impacts, other than reliance on the mobility element of the general plan that permits LOS F in the core area during peak times." The EIR's reference to "community values" and to the General Plan did not provide a sufficient explanation for why the threshold differed. Thus, the EIR did not contain substantial evidence to support the finding of no significant impacts with respect to certain intersections in the core area where LOS would degrade to E or F.

First District upholds EIR for Golden State Warriors' new arena in Mission Bay area of the city; litigation resolved under "fast track" rules established by Assembly Bill 900 for environmental leadership projects. *Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6 Cal.App.5th 160

The Golden State Warriors proposed to construct an 18,500-seat capacity arena in the Mission Bay South area of San Francisco. The Governor certified the arena under AB 900. The Office of Community Investment and Infrastructure – the successor to the city's redevelopment agency – prepared and certified a subsequent EIR. The subsequent EIR tiered off two prior EIRs prepared in 1990 and 1998 for the Mission Bay South redevelopment plan. These plans called for the transformation of the neighborhood from a disused industrial area into a medical and research complex. In November 2015, OCII approved the project. The Mission Bay Alliance – a coalition seeking to locate the arena elsewhere, rather than amidst the area's burgeoning hospital and research facilities (notably, the newly opened UCSF medical center) – sued. The trial court denied the petition. The alliance appealed.

In a lengthy opinion, the First District affirmed. First, the alliance argued that the city had improperly "scoped out" certain topics as adequately addressed in the prior EIRs. With respect to land use impacts, the alliance argued the record contained a "fair argument" that the project would adversely affect the community character in the vicinity of the arena. The Court held, however, that the "fair argument" standard did not apply; rather, "[s]ubstantial evidence is the proper standard where, as here, an agency determines that a project consistent with a prior program EIR presents no significant, unstudied adverse effect." OCII had a "reasonable basis" to conclude the arena would not interfere with other uses in the area. Similarly, the initial study explained why an area that had been excavated after the 1998 program EIR had been prepared, and subsequently filled with water, did not contain significant biological resources. The initial study, and responses to comments in the Final SEIR, also explained why there would be no new significant impacts with respect to the clean-up of hazardous substances in soil at the site, or to nearby parks.

With respect to transportation, the EIR analyzed traffic and transit impacts under various scenarios. The analysis took into account implementation of a "Transit Service Plan" (TSP) as a

component of the project that would be implemented for larger events at the arena. The alliance argued that this approach ran afoul of the First District's decision in *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, which held that an agency violated CEQA when it cited project components that served to reduce impacts, and thereby avoided analysis of the project's impacts and the identification of mitigation measures. In this case, the Court observed: "Arguably, some components of the TSP might be characterized as mitigation measures rather than as part of the project itself. Any mischaracterization is significant, however, only if it precludes or obfuscates required disclosure of the project's environmental impacts and analysis of potential mitigation measures." In this case, the characterization of the TSP as part of the project, rather than as a mitigation measure, did not interfere with the identification of the transportation consequences of the project or the analysis of measures to mitigate those consequences. The SEIR analyzed the project's transportation impacts both with and without implementation of the TSP, and applied the same significance thresholds to both scenarios. Because substantial evidence in the record showed that adequate funding would be available to implement the TSP, OCII was not required to consider other funding sources. Moreover, because the accompanying Transportation Management Plan included specific performance standards, the Warriors might have to provide additional funding if necessary to meet those standards. Mitigation measures requiring the Warriors to "work with" regional transit agencies to provide necessary additional service were similarly adequate, given the city's track record of working with these transit agencies to expand service to accommodate regional transit demand from events at nearby AT&T Park and elsewhere in the city. The record also showed that expanded regional transit service was available from a variety of sources, including the city's ½-cent sales tax, fare-box recovery, and disbursements from the Metropolitan Transportation Commission.

With respect to noise, the SEIR's significance thresholds focused on the extent to which the project would cause an incremental increase on noise levels, above existing, ambient noise. The threshold varied depending on the nature of the noise source (construction, transportation, crowds, and fixed sources) and existing noise levels (the higher the level of ambient noise, the lower the threshold). The Court held this approach was within OCII's discretion. The SEIR also contained sufficient information on the health effects of noise.

The alliance attacked the SEIR's analysis of the project's impact on greenhouse gas emissions (GHG) and climate change. The SEIR concluded this impact would be less than significant because the project was consistent with the city's adopted "GHG Strategy." According to the alliance, that was not enough; the SEIR also had to quantify both the project's GHG emissions, and the GHG emission reductions that would occur as a result of implementing the strategy. The Court disagreed, noting that CEQA Guidelines concerning GHG emissions authorize an agency to "[r]ely on a qualitative analysis or performance based standards." (CEQA Guidelines, § 15064.4, subd. (a).) "Given the nature of greenhouse gas emissions—gases that trap heat in the atmosphere, contributing to global climate change but with little immediate perceptible effect on the locale from which they emanate—a project's compliance with an area-wide greenhouse gas reduction plan may be more useful in determining the significance of those emissions on a global scale than quantification of its incremental addition to greenhouse gas emissions." In *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, the California Supreme Court endorsed this approach as a potential pathway to compliance.

The Court ruled that the SEIR was not required to study the impact of wind at on-site, publicly-accessible open space. The SEIR's inclusion of this information for disclosure purposes did not mean the impact was cognizable under CEQA.

OCII had discretion to determine the appropriate significance threshold to assess cancer risks associated with toxic air contaminant emissions. The record included guidance indicating various thresholds that had been deemed acceptable, and the threshold used in the SEIR was consistent with this guidance.

On non-CEQA claims, the alliance argued the project exceeded allowable square footage limits for retail uses. The Court disagreed, insofar as the claim rested on a misinterpretation of the meaning of "retail" under the operative redevelopment plan. The Court also upheld approval of a "place of entertainment" permit under the city's police code, finding that substantial evidence supported the arena's compliance with the code's requirements.

California Supreme Court rules that an agency's decision to rely on Public Resources Code section 21166 for a proposal to modify a project for which environmental review was previously performed is reviewed for substantial evidence, rather than as a question of law; Court also upholds CEQA Guideline authorizing addenda to negative declarations, finding that the "fair argument" standard, focusing on impacts associated with changes to the project, applies to challenges to such addenda. *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937

In 2006-2007, the San Mateo Community College District (District) adopted a negative declaration and approved a facilities master plan for the College of San Mateo campus. The plan called for demolishing certain buildings and renovating others. In 2011, the District approved a plan to demolish the "Building 20 complex," which had formerly been slated for renovation, and to construct a parking lot and install landscaping; other buildings that had previously been planned for demolition would now be restored instead. The District prepared an addendum to its 2006-2007 negative declaration. The "Friends" objected, citing the impact of demolishing the Building 20 complex on a garden located there. When the District approved the revisions to the plan, the Friends sued. The trial court granted the writ. The District appealed. The First District affirmed. The Supreme Court granted the District's petition for review.

The District had prepared the addendum based on its view that the proposal to demolish the Building 20 complex had previously undergone CEQA review. The District had therefore performed its review in accordance with Public Resources Code section 21166. The Friends argued that, where an agency performs supplemental review under section 21166, the court must first decide, as a threshold matter, whether the proposal is a modification of a previously approved project, or must be analyzed as an entirely new project. In *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, the Third District Court of Appeal had held that this threshold issue was a question of law, such that the agency's decision was entitled to no deference. The First District had followed *Save Our Neighborhood*'s formulation in concluding the District had violated CEQA.

The Supreme Court rejected this approach as unworkable. As the Court stated, "[the Friends'] approach would assign to courts the authority — indeed, the obligation — to determine whether an agency's proposal qualifies as a new project, in the absence of any standards to govern the inquiry. … [¶] … [T]o ask whether proposed agency action constitutes a new project, purely

in the abstract, misses the reason why the characterization matters in the first place." Thus, "for purposes of determining whether an agency may proceed under CEQA's subsequent review provisions, the question is not whether an agency's proposed changes render a project new in an abstract sense…. [Citation.] Rather, under CEQA, when there is a change in plans, circumstances, or available information after a project has received initial approval, the agency's environmental review obligations 'turn[] on the value of the new information to the still pending decisionmaking process.' [Citation.] If the original environmental document retains some informational value despite the proposed changes, then the agency proceeds to decide under CEQA's subsequent review provisions whether project changes will require major revisions to the original environmental document because of the involvement of new, previously unconsidered significant environmental effects.**"** (Footnotes omitted.)

Whether a previous analysis retains value to consider the impacts of revisions to the project "is a predominantly factual question." For this reason, the "substantial evidence" test applies. "We expect occasions when a court finds no substantial evidence to support an agency's decision to proceed under CEQA's subsequent review provisions will be rare, and rightly so; 'a court should tread with extraordinary care' before reversing an agency's determination, whether implicit or explicit, that its initial environmental document retains some relevance to the decisionmaking process. [Citation.]"

The Friends argued that, in any event, the District had violated CEQA because section 21166 expressly refers only to situations in which the agency had previously certified an environmental impact report (EIR), rather than (as in this case) adopted a negative declaration. The Friends thus argued that CEQA Guidelines section 15162 – which extends the rules regarding supplemental review to negative declarations – was invalid. The Court disagreed, finding that the Resources Agency acted reasonably in adopting a guidelines imposing some limitations on post-approval environmental review, even for those projects initially approved via negative declaration.

Whether the previous document was an EIR or a negative declaration has implications for how the agency applies the rules governing supplemental review; "the substantial evidence standard prescribed by CEQA Guidelines section 15162 requires an agency to prepare an EIR whenever there is substantial evidence that the changes to a project for which a negative declaration was previously approved might have a significant environmental impact not previously considered in connection with the project as originally approved…. It therefore does not permit agencies to avoid their obligation to prepare subsequent or supplemental EIRs to address new, and previously unstudied, potentially significant environmental effects. So understood, CEQA Guidelines section 15162 constitutes a valid gap-filling measure as applied to projects initially approved via negative declaration, including the project at issue in this case."

Finally, the Friends argued that the District could not rely on section 21166 because the Facilities Master Plan and accompanying negative declaration were akin to a plan or program, rather than to a specific project. The Court disagreed, noting that the District's negative declaration was expressly designed to serve as a project-level analysis, and could not be characterized as a first-tier document.

The Supreme Court reversed and remanded to the Court of Appeal to consider the merits of the district's addendum and approval of the building demolition and parking lot project. The Court of Appeal had not previously reached the merits because of its conclusion that the District could not rely on section 21166.

Fourth District rules that CEQA does not require a city to provide an appeal to the city council of the planning department's "substantial conformance review" of modifications to an approved planned development permit. *San Diegans for Open Government v. City of San Diego* (2016) 6 Cal.App.5th 995

In 1997, the city certified a program EIR and approved a high-density, mixed-use retail, commercial, and industrial business park on 242 acres. In 2000 and 2002, the city prepared, respectively, an addendum and mitigated negative declaration, and amended the plan to include 1,568 residential units. In 2012, the city approved a planned development permit for several hundred units, subject to carrying out adopted mitigation measures. In November 2013, the developer applied to the city to modify the approved design; the changes included a slight increase in building heights, a shift in the mix of units, and a reduction in parking. Various city departments performed "substantial conformance review" (SCR) to determine whether the developer's proposal was consistent with the city's approved plans. In January 2014, the planning department approved the project revisions, subject to appeal to the planning commission. The petitioner appealed the decision, arguing that the modifications were not minor, and that the SCR process was inappropriate. Following a hearing, the commission denied the appeal and upheld the approval. The petitioner appealed the commission's decision to the city council. The city refused to process the appeal based on its view that the commission's action was not appealable. The petitioner sued. The trial court denied the petition. The petitioner appealed.

According to the Court, "[t]he sole issue on appeal is whether plaintiffs are entitled to an administrative appeal of the SCR decision to the City Council." The petitioner argued that Public Resources Code section 21151, subdivision (c), required such an appeal. That statute states: "If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any." According to the petitioner, because planning staff and the commission were not elected, the city had to allow an appeal to the council. The Court disagreed. Staff and the commission did not certify an EIR or approve a negative declaration or mitigated negative declaration. Nor did they determine that the project is not subject to CEQA. The city council had already determined that the entire master plan was subject to CEQA. The SCR decision did not alter that determination. Rather, the SCR process confirmed that the project remained subject to the city's previously-adopted mitigation measures. The fact that the SCR decision involved discretion did not, in of itself, trigger a right to a city council appeal. The municipal code, which contained a right of appeal paralleling the language of section 21151, subdivision (c), did not alter that conclusion.

First District upholds decision of San Francisco Municipal Transportation Agency to approve a contract to complete construction of the "T-Line Loop" – an extension of the City's light-rail system through the Dogpatch neighborhood on the City's southeast waterfront – because substantial evidence supported Muni's conclusion that supplemental environmental review was not required. *Committee for Re-Evaluation of the T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237

In 1998, Muni issued an EIR/EIS covering expansion of the City's light-rail system. The analyzed improvements included construction of an "Initial Operating Segment" – an extension of light rail down Third Street, connecting Mission Bay and Dogpatch with the City's downtown transit system. By 2003, Muni had constructed much of this segment, including portions of a loop track at the end of this extension. Muni did not complete all components of the Third Street Loop, however, due to budget constraints. Operations commenced in 2007. In 2013, Muni received a Federal grant to complete the Loop. Muni asked the City's Planning Department to determine whether the 1998 EIR still "covered" the Loop, particularly in light of increased development in Mission Bay, and the proposal to construct an arena for the Golden State Warriors on Third Street. The Planning Department concluded that supplemental review was not required because the 1998 EIR had anticipated such growth. In 2014, Muni approved a contract to construct the remaining improvements to complete the Loop. The committee sued. The trial court denied the petition. The committee appealed.

The Court considered the standard of review applicable to review of Muni's threshold decision to rely on the rules governing supplemental environmental review under Public Resources Code section 21166, rather than treating the proposed contract as a new, stand-alone project. Citing *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, the Court held that the petitioner had the burden of proof to show that Muni's decision to rely on section 21166 was not supported by substantial evidence.

The committee argued the 1998 EIR did not analyze the impacts of the 2014 construction contract and, therefore, the "fair argument" standard of review applied. The Court disagreed. The 1998 EIR had identified the Loop as part of the "Initial Operating Segment." These passages, and other documents in the record, showed that the "Loop" approved in 2014 was the same "Loop" described and analyzed in the 1998 EIR. Case law applying the "fair argument" standard of review involved instances in which the prior EIR either did not address the latter activity, or was a "program EIR" prepared under Public Resources Code section 21094 for which latter, site-specific review was contemplated. The 1998 EIR, by contrast, was a project-specific EIR, and specifically considered the impacts of the Loop as part of the project.

The committee argued that, even if the 1998 FEIR mentioned the Loop, its analysis was insufficiently detailed to pass CEQA muster. The Court rejected this argument as a belated attack on the 1998 EIR.

Substantial evidence supported Muni's decision not to prepare a further EIR. Muni had twice asked the Planning Department whether there were substantial changes to the project, or to the circumstances surrounding the project, necessitating further analysis. Both times, the Planning Department confirmed that the project had not changed, and that although surrounding growth had occurred or been proposed, the underlying EIR had already assumed substantial growth would occur in the area. A separate analysis prepared by the Federal Transit Administration ("FTA") under NEPA provided further support that no new or more severe impacts would occur.

Finally, the committee argued that the City failed to follow required procedures in making its determination that no further CEQA review was required. The Court was unmoved. CEQA does not establish a particular procedure that must be followed to make a determination under section 21166. In particular, no initial study or public hearing is required. Moreover, the FTA had circulated its NEPA analysis, and a Board of Supervisors subcommittee had held a hearing; the committee had participated in both proceedings.

Developments in previously reported cases

Bay Area Clean Environment, Inc. v. Santa Clara County (2016) 2 Cal.App.5th 1197. The Sixth District found that the county complied with SMARA and CEQA in approving a reclamation plan for an existing quarry. Petition for review denied. Ordered depublished December 14, 2016.

Coastal Hills Rural Preservation v. County of Sonoma (2016) 2 Cal.App.5th 1234. The First District held that the "substantial evidence" test applied to its review of a subsequent mitigated negative declaration that supplemented a previously adopted mitigated negative declaration. On November 22, 2016, the Supreme Court issued the following memorandum opinion:

> The petition for review is granted. The matter is transferred to the Court of Appeal, First Appellate District, Division One, for reconsideration in light of *Friends of the College of San Mateo Gardens v. San Mateo County Community College District et al.* (2016) 1 Cal.5th 937, 957-959, footnote 6 [] and [CEQA Guidelines] section 15384. The request for an order directing depublication of the opinion in the above entitled appeal is granted.

On remand, in an unpublished decision, the First District upheld the County's mitigated negative declaration, finding that the record did not contain a "fair argument" that changes to the project would cause environmental impacts. (Slip op. dated May 16, 2017)

Union of Medical Marijuana Patients, Inc. v. City of San Diego (No. S238563). Court of Appeal opinion at 4 Cal.App.5th 103. Petitioner for review granted on January 11, 2017:

(1) Is the enactment of a zoning ordinance categorically a "project" within the meaning of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.)?

(2) Is the enactment of a zoning ordinance allowing the operation of medical marijuana cooperatives in certain areas the type of activity that may cause a reasonably foreseeable indirect physical change to the environment?

Regulatory Updates

No summaries or updates this quarter.

CLIMATE CHANGE

Recent Court Rulings

No summaries or updates this quarter.

Regulatory Updates

No summaries or updates this quarter.

COASTAL RESOURCES

Recent Court Rulings

No summaries or updates this quarter.

Regulatory Updates

Biofouling Management. In November 2016, the State Lands Commission provided notice of, and requested comments on, regulatory amendments concerning the management of biofouling from vessels arriving in California ports. A public hearing was held regarding same in January 2017. Cal. Reg. Notice Register 2016, Vol. No. 48-Z, p. 2033.

Marine Invasive Species Control Fund Fee. In September 2016, the State Lands Commission provided notice of proposed amendments to Sections 2270 and 2271 in Article 4.5 of Title 2, Division 3, Chapter 1 of the California Code of Regulations. The proposed amendments would make regulatory definitions consistent with recent amendments to the Public Resources Code as a result of AB 1312 and would increase the fee paid by vessels arriving in California ports, if traveling from outside of California. Cal. Reg. Notice Register 2016, Vol. No. 39-Z, p. 1693.

ENDANGERED SPECIES

Recent Court Rulings

In October 2016 the Ninth Circuit Court of Appeals held that a decision to list a species under the Endangered Species Act based on projected habitat losses is not necessarily arbitrary and capricious. *Alaska Oil and Gas Association, et al. v. Pritzker, et al*, No. 14-35806 (9th Cir. 2016)

The Pacific bearded seal relies on broken Arctic sea ice floes over shallow water for hunting and nursing habitat. See ice in the Artic has been, and is expected to continue to be, affected by the changing climate. In 2008, the Center for Biological Diversity filed a petition for listing the bearded seal under the Endangered Species Act, on the ground the continued impacts to Artic sea ice will threaten the habitat and thus the viability of the species. After reviewing several climate models to project future changes to sea ice in the Arctic through approximately 2095, the National Marine Fisheries Service (NMFS) in December 2012 published a final rule listing the bearded seal as threatened under the Endangered Species Act.

The key issue in the case was whether it is permissible for NMFS to list a species as threatened based on projected, rather than actual and current, habitat losses. Opponents of the listing rule argued that the listing decision was impermissibly arbitrary and capricious because, among other things, the current population of seals is healthy and the projections regarding the effect of climate change on sea ice formation and the behavior of the seals were too speculative to support the listing decision. The trial court agreed, and granted summary judgment to the Plaintiffs on the basis that the listing decision was indeed arbitrary and capricious.

The court held that on the record before it, the listing decision was not arbitrary or capricious. Courts do not require agency decisions to be supported by "ironclad and absolute" evidence, but will defer to an agency's interpretation of scientific data if the agency explains its approach and the limitations thereof. Accordingly, the fact that the forecasted climate predictions were "volatile" did not necessarily mean that NMFS's projections were arbitrary. Instead, the court found that the projections were "reasonable, scientifically sound, and supported by evidence." That was sufficient to support overturning the trial court.

Regulatory Updates

Coast Yellow Leptosiphon. In December 2016, the Fish and Game Commission (Commission) accepted for consideration a petition to list the coast yellow leptosiphon as an endangered species. Based on the petition and other available information, the Commission provided notice that the species is a candidate species. The Department of Fish and Wildlife (Department) shall submit a written report within one year indicating whether the petitioned action is warranted. Cal. Reg. Notice Register 2016, Vol. No. 52-Z, p. 2197.

Flat-Tailed Horned Lizard. In November 2016, the Commission provided notice of a hearing to consider potentially listing the flat-tailed horned lizard under the California Endangered Species Act. Cal. Reg. Notice Register 2016, Vol. No. 47-Z, p. 2021.

Livermore Tarplant. In November 2016, the Commission provided notice of a finding that the petitioned action to add the Livermore tarplant to the list of endangered species is warranted. The finding is based on review of the best scientific information available, which provides that the Livermore tarplant is in serious danger or threat. Cal. Reg. Notice Register 2016, Vol. No.45-Z, p. 1973. In December 2016, the Commission provided notice of, and requested comments on, its recommendation to add the Livermore tarplant to the list of endangered species based on the following threats: (i) recent and ongoing development and changes in land use, (ii) impacts from invasive species, (iii) recreation activities, (iv) herbicide use, and (v) vulnerability of small populations. Cal Reg. Notice Register 2016, Vol. No. 52-Z, p. 2177.

Townsend's Big-Eared Bat. In October 2016, the Commission provided a notice of findings in response to a petition requesting the Townsend's Big-Eared Bat be added to the list of threatened or endangered species. The Commission found that the Townsend's Big-Eared Bat is not in serious danger or threatened, and is not warranted as an endangered species at this time. Cal. Reg. Notice Register 2016, Vol. No. 45-Z, p. 1976.

ENERGY

Recent Court Rulings

No summaries or updates this quarter.

Regulatory Updates

No summaries or updates this quarter.

FEES/TAXES

Recent Court Rulings
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Regulatory Updates
No summaries or updates this quarter.

FOREST RESOURCES

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No summaries or updates this quarter.

Regulatory Updates

Safety Element Review, 2017. In October 2016, the Board of Forestry and Fire Protection (Board) provided notice of a proposed action to create a procedure to standardize the review of safety elements submitted to the Board as required by counties and cities. Currently, there are no implementing regulations in place for the program. Cal. Reg. Notice Register 2016, Vol. No. 44-Z, p. 1949. In December 2016, the Board gave notice of a decision not to proceed regarding same. Cal Reg. Notice Register 2016, Vol. No. 52-Z, p. 2198.

HAZARDOUS MATERIALS/ WASTE

Recent Court Rulings
No summaries or updates this quarter.

Regulatory Updates

Copper-Based Antifouling Paint and Coating Products (AFP). In November 2016, the Department of Pesticide Regulation provided notice of a proposal to adopt California Code of Regulations, Title 3, Section 6190 concerning copper-based AFP. The proposed regulation would require registrants of all new copper-based AFP products to submit estimated daily mean copper release rate data as a requirement for registration, and establish a maximum allowable copper leach rate for recreational vessels. Cal. Reg. Notice Register 2016, Vol. No. 47-Z, p. 2012.

Pesticides Related to Agricultural Commodities. In September 2016, the Department of Pesticide Regulation provided notice of proposed regulations that would require growers to notify public K-12 schools, child day care facilities, and county agricultural commissioners when certain pesticide applications made for production of an agricultural commodity are made near a school site. Cal. Reg. Notice Register 2016, Vol. No. 40-Z, p. 1747.

Site Cleanup. In November 2016, the Department of Toxic Substance Control announced a public workshop to discuss the toxicity criteria required when establishing human risk-based screening levels, action levels and remediation goals. The workshop will discuss the addition of a proposed

chapter to California Code of Regulations, Title 22, Division 4.5, concerning human health toxicity criteria for site cleanup prior to the formal rulemaking process. Cal. Reg. Notice Register 2016, Vol. No. 46-Z, p.1998.

INSURANCE COVERAGE

Recent Court Rulings
No summaries or updates this quarter.

Regulatory Updates
No summaries or updates this quarter.

LAND USE

Recent Court Rulings
No summaries or updates this quarter.

Regulatory Updates

Transformative Climate Community Program Funds. In September 2016, the Strategic Growth Council provided notice of proposed regulations allocating funding of Transformative Climate Community Program funds. The proposed action is the first of several to develop guidelines for plan development and implementation of the program. Cal. Reg. Notice Register 2016, Vol. No. 39-Z, p. 1706.

PROPOSTITION 65

Recent Court Rulings
No summaries or updates this quarter.

Regulatory Updates

List of Chemicals Known to the State to Cause Cancer or Reproductive Toxicity. For the Office of Environmental Health Hazard Assessment's (OEHHA) most current list of chemicals known to the State to cause cancer or reproductive toxicity, see Cal. Reg. Notice Register 2016, Vol. No. 43-Z, p. 1898.

New Listings. In October 2016, the OEHHA announced that, effective September 30, 2016, *furfuryl alcohol*, was added to the list of chemicals known to the State to cause cancer under the authoritative bodies mechanism. Cal. Reg. Notice Register 2016, Vol. No. 42-Z, p. 1852.

In October 2016, OEHHA also announced that, effective October 21, 2016, *pentachlorophenol and by-products of its synthesis (complex mixture)* was added to the list of chemicals known to the State to cause cancer under the authoritative bodies mechanism. Cal. Reg. Notice Register 2016, Vol. No. 43-Z, p. 1898.

Notice of Intent to List. In September 2016, OEHHA provided notice of its intent to list:

1. *Perfluorooctanoic acid* and p*erfluorooctane sulfonate* as known to the State to cause cancer under the authoritative bodies listing mechanism. Cal. Reg. Notice Register 2016, Vol. 38-Z, p. 1678.
2. *Pertuzumab* as known to the State to cause reproductive toxicity under the "formally required to be labeled or identified" listing mechanism. Cal. Reg. Notice Register 2016, Vol. 40-Z, p. 1772.
3. *Vismodegib* as known to the State to cause reproductive toxicity (development, female, and male endpoints) under the "formally required to be labeled or identified" listing mechanism. Cal. Reg. Notice Register 2016, Vol. 40-Z, p. 1774.

In December 2016, OEHHA provided notice of its intent to list:

1. *Pertuzumab* as known to the State to cause reproductive toxicity under the formally required to be labeled or identified listing mechanism. Cal. Reg. Notice Register 2016, Vol. 49-Z, p. 2091.
2. *Vismodegib* as known to the State to cause reproductive toxicity under the formally required to be labeled or identified listing mechanism. Cal. Reg. Notice Register 2016, Vol. No. 49-Z, p. 2093.
3.

Notice to Change the Basis for Listing. In December 2016, OEHHA provided notice of a change in the listing mechanism for *chloroform* based on modifications to certain federal regulations. The listing mechanism is being changed from the Labor Code mechanism to the State's qualified experts mechanism. Cal. Reg. Notice Register 2016, Vol. No. 52-Z, p. 2197.

Safe Use Determinations. In October 2016, OEHHA provided notice of an amendment to Section 25204(f) in Title 27 of the California Code of Regulations relating to Safe Use Determination hearings. The amendment would make the public hearings optional and held only at the request of an interested individual during the prescribed time. Cal. Reg. Notice Register 2016, Vol. No. 42-Z, p. 1848.

RESOURCE CONSERVATION

Recent Court Rulings

No summaries or updates this quarter.

Regulatory Updates

Deer Hunting. In December 2016, the Fish and Game Commission (Commission) provided notice of proposed amendments to regulations concerning reporting requirements for deer tagging. The proposed amendments would: (i) eliminate in-person delivery of completed reports, and (ii) add a provision that report cards submitted by mail will be considered not reported if they are not received. Cal. Reg. Notice Register 2016, Vol. No. 52-Z, p.2175.

In December 2016, the Commission also provided notice of proposed amendments relating to deer hunting tags for: (i) the X zones, (ii) additional hunts, and (iii) existing area-specific archery hunts. The numbers of tags are provided in ranges and will be finalized once the spring deer herd data is collected. In addition, the proposed amendments would make modifications to the hunting season dates. Cal Reg. Notice Register 2016, Vol. No. 52-Z, p. 2180.

Groundfish and Associated Species. In September 2016, the Commission provided notice of amendments and additions to certain regulations relating to recreational fishing for federal groundfish and associated species for consistency with federal rules for 2017 and 2018. The recommendations will subsequently be implemented as federal fishing regulations by the National Marine Fisheries Service. Cal. Reg. Notice Register 2016, Vol. No. 38-Z, p. 1672.

North Coast Marine Protected Areas. In October 2016, the Commission provided notice of proposed amendments to Section 632 in Title 14 of the California Code of Regulations relating to tribal take in north coast marine protected areas. Specifically, the amendments would: (i) add two tribes to the list of tribes exempt from the area and take regulations, and (ii) account for a name change. Cal. Reg. Notice Register 2016, Vol. No. 41-Z, p. 1812.

Take of Game. In September 2016, the Commission provided notice of new proposed regulations establishing standards for imposing penalty enhancements for illegal take of game with defined characteristics. Specifically, the definitions of "trophy" deer, elk, antelope, bighorn sheep, and wild turkey will be adopted to enhance fines and penalties for poaching animals meeting specified criteria. Cal. Reg. Notice Register 2016, Vol. No. 40-Z, p. 1765.

Use of Dogs for Pursuit/Take of Mammals. In November 2016, the Commission provided notice of proposed changes to amend Section 265 in Title 14 of the California Code of Regulations, prohibiting the use of GPS collars and treeing switches for dogs used in the taking of mammals. The proposed amendments are in response to litigation seeking to invalidate the existing regulation, which allows for the use of such equipment. Cal. Reg. Notice Register 2016, Vol. No. 47-Z, p. 2018. In December 2016, the Commission provided a notice of hearing regarding same. Cal. Reg. Notice Register 2016, Vol. No. 52-Z, p. 2197.

Waterfowl. In December 2016, the Commission provided notice of proposed regulations relating to waterfowl hunting for the 2017-18 season. The proposed regulations specify: (i) the length of the season, (ii) daily duck limits, and (iii) daily bag limit ranges. In addition, the Department of Fish and Wildlife recommended several regulatory modifications as required by Federal regulations. Cal. Reg. Notice Register 2016, Vol. No. 52-Z, p. 2189.

SOLID WASTE

Recent Court Rulings

No summaries or updates this quarter.

Regulatory Updates

No summaries or updates this quarter.

WATER RESOURCES

Recent Court Rulings

No summaries or updates this quarter.

Regulatory Updates

WATER QUALITY

Recent Court Rulings

Regulatory Updates

Nitrates in Combination with Amines or Amides. In September 2016, OEHHA provided notice of an extended comment period for the hazard identification materials for nitrite in combination with amines or amides. The comment period was extended to October 17, 2016. Cal. Reg. Notice Register 2016, Vol. No. 39-Z, p. 1716.

Public Health Goals (PHGs). In September 2016, OEHHA provided a notice of an updated PHG for antimony in drinking water. PHGs provide information on the health effects of contaminants in water, and are considered by the State Water Resources Control Board in setting drinking water standards. As a result of the update, the PHG for antimony has been revised from 20 parts per billion (ppb) to 1 ppb. Cal. Reg. Notice Register 2016, Vol. No. 39-Z, p. 1714.

In September 2016, OEHHA also provided notice of updated PHGs, and a supporting technical document, for carbofuran, diquat, endrin, picloram and thiobencarb. The updated PHGs are 0.7 bbp for carbofuran, 6 ppb for diquat, 0.3 ppb for endrin, 166 ppb for picloram, and 42 ppb for thiobencard. Cal. Reg. Notice Register 2016, Vol. No. 39-Z, p. 1715.

In October 2016, OEHHA provided a notice of initiation of the process to update PHGs for the following chemicals: (i) c*is-1,2-dichloroethylene*; (ii) *trans-1,2-dichloroethylene*; (iii) h*exavalent chromium*; and (iv) *nickel*. Cal. Reg. Notice Register 2016, Vol. No. 44-Z, p. 1953.

In December 2016, OEHHA provided a notice of availability, and requested comments on, a draft technical support document for the proposed update of the PHGs for nitrate and nitrite in drinking water. OEHHA will submit the draft risk assessment for external scientific peer review following the workshop being held regarding same. Cal. Reg. Notice Register 2016, Vol. No. 51-Z, p. 2158. Well Stimulation Treatment and Underground Injection Control Class II Regulations. In December 2016, the Department of Conservation provided notice of its decision to deny a petition requesting amendments to the Division of Oil, Gas, and Geothermal Resources' well stimulation treatment and underground injection control Class II regulations. Cal. Reg. Notice Register 2016, Vol. No. 49-Z, p. 2099.

Federal Summaries

Supreme Court

No summaries or updates this quarter.

Ninth Circuit Court of Appeals

The Ninth Circuit has held that, where a second NPDES permit supplants a prior permit which is the subject of a legal challenge for exceedance of pollution limits, the challenge is moot only if permittee shows with "absolute clarity" that it will meet the permit requirements. ***Natural Resources Defense Council v. County of Los Angeles*****, 840 F.3d 1098 (9th Cir. 2016).**

In 2008, NRDC filed suit alleging that County stormwater discharges violated its 2001 NPDES permit. In 2013, the Ninth Circuit upheld the claim on grounds that pollution levels exceeded the permit limits. But in 2012, the County received a new permit with the same baseline limitations as the 2001 permit. Where the 2001 permit prohibited any exceedance of water quality standards, the 2012 permit contained total maximum daily loads (TMDL) for over thirty impaired water bodies, with interim requirements to meet the final TMDL deadlines. The 2012 permit also contained a "safe harbor" program allowing implementation of and compliance with voluntary watershed management programs (WMP) in order to be "deemed compliant" with the baseline limitations and interim TDML requirements. "Deemed compliance" began upon notice of the County's intent to implement a WMP, but could be revoked if the County failed to keep up with the programs. The County prepared WMPs for all water bodies. In January 2015, the County requested dismissal of plaintiffs' lawsuit on mootness grounds, arguing that the 2012 permit supplanted the 2001 permit and thus no relief was available. The district court granted the request in part, on grounds that the County was in compliance with the 2012 permit and there was no evidence it would not comply. Plaintiffs appealed.

On appeal, the question was whether the 2012 permit and County's actions to date thereunder rendered NRDC's challenge moot. The court also addressed a threshold, jurisdictional question, whether the district court's decision effectively denied an injunction such that the Ninth Circuit had authority to review the denial as an interlocutory order.

The Ninth Circuit held that the dismissal of NRDC's claim was a reviewable interlocutory order whose effect was to deny plaintiffs' request for an injunction. The court also held plaintiffs' claim regarding the 2001 permit was not moot. The relevant inquiry was "whether the 2012 permit maintains the receiving water limitations from the 2001 permit such that an injunction could still provide effective relief." The district court erred by assuming that *any* relaxation of the standards in the 2012 permit necessarily mooted the case. The 2012 permit substantially retained the prior permit's baseline limitations, and only excused violations if the County qualified for the safe harbor program by keeping up with the WMP deadlines. Thus the County's compliance with the baseline limitations was conditioned on the success of the WMP programs and the County had to demonstrate with "absolutely clarity" that violations would not occur. The district court improperly

placed the burden on NRDC to show the County could not show future compliance with absolute clarity, instead of requiring the County to make this showing based on "positive evidence." Mere initiation of the WMP programs was not enough; the County had to actually establish it would comply with the programs. Without such showing, the baseline limitations from the 2001 permit would still potentially apply and it was therefore not impossible for the district court to award injunctive relief to plaintiffs.

The Ninth Circuit has held that federal and state law preempt a voter-adopted ordinance purporting to ban the cultivation and testing of genetically engineered plants. *Atay v. County of Maui* (9th Cir. 2016) 842 F.3d 388

Voters in the County of Maui voted to adopt an ordinance that banned the cultivation and testing of genetically engineered (GE) plants. The purpose of the ordinance was to protect organic and non-GE farmers and the environment from contamination and pesticides; preserve the residents' right to reject GE agriculture; and protect the County's vulnerable ecosystems. The district court ruled that the ordinance was expressly and impliedly preempted by federal law; impliedly preempted by state law; and in excess of the County's authority under its Charter.

The issue on appeal was whether state and/or federal law preempted the ordinance banning cultivation and testing of GE plants.

The Ninth Circuit ruled that: (1) the ordinance was expressly preempted by the Plant Protection Act, 7 U.S.C. section 7756(b) to the extent that the ordinance banned GE plants that are regulated as plant pests by the U.S. Animal and Plant Health Inspection Service (APHIS); (2) the ordinance was not impliedly preempted by the Plant Protection Act with respect to GE plants that APHIS has deregulated; and (3) the ordinance was impliedly preempted as applied by Hawaii's comprehensive statutory scheme for regulating potentially harmful plants.

The Ninth Circuit has held that a local ordinance regulating commercial farmers' use of pesticides and cultivation of genetically engineered (GE) plants was impliedly preempted by state law. *Syngenta Seeds v. County of Kauai* (9th Cir. 2016) 842 F.3d 669

The County of Kauai adopted an ordinance regulating "commercial agricultural entities'" (CAEs) use of restricted use pesticides (RUPs). In relevant part, the ordinance required CAEs to: (1) comply with notification and disclosure provisions before and after applying RUPs; (2) prepare detailed reports regarding the use of the RUPs; and (3) establish "buffer zones" between crops treated with RUPs and certain surrounding properties, including schools and waterways. The ordinance also required the County to complete an Environmental and Public Health Impact Study to address "environmental and public health questions related to large-scale commercial agricultural entities utilizing pesticides and genetically modified organisms" and recommend possible actions to address such public health impacts.

The issue on appeal was whether state law preempted the ordinance.

The Ninth Circuit ruled that the Hawaii Pesticides law preempted the ordinance's pesticide provisions.

Other Federal Cases of Interest

The United States Court of Appeals for the First Circuit held that land acquired and developed via a Land and Water Conservation Fund Act grant is subject to administrative restrictions in perpetuity. *Boston Redevelopment Authority v. National Park Service and Sally Jewell, as Secretary for the United States Department of the Interior*, No. 15-2770 (1st Cir. September 23, 2016).

In the 1970s, The Boston Redevelopment Authority ("BRA") acquired title to "Long Wharf," a piece of real estate bordering the Boston Harbor. In 1980, BRA applied for a federal grant via the Land and Water Conservation Fund Act ("LWCFA"). LWCFA grants provide financial assistance to state entities for acquisition of land and related development for outdoor recreational purposes. As a condition of receiving the grant, the landowner may not convert the land to any use other than "outdoor recreation use" without approval from the National Park Service ("NPS"). The LWCFA refers to such restricted land as "Section 6(f) area." BRA wished to redevelop a portion of the Long Wharf, referred to as the "Pavilion," for commercial purposes. Based upon a 1983 map included within the LWCFA grant materials, NPS initially determined the Pavilion was not a part of Long Wharf's Section 6(f) area, and did not require NPS approval. Accordingly, BRA proceeded with the redevelopment. Six years later, NPS discovered a hand-labeled map in its files that corresponded with BRA's grant application. Utilizing the 1980 map, NPS issued a 2014 final determination that the Pavilion fell within the Section 6(f) area, and denied permission for BRA's redevelopment. NPS asserted the area should remain open to outdoor recreational use. BRA sued NPS in the U.S. District Court for the District of Massachusetts. The court granted a motion for summary judgment filed by NPS, and BRA appealed to the First Circuit Court of Appeals.

The Court initially addressed the standard of appellate review. It held that the appropriate standard was "arbitrary and capricious" under the Administrative Procedure Act. Its primary analysis focused upon whether the 1980 or 1983 map controlled with regard to the Section 6(f) area. The Court found compelling the facts that the 1980 map coincided with the timing of BRA's grant application and BRA sought NPS approval as to prior easements encompassing the Pavilion. Additionally, BRA used the terms "Long Wharf" and "project site" interchangeably in its grant application, indicating the Section 6(f) area encompassed all of the Long Wharf, including the Pavilion. The Court held NPS correctly used the 1980 map and its decision was neither arbitrary nor capricious. As dicta, the Court addressed additional arguments raised by BRA. First, BRA alleged the LWCFA grant was only used for planning, which should be distinguished from development. The Court held such a distinction was artificial and it would not create a loophole allowing one to allocate LWCFA funds toward "planning" to bypass the NPS's control over redevelopment of Section 6(f) areas. Additionally, the Court rejected procedural and substantive due process arguments raised by BRA.

The holding acts as a cautionary tale regarding the use of LWCFA grants. The Court provided that, as part of the basis of the bargain in applying for LWCFA grants, the land is subject to Section 6(f) area approval in perpetuity.

Federal Regulatory Updates

Agency Administration

Fall 2016 Regulatory Agenda. In December 2016, the U.S. Environmental Protection Agency (EPA) provided notice of its semiannual regulatory agenda update. The document contains information about: (i) regulation changes since the previous agenda; (ii) retrospective reviews of existing regulations; and (iii) review of regulations with small business impacts under Section 610 of the Regulatory Flexibility Act. 81 Fed. Reg. 94809.

Air Quality

Air Pollution Control Cost Manual. In September 2016, the EPA provided notice of, and requested comments on, the following updated chapters of the current Air Pollution Control Cost Manual: (i) Chapter 2, Cost Estimation: Concepts and Methodology; (ii) Section 3.1, Chapter 1, Refrigerated Condensers; and, (iii) Section 3.2, Chapter 2, Incinerators/Oxidizers. 81 Fed. Reg. 65352.

Ambient Air Monitoring Reference and Equivalent Methods. In November 2016, the EPA provided a notice of designation of one new equivalent method for measuring concentrations of nitrogen dioxide (NO_2) in the ambient air. 81 Fed. Reg. 85561.

Applicability Determination Index Data System. In December 2016, the EPA provided a notice of availability of applicability determinations, alternative monitoring decisions, and regulatory interpretations that the EPA has made under the New Source Performance Standards, National Emission Standards for Hazardous Air (NESHAP) and/or the Stratospheric Ozone Protection Program. 81 Fed. Reg. 95585.

California State Motor Vehicle Pollution Control Standards. In November 2016, the EPA provided notice of its decision granting the California Air Resources Board's (CARB) request for a waiver of Clean Air Act preemption to enforce amendments to regulations entitled "Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Engines," and amendments to CARB's regulations entitled "Enforcement of Malfunction and Diagnostic Systems Requirements for 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines." 81 Fed. Reg. 78143.

In November 2016, the EPA also provided notice of its decision granting CARB's request for a waiver of Clean Air Act preemption for amendments made in 2013 to its "Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model Year Heavy-Duty Engine," and to its "Enforcement of Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model-Year Heavy-Duty Engines." The EPA also confirmed that certain amendments are within the scope of the previous waiver. 81 Fed. Reg. 78149.

In December 2016, the EPA provided a notice of decision granting CARB's request for a waiver of Clean Air Act preemption for its GHG emission regulation for the new 2014 and subsequent model year on-road medium- and heavy-duty engines and vehicles adopted in 2011. The regulation establishes requirements applicable to new motor vehicles with a gross vehicle weight rating exceeding 8,500 pounds and engines that power such motor vehicles with certain exceptions. 81 Fed. Reg. 95982.

Clean Air Act Permitting Programs. In October 2016, the EPA provided notice of a final rule revising the public notice provisions for the New Source Review (NSR), Title V and Outer Continental Shelf (OCS) permit programs of the Clean Air Act. Specifically, the rule replaces the requirement for newspaper publication of a public notice of a draft air permit with electronic notice (e-notice). 81 Fed. Reg. 71613.

Control Technique Guidelines for Oil and Natural Gas Industry. In October 2016, the EPA provided a notice of availability of a final document titled, "Control Techniques Guidelines for the

Oil and Natural Gas Industry." The document provides information to assist in determining reasonably available control technology (RACT) for volatile organic compound (VOC) emissions from select oil and natural gas industry emission sources. 81 Fed. Reg. 74798.

Cross-State Air Pollution Rule (CSAPR) Allowances. In November 2016, the EPA provided notice of a final rule, and data availability, for emission allowance allocations to certain units under the new unit set-aside (NUSA) provisions of the CSAPR federal implementation plans (FIP). The final rule provides the second-round of 2016 NUSA allocations of CSAPR oxides of nitrogen (NO_X) Ozone Season allowances to new units, and allocations to existing units of the remaining CSAPR NO_X Ozone Season allowances not allocated to new units in either round of the 2016 NUSA allocation process. 81 Fed. Reg. 80593.

Events Rule and Guidance. In October 2016, the EPA provided notice of a final rule concerning revisions to regulations that govern the exclusion of event-influenced air quality data from certain regulatory decisions. In addition, the EPA provided a notice of availability of a document titled: "Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations." 81 Fed. Reg. 68216.

Federal Implementation Plan. In December 2016, the EPA provided notice of a rule proposing a limited FIP to apply to the North Coast Air Quality Management District (AQMD) in California. The limited FIP would implement provisions to regulate fine particulate matter ($PM_{2.5}$) under the Clean Air Act Prevention of Significant Deterioration program. This action is a result of North Coast AQMD's failure to comply. 81 Fed. Reg. 93872.

Formaldehyde Emission Standards for Composite Wood Products. In December 2016, the EPA provided notice of a final rule to implement the Formaldehyde Emission Standards for Composite Wood Products Act. The purpose of the Act is to reduce emissions, which will reduce exposure to formaldehyde and result in benefits from avoided adverse health effects. 81 Fed. Reg. 89674.

Mercury and Air Toxics Standards. In October 2016, the EPA provided notice of a 15-day comment period extension for the proposed rule titled, "Mercury and Air Toxics Standards Completion of Electronic Reporting Requirements." The extended comment period closes November 15, 2016. 81 Fed. Reg. 75365.

Method 303 Certification Training. In November 2016, the EPA provided notice of a final rule revising requirements for Method 303 training courses. Method 303 is an air pollution test method used to determine the presence of visible emissions from coke ovens. The revisions add clarifying language. 81 Fed Reg. 83701.

Minor New Source Review Program. In October 2016, the EPA provided notice of a final rule concerning general permits pursuant to the Federal Minor NSR Program in Indian country for new or modified minor sources in the following categories: concrete batch plants; boilers and emergency engines; stationary spark ignition engines; stationary compression ignition engines; graphic arts and printing operations; and sawmill facilities. 81 Fed. Reg. 70944.

National Ambient Air Quality Standards (NAAQS). In September 2016, the EPA provided a notice of availability of, and requested comments on, "Policy Assessment for the Review of the Primary National Ambient Air Quality Standards for Nitrogen Dioxide – External Review Draft." 81 Fed. Reg. 65353.

In October 2016, the EPA:

1. Provided notice of a final rule denying a request submitted by California to extend the attainment date for the 1997 24-hour and annual $PM_{2.5}$ NAAQS in the San Joaquin Valley Serious $PM_{2.5}$ nonattainment area. 81 Fed. Reg. 69396.
2. Provided notice of a proposed rule to determine that the San Joaquin Valley nonattainment area failed to attain the 1997 annual and 24-hour $PM_{2.5}$ NAAQS by the required date. The proposed determination is based on monitored air quality from 2013 through 2015. 81 Fed. Reg. 69448.
3. Provided notice of a proposed rule determining that the San Luis Obispo County ozone nonattainment area has attained the 2008 ozone NAAQS by the applicable attainment date. If the determination is finalized, this area will not be reclassified to a higher ozone classification. 81 Fed. Reg. 70382.
4. Provided notice of a final rule following its review of the NAAQS for lead. The final rule retains the current standards without revision. 81 Fed. Reg. 71906.

In November 2016, the EPA:

1. Provided notice of a proposed rule classifying nonattainment area thresholds and implementation requirements for the 2015 ozone NAAQS. The proposed rule is an update to the 2008 ozone NAAQS, and addresses the timing of attainment dates and nonattainment area state implementation plan requirements for the 2015 ozone NAAQS. 81 Fed. Reg. 81276.
2. Provided notice of a final rule concerning the San Joaquin Valley nonattainment area failing to attain the 1997 annual and 24-hour $PM_{2.5}$ NAAQS by the "serious" area attainment date. As a result, the State of California must submit a revision to the California SIP. 81 Fed. Reg. 84481.

In December 2016, the EPA:

1. Provided a notice of availability of a final document titled, "Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter." 81 Fed. Reg. 87933.
2. Provided a notice of public comment period for the draft document titled, "Second External Review Draft Integrated Science Assessment for Sulfur Oxides-Health Criteria." 81 Fed. Reg. 89097.
3. Provided a notice of determination of attainment by the attainment date for areas currently classified as moderate for the 2006 24-hour $PM_{2.5}$ NAAQS, including: Chico, Imperial County, Sacramento, and San Francisco. 81 Fed. Reg. 91088.
4. Provided notice of a public hearing, and extended comment period, concerning the proposed rule titled, "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Requirements." 81 Fed. Reg. 91894.
5. In December 2016, the EPA also provided notice of a final rule providing the determination that the San Luis Obispo ozone nonattainment area in California has attained the 2008 ozone NAAQS by the applicable attainment date. 81 Fed. Reg. 93620.
6. Provided notice of a direct final rule determining that the Mariposa County moderate nonattainment area has attained the 2008 8-hour ozone NAAQS. The determination

suspends any unfulfilled obligations to submit revisions to the SIP as long as the area continues to meet the standards. 81 Fed. Reg. 93624. The EPA provided notice of a proposed rule concerning same. 81 Fed. Reg. 93653.

7.

National Emission Standards for Hazardous Air Pollutant (NESHAP) Emissions. In September 2016, the EPA provided notice of a proposed rule to amend electronic reporting requirements for the NESHAP Coal- and Oil-Fired electricity utility steam generation units (also known as the Mercury and Air Toxics Standards). The proposed rule would revise and streamline the electronic data reporting requirements and increase data transparency. 81 Fed. Reg. 67062.
In October 2016, the EPA announced reconsideration of, and requested comments on, five issues raised in petitions for the previously finalized amendments to the NESHAP Refinery Maximum Achievable Control Technology (MACT) 1 and Refinery MACT 2 regulations and the New Source Performance Standard for petroleum refineries. 81 Fed. Reg. 71661. In November 2016, the EPA provided notice of a public hearing and extended comment period for same. 81 Fed. Reg. 76550.
In December 2016, the EPA:

1. Provided notice of a proposed rule amending the NESHAP for phosphoric acid manufacturing and phosphate fertilizer production source categories. The revisions are in response to petitions for reconsideration filed regarding same. 81 Fed. Reg. 89026.
2. Provided a notice of availability of broadly applicable alternative test method approval decisions the EPA has made under, and in support of, New Source Performance Standards and NESHAP. 81 Fed. Reg. 93682.
3. Provided notice of a proposed rule amending the NESHAP for Publicly Owned Treatment Works (POTW) to address the results of the residual risk and technology review. The amendments would include: (i) pretreatment requirements to limit certain emissions; (ii) requirements for certain industrial (Group 1) POTW; and (ii) hazardous air pollutants emission limits for existing, non-industrial (Group 2) POTW. 81 Fed. Reg. 95352.
4. Provided notice of a proposed rule amending the NESHAP for the Manufacturing of Nutritional Yeast source category. The proposed amendments include: (i) revising the fermenter VOC emission limits form, (ii) changing the testing and monitoring requirements, and (iii) updating the reporting and recordkeeping requirements. 81 Fed. Reg. 95810.
5. Provided notice of a proposed rule amending the NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills. The proposed amendments include: (i) revising opacity monitoring provisions, (ii) adding electrostatic precipitator parameter monitoring provisions, and (iii) requiring periodic emissions testing, as well as others. 81 Fed. Reg. 97046.

6.

Near Road NO_2 Monitoring. In December 2016, the EPA provided notice of a final rule revising minimum monitoring requirements for near-road NO_2 monitoring by removing the existing requirement for certain areas having a population between 500,000 and 1,000,000. 81 Fed. Reg. 96381.

New Source Performance Standards. In November 2016, the EPA provided notice of a final rule updating quality assurance requirements for PM continuous emission monitoring system (CEMS) procedures in the New Source Performance Standards. The procedures will be modified to allow facilities to extend their PM CEMS correlation regression line to ensure facilities have

reduced their emissions. 81 Fed. Reg. 83160. The EPA provided notice of a proposed rule regarding same. 81 Fed. Reg. 83189.

Outer Continental Shelf Air Regulations. In December 2016, the EPA provided notice of a proposed rule to update portions of the OCS regulations for the Santa Barbara County (Air Pollution Control District) APCD and Ventura County APCD designated corresponding onshore areas. The rule would regulate emissions from OCS sources in accordance with onshore requirements. 81 Fed. Reg. 89418.

Prevention of Significant Deterioration. In November 2016, the EPA provided notice of a final rule amending its federal Prevention of Significant Deterioration regulations. The amendments would: (i) remove a date restriction from the permit rescission provision, (ii) add a permit rescission provision that applies to major sources in nonattainment areas of Indian county, and (iii) provide clarifications and corrections. 81 Fed. Reg. 78043.

In November 2016, the EPA also provided notice of an extended comment period for a proposed rule concerning revisions to the provisions in the prevention of significant deterioration and title V permitting regulations applicable to GHGs. The comment period was extended to December 16, 2016. 81 Fed. Reg. 81711.

Protection of Stratospheric Ozone. In October 2016, the EPA provided a determination of acceptability expanding the list of substitutes pursuant to the EPA's Significant New Alternatives Policy Program. The added acceptable substitutes are for use in the refrigeration and air conditioning sector and fire suppression and explosion protection sectors. 81 Fed. Reg. 70029.
In November 2016, the EPA provided notice of a final rule updating refrigerant management requirements and extending them to include non-ozone depleting substitute refrigerants. The updates include: (i) strengthened leak repair requirements, (ii) recordkeeping requirements, (iii) revisions to the technician certification program, and (iv) clarifying revisions. 81 Fed. Reg. 82272.
In December 2016, the EPA provided notice of a final rule pursuant to the New Alternatives Policy Program including: (i) the level of acceptability for certain substances, (ii) specifics for a propane exemption in certain refrigeration end-uses, and (iii) unacceptability determinations for closed cell foam products. 81 Fed. Reg. 86778.

Renewables Enhancement and Growth Support Rule. In November 2016, the EPA provided notice of, and requested comments on, its intent to update both its renewable fuels and other fuels regulations to reflect changes in the marketplace and to promote the growing use of both ethanol fuels (conventional and advanced) and non-ethanol advanced and cellulosic biofuels. 81 Fed. Reg. 80828. In December 2016, the EPA provided notice of an extended comment period for same. 81 Fed. Reg. 95097.

Renewable Fuel Standard Program. In December 2016, the EPA provided notice of a final rule establishing the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to all motor vehicle gasoline and diesel produced or imported in 2017. 81 Fed. Reg. 89746.

State Implementation Plan (SIP). In September 2016, the EPA:

1. Provided notice of proposed revisions to the South Coast AQMD portion of the California SIP. The revisions concern emissions of NO_X from ovens, dryers, dehydrators, heaters, kilns, calciners, furnaces, crematories, incinerators, heated pots, cookers, roasters, smokers, fryers, closed and open heated tanks and evaporators, distillation units, vapor incinerators, catalytic or thermal oxidizers, soil and water remediation units, and other combustion equipment. 81 Fed. Red. 63732.
2. Provided notice of a final action to approve revisions to the California Department of Pesticide Regulations portion of the California SIP. The revisions concern emissions of VOCs from pesticides and would restrict the use of certain nonfumigant pesticide products applied to certain crops in the San Joaquin Valley ozone nonattainment area under certain conditions. 81 Fed. Reg. 64350.
3. Provided notice of a proposed rule to approve revisions to the Ventura County APCD portion of the California SIP. The proposed revisions would incorporate a Prevention of Significant Deterioration (PSD) rule to establish a permit program for pre-construction review of certain new and modified major stationary sources in attainment and unclassifiable areas. 81 Fed. Reg. 65595.
4.

In October 2016, the EPA:

1. Provided notice of a direct final rule to approve revisions to the Sacramento AQMD and the San Diego County APCD portions of the California SIP. The revisions concern emissions of VOCs from architectural coatings. 81 Fed. Reg. 68320. The EPA also provided notice of a proposed rule regarding same. 81 Fed. Reg. 68379.
2. Provided notice of a final rule on five permitting rules submitted as a revision to the Northern Sonoma County APCD portion of the California SIP. The amended rules govern the issuance of permits for stationary sources, including review and permitting of minor sources, major sources and major modifications. 81 Fed. Reg. 69390.
3. Provided notice of a final rule approving a revision to the San Joaquin Valley APCD portion of the California SIP. The revision concerns emissions of VOCs, NO_X, and PM from wood burning devices. 81 Fed. Reg. 69393.
4. Provided notice of a direct final rule to approve revisions to the Butte County AQMD portion of the California SIP concerning emissions of PM from open burning. 81 Fed. Reg. 70018. The EPA provided notice of a proposed rule concerning same. 81 Fed. Reg. 70065.
5. Provided notice of a direct file rule to approve revisions to the California SIP concerning the base year emission inventories for four areas designated as nonattainment areas for the 2008 ozone NAAQS. The four areas are: (i) Calaveras County; (ii) Chico (Butte County); (iii) San Francisco Bay Area; and (iv) eastern San Luis Obispo. 81 Fed. Reg. 71997. The EPA provided notice of a proposed rule concerning same. 81 Fed. Reg. 72011.
6.

In November 2016, the EPA:

1. Provided notice of a proposed rule to approve California SIP revisions concerning attainment of the 1997 8-hour ozone NAAQS in the Coachella Valley nonattainment area. The EPA proposes to find the emissions inventories acceptable and approve the related measures, demonstrations and budgets. 81 Fed. Reg. 75764.
2. Provided notice of a partial approval and partial disapproval of the revisions to the South Coast AQMD portion of the California SIP. The revision concerns the demonstration of

RACT requirements for the 2008 8-hour ozone NAAQS in the South Coast Air Basin and Coachella Valley ozone nonattainment areas. 81 Fed. Reg. 76547.

3. Provided notice of a final rule approving South Coast AQMD Rule 2449, Control of Oxides of Nitrogen Emissions from Off-Road Diesel Vehicles, for the California SIP. The rule requires certain in-use off-road vehicle fleets to meet more stringent requirements when funding is provided by South Coast AQMD in order to achieve additional reductions of NO_X. 81 Fed. Reg. 83154.
4.

In December 2016, the EPA:

1. Provided notice of a proposed rule concerning revisions to the Yolo-Solano AQMD portion of the California SIP. The revision concerns emissions of VOCs and PM from confined animal facilities. 81 Fed. Reg. 86662.
2. Provided notice of a proposed rule approving revisions to the Imperial County APCD portion of the California SIP. The revisions concern VOCs and PM from large confined animal facilities. 81 Fed. Reg. 89024.
3. Provided notice of a proposed rule to approve an SIP revision to meet requirements applicable to the Owens Valley PM_{10} nonattainment area. The revision was required as a result of the EPA's 2007 finding that Owens Valley PM_{10} nonattainment area had failed to meet its deadline to meet the PM_{10} NAAQS. 81 Fed. Reg. 89407.
4. Provided notice of a proposed rule partially approving and partially disapproving revisions to the Antelope Valley AQMD portion of the California SIP. The revisions concern the demonstration regarding RACT requirements for the 1997 and 2008 8-hour ozone NAAQS. 81 Fed. Reg. 90754.
5. Provided notice of a proposed rule concerning revisions to the Imperial County APCD portion of the California SIP. Specifically, the EPA is proposing to approve two rules and partially disapprove one rule that would update and revise the NSR permitting program for new and modified sources of air pollution. 81 Fed. Reg. 91895.
6. Provided notice of a final rule concerning the Butte County AQMD portion of the California SIP. Specifically, the EPA is finalizing limited approval and limited disapproval of one rule, approval of two permitting rules, and deletion of ten rules from the SIP regarding the NSR permitting program for new and modified sources of air pollution. 81 Fed. Reg. 93820.
7. Provided notice of a proposed rule concerning revisions to the Mendocino County AQMD portion of the California SIP. Specifically, the EPA is proposing a limited disapproval of one rule and approval of the remaining three permitting rules regarding the issuance of permits for stationary sources, including review and permitting of minor sources, and major sources and major modifications under Part C of title I of the Clean Air Act. 81 Fed. Reg. 95074.
8. Provided notice of a final rule approving revisions to the South Coast AQMD portion of the California SIP. The revisions concern emissions of NO_X from ovens, dryers, dehydrators, heaters, kilns, calciners, furnaces, crematories, incinerators, heated pots, cookers, and other combustion equipment. 81 Fed. Reg. 95472.
9. Provided notice of a final rule to approve a revision to the Great Basin Unified APCD portion of the California SIP. The revision concerns emission of particulate matter at Owens Lake. 81 Fed. Reg. 95473.

Climate Change

Aircraft Greenhouse Gas (GHG) Emissions. In December 2016, the EPA provided notice of a final action denying a petition for reconsideration of the final finding that GHG emissions from aircraft cause or contribute to air pollution that may reasonably be anticipated to endanger public health and welfare. 81 Fed. Reg. 96413.

GHG Emissions and Fuel Efficiency Standards. In October 2016, the EPA and National Highway Traffic Safety Administration (NHTSA) provided notice of a final rule that establishes a comprehensive Phase 2 Heavy-Duty National Program to reduce GHG emissions and fuel consumption from new on-road medium- and heavy-duty vehicles and engines. The program includes several sets of standards, some of which are exclusive to the EPA program. In addition, NHTSA is addressing inconsistencies between the Phase 1 EPA GHG standards and NHTSA fuel efficiency standards. 81 Fed. Reg. 73478.

GHG Reporting Rule. In November 2016, the EPA provided notice of a final rule concerning revisions and confidentiality determinations for the petroleum and natural gas systems source category of the GHG Reporting Rule. Specifically, the revisions add new monitoring methods and emission factors for leaking equipment, and finalize reporting requirements and confidentiality determinations for certain data elements. 81 Fed. Reg. 86490.

In December 2016, the EPA provided notice of a final rule amending specific provisions of the GHG Reporting Rule to streamline and improve implementation of the rule, improve the quality and consistency of the data collected, and clarify or provide minor updates to certain provisions. 81 Fed. Reg. 89188.

Model Year 2022-2025 Light-Duty Vehicle GHG Standards. In December 2016, as part of its Midterm Evaluation, the EPA provided a notice of availability of its proposed determination that the GHG standards in place for model year 2022-2025 remain appropriate and should be not be amended. The determination is based on the Technical Assessment Report, public comments on same, and other information. 81 Fed. Reg. 87927.

Prevention of Significant Deterioration. In October 2016, in response to a U.S. Supreme Court decision, the EPA provided notice of revisions to regulations concerning the EPA's PSD and Title V permitting regulations. The amendments would: (i) change several definitions; (ii) revise the PSD provisions on GHG Plantwide Applicability Limitations; (iii) revise provisions to ensure that neither the PSD nor title V rules require a source to obtain a permit with exceptions; and (iv) propose a significant emissions rate for GHGs under the PSD program. 81 Fed. Reg. 68110.

Endangered Species

Candidate Notice of Review (CNOR): In December 2016, the U.S. Fish and Wildlife Service (USFWS) provided notice of its CNOR. The CNOR summarizes the status and threats the USFWS evaluated in order to determine that species qualify as candidates, assign a listing priority number (LPN), and whether species should be removed from the list. Specifically, in California: (i) the Sierra Nevada red fox is assigned an LPN of 3; (ii) the red-crowned parrot LPN remains at 2; (iii) the Bay-Delta distinct population segment of the longfin smelt LPN remains at 3; (iv) the Whitebark pine LPN remains at 8; and (v) the delta smelt LPN remains at 2. 81 Fed. Reg. 87246.

Compensatory Mitigation Policy. In December 2016, the USFWS provided notice of the final Endangered Species Act Compensatory Mitigation Policy. The new policy reflects a shift from project-by-project to landscape-scale approaches to planning and implementing compensatory mitigation. 81 Fed. Reg. 95316.

Guadalupe Murrelet. In September 2016, the USFWS provided notice of a 12-month petition finding for the Guadalupe murrelet. Based on a review of the best available scientific and commercial information, the USFWS found that listing the species as endangered, threatened, or maintaining it as a candidate species is not warranted at this time; and, the species is being removed from the candidate list. 81 Fed. Reg. 64843.

North American Wolverine. In October 2016, the USFWS provided notice that it is reopening the comment period on its February 4, 2013 proposed rule to list the distinct population segment of the North American wolverine as threatened as a result of a District Court action. USFWS will initiate a new status review and requests new information to inform the status review. 81 Fed. Reg. 71670.

Petition Regulations. In September 2016, the USFWS provided notice of a final rule amending the regulations for petitions to improve the content and specificity of petitions, and to enhance the efficiency and effectiveness of the petition process to support species conservation. The revisions clarify and enhance the procedures by which the USFWS and National Marine Fisheries Service evaluate petitions. 81 Fed. Reg. 66461.

Scripps Murrelet. In September 2016, the USFWS provided notice of a 12-month petition finding for the Scripps murrelet. Based on a review of the best available scientific and commercial information, the USFWS found that listing the species as endangered, threatened, or maintaining it as a candidate species is not warranted at this time; and, the species is being removed from the candidate list. 81 Fed. Reg. 64843.

Hazardous Materials/Wastes

Chemical Data Reporting. In September 2016, the EPA provided notice of a final rule extending the submission deadline for 2016 chemical data reporting reports from September 30 to October 31, 2016. The Chemical Data Reporting regulation requires manufacturers of certain chemical substances to report current data on the manufacturing, processing, and use of the chemical substances. 81 Fed. Reg. 65924.

Hazardous Waste Compliance Docket. In October 2016, the EPA provided notice of the thirtieth update of the Federal Agency Hazardous Waste Compliance Docket. The docket contains reported information that is used to identify Federal facilities that potentially pose a threat to public health or welfare and the environment. This update includes 13 additions, 28 corrections, and 21 deletions. 81 Fed. Reg. 73096.

Hazardous Waste Export-Import. In November 2016, the EPA provided notice of a final rule amending regulations regarding the export and import of hazardous wastes from the United States. The revisions are being made to provide greater protection to human health and the environment, enable electronic submittal of documents, and enable electronic consent for certain export

shipments. 81 Fed. Reg. 85696. The EPA provided notice of a proposed rule regarding same. 81 Fed. Reg. 85459.

Hazardous Waste Generator Improvements. In November 2016, the EPA provided notice of a final rule concerning revisions to the Resource Conservation and Recovery Act's hazardous waste generator regulatory program. The revisions include, among others: (i) reorganization; (ii) providing a better understanding of the program; and (iii) addressing gaps to strengthen environmental protection. 81 Fed. Reg. 85732.

National Discharge Standards for Vessels of the Armed Forces. In October 2016, the EPA and Department of Defense provided notice of a proposed rule concerning discharge performance standards for vessels of the Armed Forces. The proposed discharge performance standards would: (i) reduce adverse environmental impacts; (ii) improve vessel pollution control devices; and (iii) advance the development of environmentally sound vessels of the Armed Forces. 81 Fed. Reg. 69753.

National Pollutant Discharge Elimination System (NPDES). In November 2016, the EPA provided a notice of issuance of the 2016 NPDES pesticide general permit, effective October 31, 2016. The permit authorizes certain point source discharges from the application of pesticides to waters of the United States in accordance with the terms and conditions. 81 Fed. Reg. 75816.
In December 2016, the EPA provided notice of a final rule revising the regulations governing regulated small municipal storm sewer system (MS4) permits in response to a remand from the U.S. Court of Appeals for the Ninth Circuit. The final rule establishes two alternative approaches a permitting authority can use to issue NPDES general permits for small MS4s while meeting the requirements of the court remand. 81 Fed. Reg. 89320.

Non-Hazardous Secondary Materials. In November 2016, the EPA provided notice of proposed amendments to the Non-Hazardous Secondary Materials rule which establishes standards and procedures for identifying whether non-hazardous secondary materials are solid wastes when used as fuels or ingredients in combustion units. The amendment would add three materials to the list of categorical non-waste fuels. 81 Fed. Reg. 75781.

Toxic Chemical Release Reporting. In November 2016, the EPA provided notice of, and requested comments on, a proposed rule to add nonylphenol ethoxylates category to the list of toxic chemicals subject to reporting under certain sections of the Emergency Planning and Community Right-to-Know Act and Pollution Prevention Act. 81 Fed. Reg. 80624.
In November 2016, the EPA also provided notice of a final rule adding hexabromocyclododecane category to the list of toxic chemicals subject to reporting under certain sections of the Emergency Planning and Community Right-to-Know Act and Pollution Prevention Act. 81 Fed. Reg. 85440.

Trichloroethylene. In December 2016, the EPA provided notice of a proposed rule concerning trichloroethylene. Specifically, to prohibit the manufacture, processing and distribution in commerce for certain uses, to prohibit commercial use for certain use, require downstream notification of the prohibition, and require limited recordkeeping. 81 Fed. Reg. 91592.

Resource Conservation

Candidate Conservation Agreements with Assurances. In December 2016, the USFWS provided notice of a final rule revising regulations concerning the enhancement of survival permits associated with Candidate Conservation Agreements with Assurances. Specifically, the term "net conservation benefit" was added, and the term "other necessary properties" was deleted. 81 Fed. Reg. 95053. The USFWS and National Marine Fisheries Service provided notice of its revised policy regarding same. 81 Fed. Reg. 95164.

Eagle Permits. In December 2016, the USFWS provided notice of a final rule revising the regulations for eagle nonpurposeful take permits and eagle nest take permits. Specifically, the revisions include changes to permit issuance criteria and duration, definitions, compensatory mitigation standards, criteria for eagle nest removal permits, permit application requirements and fees. 81 Fed. Reg. 91494.

Habitat Conservation Planning Handbook. In December 2016, the USFWS provided a notice of availability of the final revised Habitat Conservation Planning Handbook. The revised Handbook will instruct USFWS on assisting applicants to develop Habitat Conservation Plans in an efficient and effective manner, while ensuring adequate conservation of listed species. 81 Fed. Reg. 93702.

Hunting and Sport Fishing. In October 2016, the USFWS provided notice of a final rule to: (i) add 1 national wildlife refuge (NWR) to the list of areas open for hunting; (ii) increase the hunting activities available at 12 NWRs; (iii) open 1 NWR to fishing; and (iv) add pertinent refuge-specific regulations for other NWRs that pertain to migratory game bird hunting and sport fishing for the 2016-2017 season. 81 Fed. Reg. 68874.

Mitigation Policy. In November 2016, the USFWS provided notice of final revisions to its Mitigation Policy, a guide for recommendations on mitigating adverse impacts of land and water development on fish, wildlife, plants and their habitats. The revisions are based on changes in conservation challenges and practices since the policy was first created. 81 Fed. Reg. 83340.

Paleontological Resources Preservation. In December 2016, the USFWS provided notice of a proposed rule to promulgate regulations under the Paleontological Resources Preservation Act. The proposed regulations would preserve, manage, and protect paleontological resources and ensure the federally owned resources are available for current and future generations. 81 Fed. Reg. 88173.

Sea Otter Stock. In December 2016, the USFWS provided a notice of availability, and requested comments on, its draft revised marine mammal stock assessment report for the southern California sea otter stock. 81 Fed. Reg. 87951.

Solid Waste

Streamlined Approval Process for Non-Regulatory Methods in SW-846. In September 2016, the EPA provided notice of a streamlined approval process for non-regulatory methods in the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" manual, known as SW-846.

The new process will use website postings and e-mail lists, in lieu of Federal Register publication, for notification of methods being released for public comment. 81 Fed. Reg. 66272.

Water Quality

Drinking Water Contaminant Candidate List. In November 2016, the EPA provided notice of a final list of contaminants that are known or anticipated to occur in public water systems and may require regulation under the Safe Drinking Water Act. The list includes 97 chemicals, or chemical groups, and 12 microbial contaminants. 81 Fed. Reg. 81099.

Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category. In September 2016, the EPA provided notice of a direct final rule extending the implementation date, to November 29, 2016, for establishment of pretreatment standards under the Clean Water Act for discharges of pollutants into publicly owned treatment works from onshore unconventional oil and gas extraction facilities. 81 Fed. Reg. 67191. The EPA provided notice of a proposed rule regarding same. 81 Fed. Reg. 67266. In November 2016, the EPA withdrew the direct final rule due to adverse comments. 81 Fed. Reg. 85445. In December 2016, the EPA provided notice of a final rule extending the implementation deadline. 81 Fed. Reg. 88126.

Federal Baseline Standards for Indian Reservations. In September 2016, the EPA provided advance notice of proposed rulemaking considering establishment of federal baseline water quality standards for certain Indian reservation waters. The EPA requested comments on whether such standards should be established and, if so, what they should be and how they should be implemented. 81 Fed. Reg. 66900.

Human Health Recreational Ambient Water Quality Criteria. In December 2016, the EPA provided a notice of availability of, and requested comments on, the draft "Human Health Recreational Ambient Water Quality Criteria and/or Swimming Advisories for Microcystins and Cylindrospermopsin-2016." 81 Fed. Reg. 91929.

Hydraulic Fracturing for Oil and Gas. In December 2016, the EPA provided a notice of availability of a final report titled, "Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States." The final report provides a review of available scientific information concerning the relationship between hydraulic fracturing activities and drinking water resources in the United States. 81 Fed. Reg. 95135.

Perchlorate. In September 2016, the EPA provided notice of, and requested comments on, materials that will undergo expert peer review in support of the EPA's Safe Drinking Water Action decision making on perchlorate. 81 Fed. Reg. 67350. In October 2016, the EPA provided notice of an extended comment period, to November 26, 2016, for same. 81 Fed. Reg. 73397.

Section 303(d) of the Clean Water Act. In September 2016, the EPA provided notice of a final rule to establish regulatory procedures for eligible tribes to obtain treatment in a similar manner as states (TAS) for Clean Water Act Section 303(d) Impaired Water Listing and total maximum daily loads (TMDLs) Program which enables eligible tribes to obtain authority to identify impaired waters on their reservations and to establish TMDLs. 81 Fed. Reg. 65901.

Unregulated Contaminant Monitoring Rule. In December 2016, the EPA provided notice of a final rule and public meeting concerning the requirement for public water systems to collect occurrence data from contaminants that may be present in drinking water but are not yet subject to the EPA's drinking water standards. 81 Fed. Reg. 92666.

Water Resources

Field-Based Methods for Developing Aquatic Life Criteria for Specific Conductivity. In December 2016, the EPA provided a notice of availability for its Draft Field-Based Methods for Developing Aquatic Life Criteria for Specific Conductivity. Once finalized, the methods can be used to develop field-based conductivity criteria for flowing waters. 81 Fed. Reg. 94370.

National Lakes Assessment 2012. In December 2016, the EPA provided a notice of availability of its final report on the National Lakes Assessment 2012. The report describes the results of a survey that was conducted in 2012 and includes information on how the survey was implemented, what the findings are on a national scale, and future actions and challenges. 81 Fed. Reg. 88681.

Protecting Aquatic Life from Effects of Hydrologic Alteration. In December 2016, the EPA and United States Geological Survey provided a notice of availability of a technical report titled, "EPA-USGS Technical Report: Protecting Aquatic Life from Effects of Hydrologic Alteration." The report provides technical information for those interested in developing narrative or numeric targets for flow regime components that are protective of aquatic life. 81 Fed. Reg. 93681.

Water Infrastructure Projects. In December 2016, the EPA provided notice of, and requested comments on, an interim final rule to implement a new program referred to as the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014. The program allows the EPA to provide secured loans, and loan guarantees, to eligible water infrastructure projects. 81 Fed. Reg. 91822.

In December 2016, the EPA also provided notice of, and requested comments on, a proposed rule to charge fees under WIFIA to recover EPA's costs of providing credit assistance and the costs of retaining expert firms. 81 Fed. Reg. 91890.