



NEW CA ENVIRONMENTAL LAWS: TRENDS, DIRECTIONS, & DEVELOPMENTS

H-3/24 Gary Lucks

March 24, 2022



**24th California Unified Program
Annual Training Conference
March 22, 23, 24, 29, 30, 31 - 2022**

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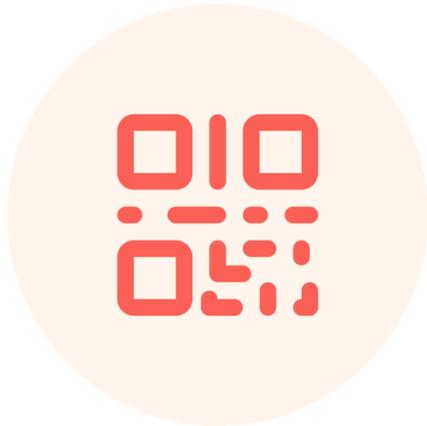
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i Start presenting to display the joining instructions on this slide.

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Most of you will see a Q&A/Polls panel on the right side of your screen. You can just participate in the Polls and Q&A there.

Some of you won't see that so either go to slido.com and enter meeting ID# XXXX (see next slide)

From your smartphone, visit this QR Code (see next slide)

A screenshot of a Slido meeting interface. The browser address bar shows the URL: event-app5.eventpower.com/event_app/display/index/21CALCUPA-FORUM. The page title is "23rd California Unified Program Annual Training Conference February 2 through March 18, 2021". The main content area displays a slide titled "Manifest Distribution" with a blue circular icon containing a white 'U' and 'S'. The slide text includes "e-manifest system w/ 30 days." and "Electronic only after 06.30.21". There is an illustration of a factory with smokestacks and a document with the word "VOID" written on it. A large yellow arrow points from the slide towards the right-hand side of the interface. On the right, there is a Q&A and Polls panel with several user comments and a video feed of a man in a red shirt. At the bottom left, there is a "Support Chat" button. The footer shows "© 2021 eventPower".

Announcement – Post Session Zoom Room

- Sometimes, if there are still more questions/conversation happening when the Session needs to conclude, a Zoom Room meeting link will be provided in the Slido Q&A area for continuation of the Session with the Presenter/Attendees
- If you would like to ask additional questions or have further discussion with the presenter/moderator on this subject, we encourage you to join us there
- If given a choice, please select the breakout room for this session when you arrive in the Post Session 'Zoom Room'



Announcement – How to earn CEUs

➤ Remember, to earn CEUs, you must

- Arrive in the Session within the first 10 minutes of the Live Session
- Click on the “Are you still watching?” pop up (say YES) to show you are engaged
- Attend 90-100% of the actual Session minutes
- Complete your Session Evaluation (after EVERY Session)
- Click on the “Leave Session” button on top left of Session to exit the Session/Close Session
- Complete the overall Conference Survey (1 time) – **Conference Survey to be released on 03-29-2022** at <https://calcupa.org/conference-survey/index.html>
- Check your Course History for CEUs-<https://calcupa.org/course-history/index.html>



KEY

UPDATES/REMINDERS

Did you know that...

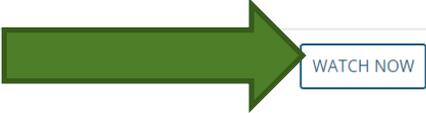
If you missed a Session you are interested in (or need more Minutes for CEU credit), you can go back to MOST Sessions and watch them in an OnDemand style of viewing?

On the Agenda, find the Session and click "WATCH NOW"

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1:00 p.m. - 5:00 p.m.		(B3-3/23) THE LOST ART OF LAB PACKING
Wednesday, March 23		<input type="checkbox"/> Add to MyAgenda
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1:00 p.m. - 5:00 p.m.		(J2-3/23) EMPLOYEE SAFETY
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New California Laws: Trends, Directions & Developments

Gary Lucks JD, CPEA

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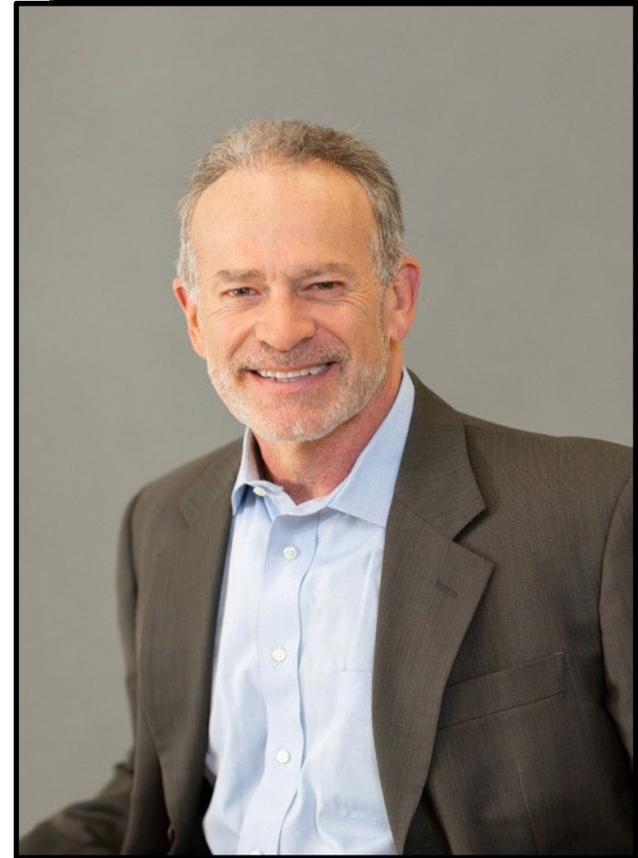
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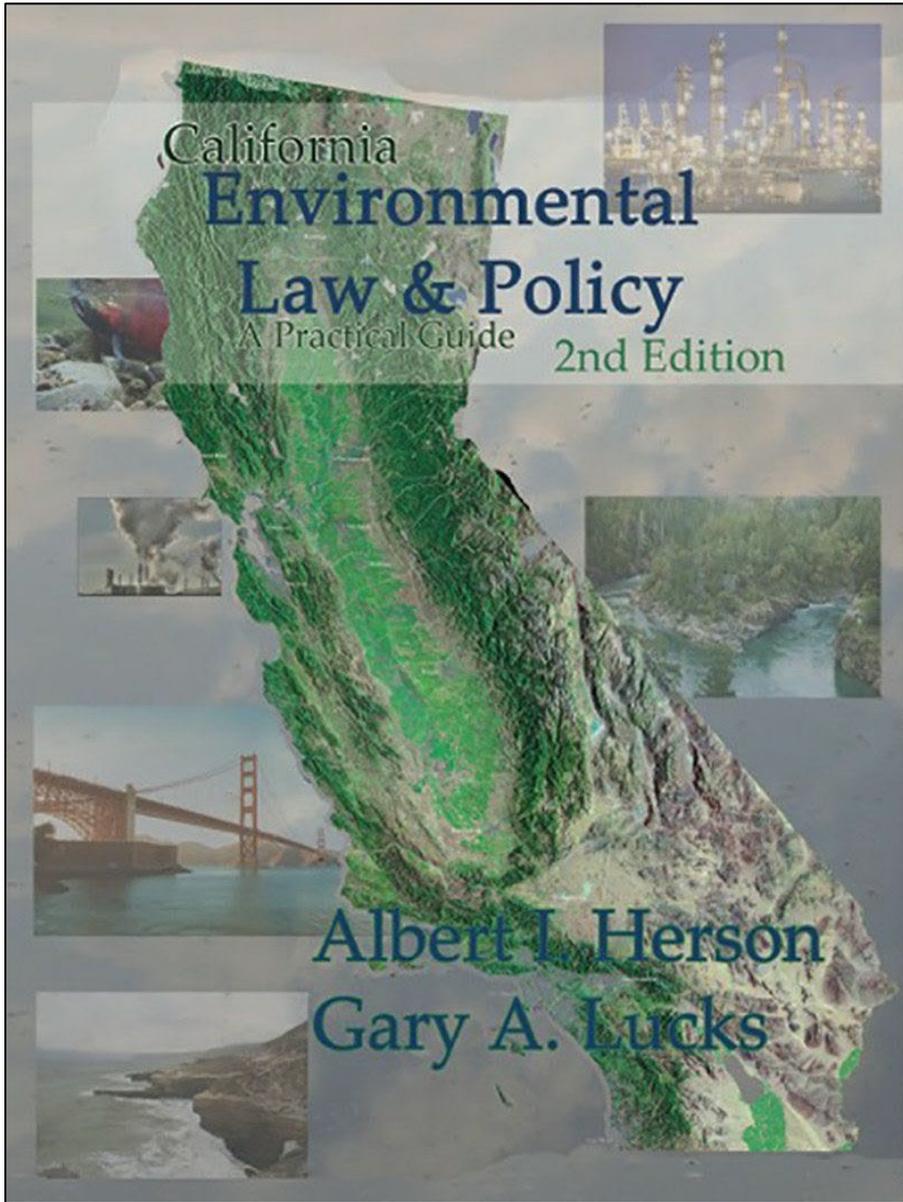
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CALIFORNIA

Environmental Law Reporter

FEBRUARY 2020
VOLUME 2020 • ISSUE NO. 2

The 2020 Environmental Legislative Update: Change of the Guard

By

Gary A. Lucks*

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Substantial evidence supported a city's finding that the construction of seven dwelling units was consistent with its general plan, community plan, and steep hillside regulations, while the project's steep hillside topography made construction of 16 to 23 dwelling units on the site impractical and inconsistent with the regulations (p.77).

LAND USE AND ENVIRONMENTAL PLANNING

Denial of plaintiff's fee motion under 42 U.S.C. 1988 was an abuse of discretion, because plaintiff was a prevailing plaintiff where he succeeded on a significant issue, his section 1983 claim was substantial, and he prevailed on a state law claim based on the same facts as the section 1983 claim (p.86).

CONTROLS ON NOISE

A court of appeals held that the city ordinance that required individuals to obtain permits before using sound amplifying devices within the city was a prior restraint that chilled First Amendment free speech rights (p.105).

* Mr. Gary Lucks JD, CPEA is a principal environmental attorney and scientist with Beyond Compliance Law. He is a Certified Professional Environmental Auditor (CPEA) with 35 years of experience in environmental, health, and safety law, legislative affairs, and sustainability strategy. He advises clients on maintaining business continuity, risk management, and license to operate while managing compliance risks.

Mr. Lucks wrote environmental policy briefing papers for Governor Newsom, Senator Feinstein, Senator Steinberg, and State Insurance Commissioner Dave Jones. He has published extensively on environmental law, legislation, and policy. He co-wrote a book entitled *California Environmental Law and Policy: A Practical Guide* and wrote the Environmental Auditing chapter in the treatise *California Environmental Law and Land Use* (Matthew Bender). He has been contributing to the *California Environmental Law Reporter* for the past 25 years.

He serves on the California Lawyers Association, Environmental Law Section's Executive Committee and the Environmental Legislation Committee for over two decades. He also served as an Advisor to the Bay Area Air Quality Management District, co-founded the Sustainable Earth Initiative, and has chaired the West Coast Institute of Internal Auditors.

Introduction

Notably absent from Governor Newsom's first State of the State address was a focus on environmental priorities, especially considering President Trump's unrelenting efforts to roll back environmental protections. Of particular note was Governor Newsom's veto of SB 1 (Atkins, Portantino, Stern), which would have enacted the California Environmental, Public Health, and Workers Defense Act of 2019. This bill was intended to push back against the Trump Administration's efforts to weaken environmental and labor protections. Authored by the Senate President Pro Tempore Toni Atkins, this bill was designed to codify the versions of the federal Clean Air Act, Clean Water Act, Endangered Species Act, and Fair Labor Standards Act, and their accompanying regulations prior to the inauguration of President Trump in January 2017.

 LexisNexis™
Matthew Bender*

continued on page 46

Gearing up and Getting Going

- **Gear up with Environmental Compliance**
- **Get going on Sustainable Leadership**
 - Optimize your investment:
 - Branding opportunities
 - Investment opportunities
 - Leadership opportunities
 - Avoid Green washing

The Writing is on the Wall

The Biden Administration's Environmental Compliance challenges & Sustainability opportunities

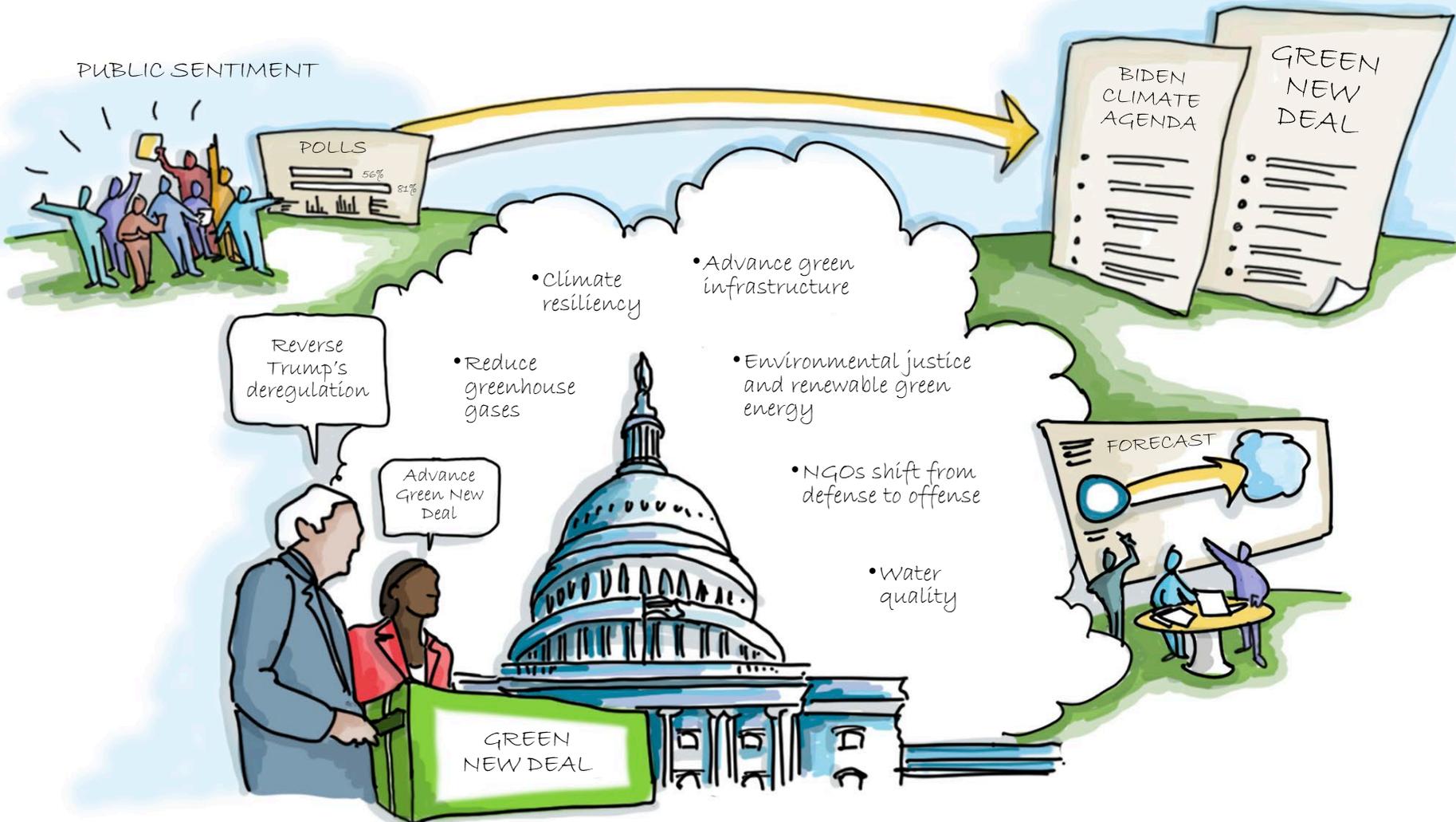
- 1. Sustainability not your mission?** You still have opportunities
- 2. You lead and innovate in the sustainability space as part of your corporate mission?** Leverage opportunities and put a stake in the ground as a visionary, innovative early adopter.



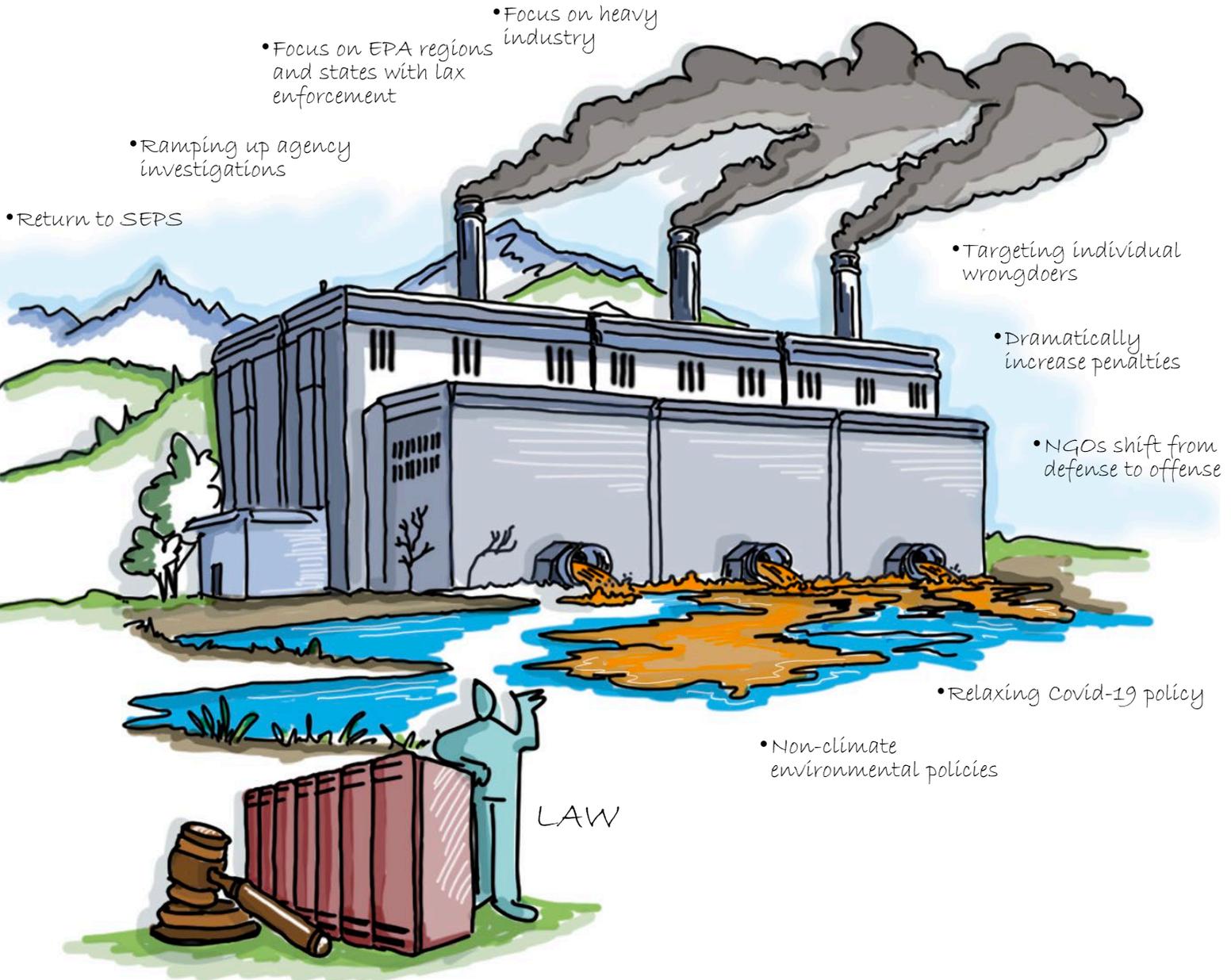
The Biden Train has left the station.



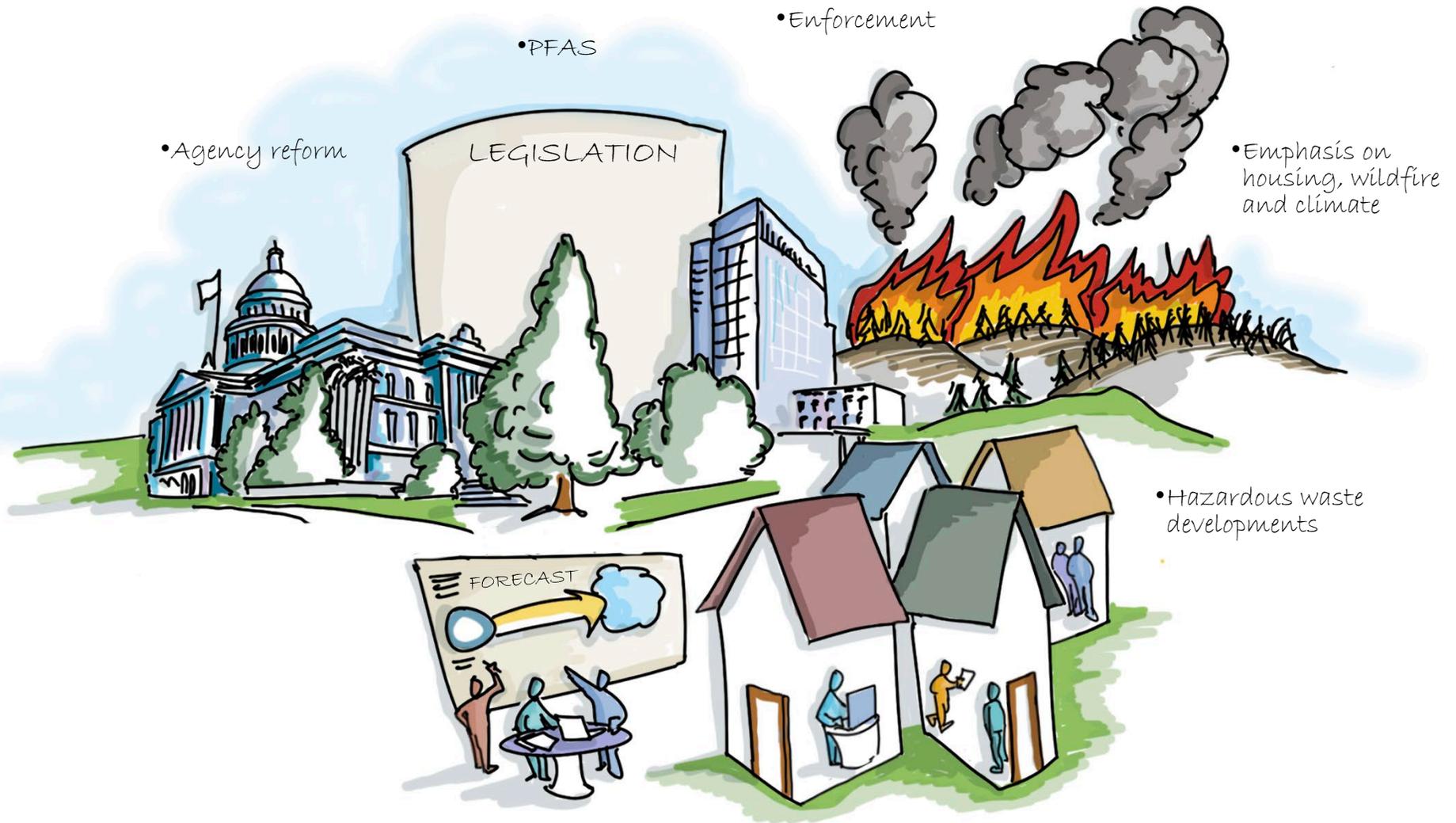
BIDEN POLICY



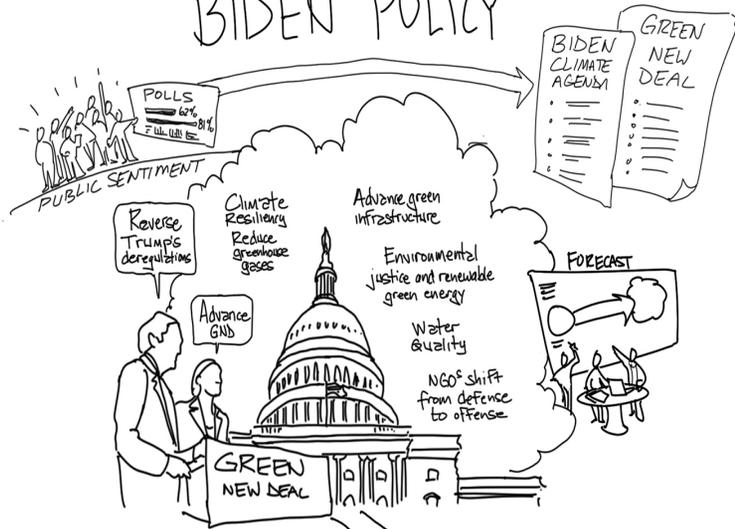
BIDEN ENFORCEMENT



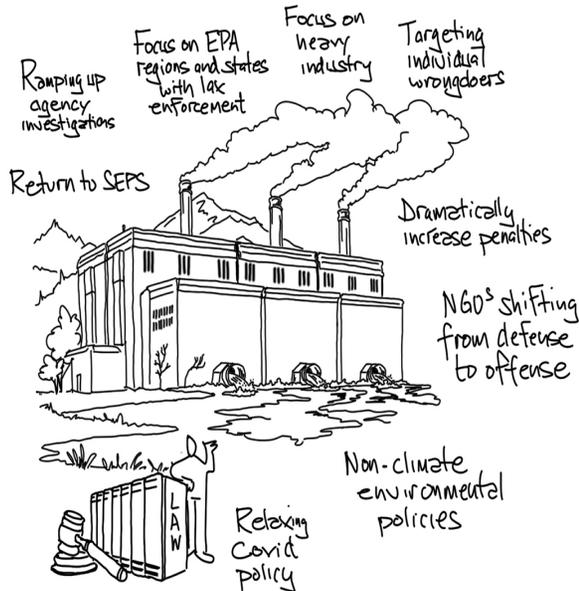
CALIFORNIA POLICY AND ENFORCEMENT



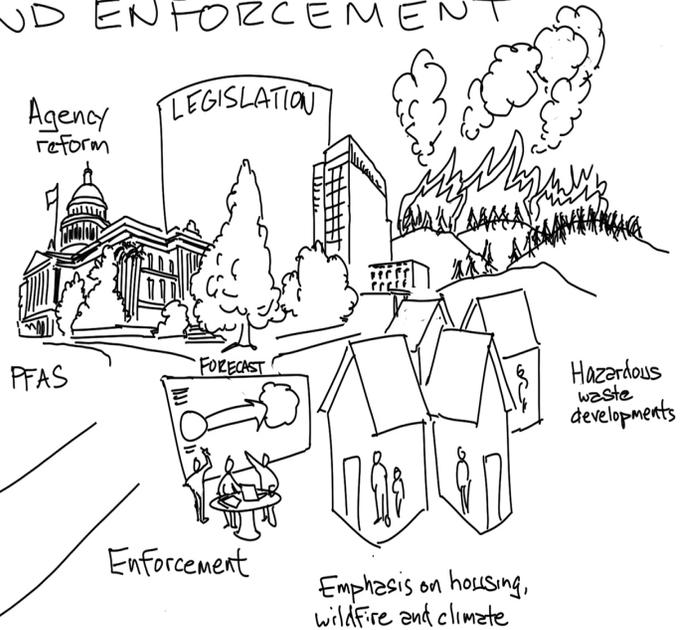
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BIDEN ENFORCEMENT

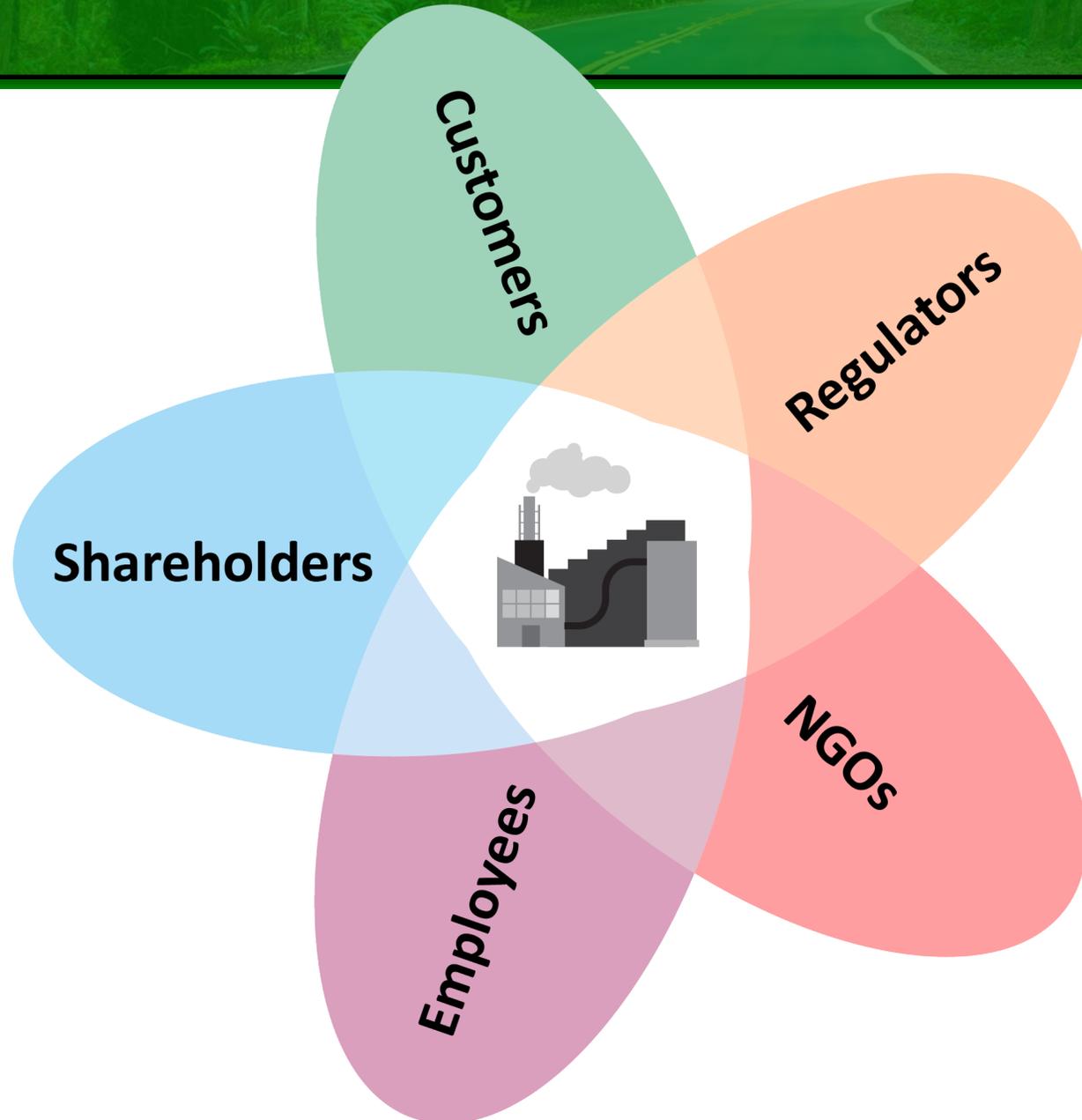


CALIFORNIA POLICY AND ENFORCEMENT



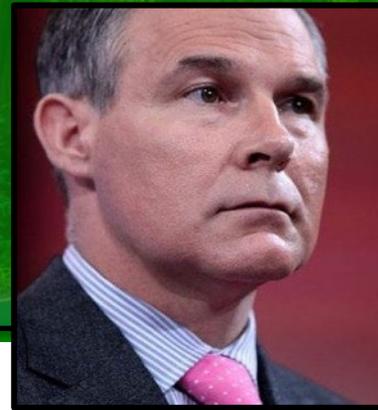
Stake holders & the New Paradigm

- Regulators
- NGOs
- Customers
- Shareholders
- Employees



The Trump Administration's Legacy

Where we are Now?



1. **A nuanced, partial retreat pivoting to a wholesale reversal**
2. **Federal Regulatory Drivers:** Remained largely intact
3. **EPA Staff and funding:** Still largely intact
4. **EPA Morale:** Suffering at the federal level
5. **Enforcement:**
 1. **Federal:** Relaxed but Yates Memo and still relatively heavy enforcement in targeted OECA areas
 2. **State:** Blue and Green States: Robust enforcement
 3. **NGOs:** Winning 95% of their cases
6. **Courts:** Largely served as a backstop



Trump EPA Staff Priorities

Narrow Focus:

Superfund:

- High priority
- Identified list of sites with significant redevelopment potential

TSCA: Shifting staff to implement TSCA updating and streamlined risk reviews for “new” chemicals

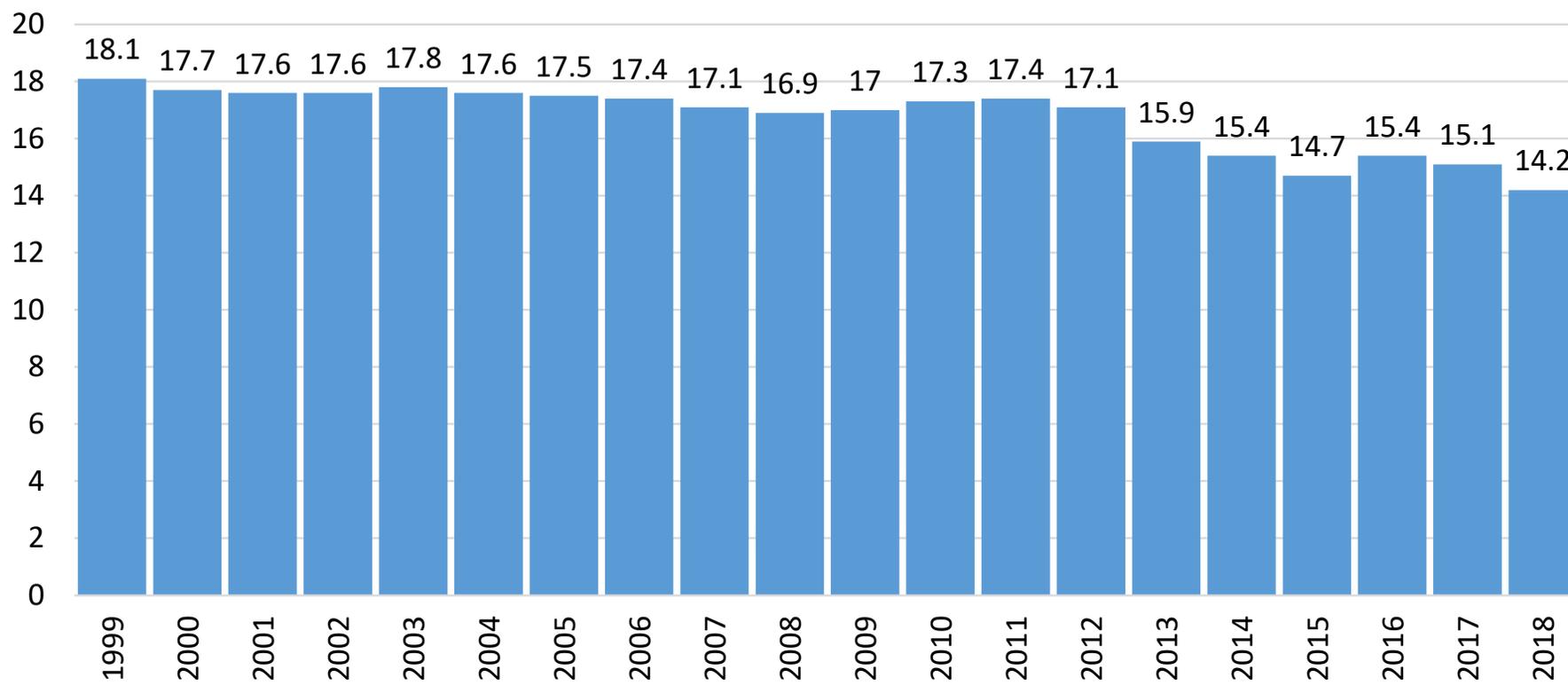
- Approximately 40,000 chemicals in commerce
- Targeting backlog of 600 chemicals:
- Reduced to 300 new cases for review
- Challenge to meet strict regulatory deadlines

Safe Drinking Water Act



Proposed Budget and Staffing cuts did not Materialize

Agency Workforce (Thousand FTE's)



Source: U.S. EPA

Former EPA Administrators & Alumni

- EPA budget (in real dollars) declined 45% from 2004
- Rebuilding Workforce & Budget
- Expand work force planning efforts
 - Reinvigorate demoralized EPA staff
 - Attempt to increase program and enforcement funding
- Environmental Protection Network (EPA alumni): plan to rebuild budget to 40-year average in “real dollars” or ~ to \$11.4 B (2019 dollars)
- Strengthen recruitment to overcome “hollowing out”
- **FY 2022 budget request** Reinvigorate demoralized EPA staff
 - Seeking \$2B increase to \$11.2B
 - Adding 1,000 FTEs

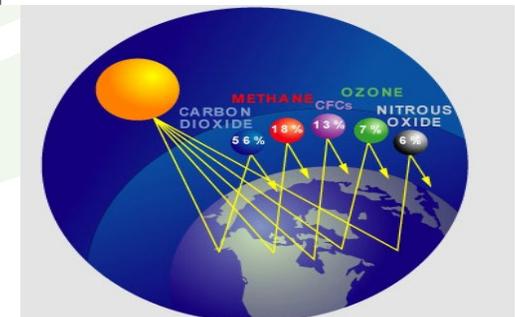
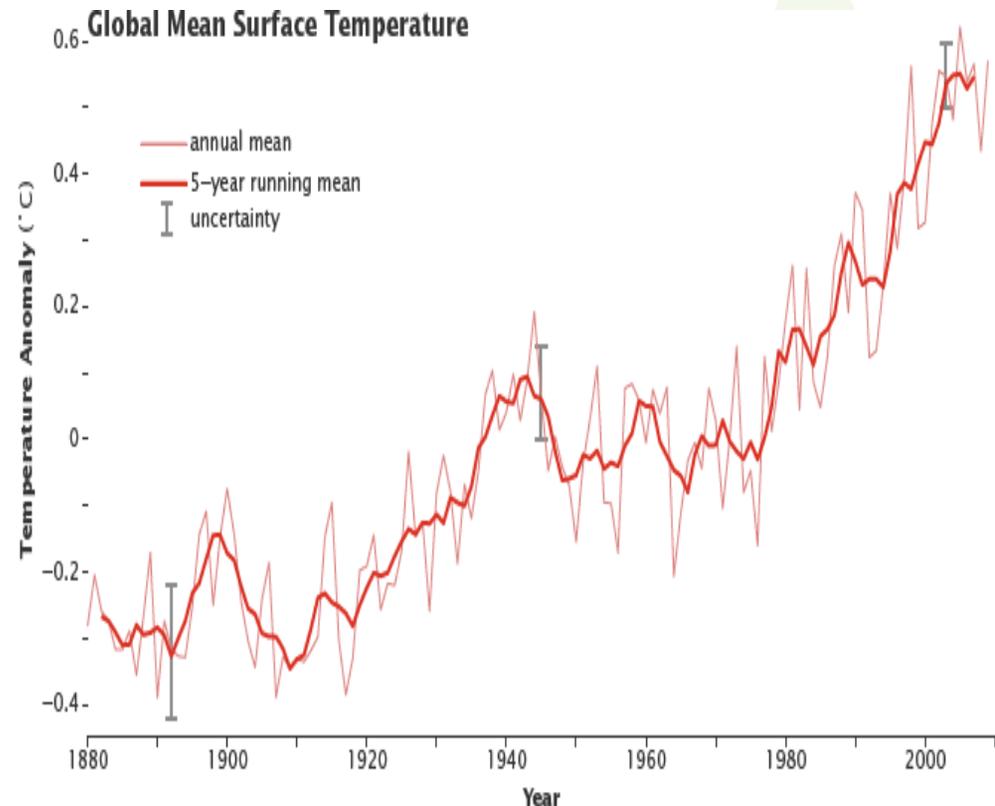


Public Sentiment

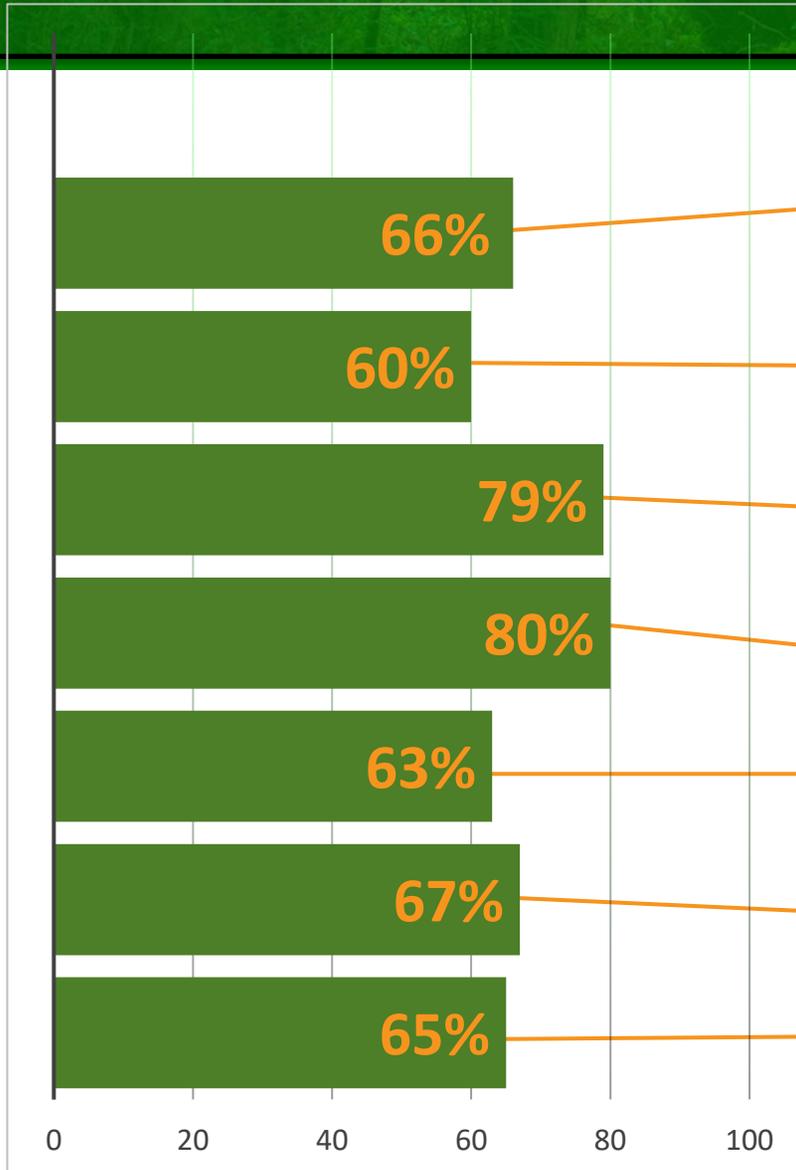
2020: Warmest Year on Record

Tied with 2016

- 20 of 21 warmest years have occurred since 2000
- 10 hottest years occurred in past 20
- 2018: Warmest for Oceans
- 2015 – 2018: Four warmest years since records began in 1850
- **Source:** NASA



Environmental & Climate Polls



- Federal government should act more aggressively to combat climate change (Pew Research Center June 2020)
- Climate change is a major threat (Pew Research Center June 2020)
- Country should prioritize alternative forms of energy (Pew Research Center June 2020)
- Human activity is fueling climate change
Source: 2019 Washington Post & Kaiser Family Foundation
- The Green New Deal is a good idea to address climate change (NPR/PBS 2019)
- The US needs to do more to address climate change (Quinnipiac 2019)
- Protecting the environment is a priority even at the risk of curbing economic growth (Gallup 2019)



Climate Poll

- **Almost 2/3 of Americans** say it is already affecting their community
- **Carbon capture/storage** Overwhelming support for tax credit
- **Significant majorities support:**
 - Taxing corporations based on their emissions
 - Requiring more fuel-efficient cars
 - Planting huge numbers of trees
 - Restricting power plant emissions

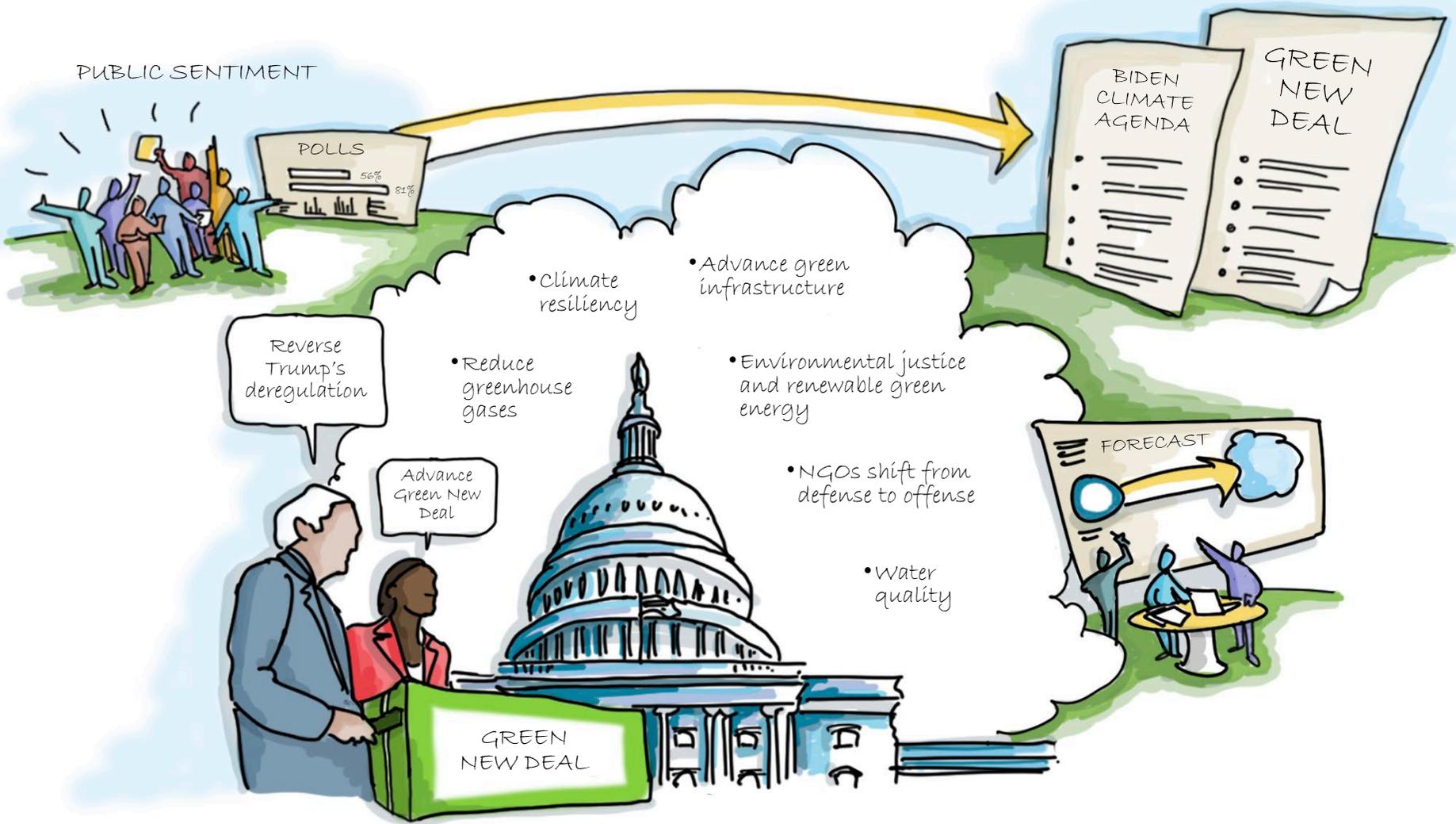
Source: Pew Research Center June 2020



The Green New Deal & Biden



BIDEN POLICY



The Green New Deal Non-binding Resolution

- **Renewable Energy:** Transition to 100% green, renewable energy & zero-emissions power by 2030 (no nuclear or natural gas) & building/upgrading to “smart” power grids
- **Green Transportation:** EV infrastructure, public transport (including high-speed rail)
- **Energy-efficient Buildings:** Upgrade all existing buildings to be energy-efficient
- **GHG Reduction:** Cuts carbon emissions to meet Paris Agreement’s most ambitious climate goal
- **Eliminate fossil fuels:** Reduce air quality pollution & GHG emissions “as much as technologically feasible”
- **Green Jobs:** Guarantee full employment generating up to 20 million new, living-wage jobs
- **Climate Resiliency**



Biden's Environmental Agenda

- Pivot from Trump deregulatory Agenda
- Regulatory reversals (time-consuming)
- Green Executive Orders
 - Formal Initiatives
 - Non-regulatory tools
- Boosting staffing and morale at the compliance office
- Withdrawing guidance aimed at limiting inspections or enforcement
- Focus on EJ considerations



Biden Climate & Energy Priorities

- **Environmental Justice:**
 - New Environmental Justice Advisory Council
 - EJ and “equitable opportunity” in a clean energy future
- **Climate:** Urging congressional enactment of GHG reduction “enforcement mechanism” with initial target no later than 2025 with commitments in 7 topic areas:
 - Energy efficient buildings
 - Achieve net-zero GHG emissions by 2050
 - Eliminate fossil fuel emissions from power sector by 2035
 - Green Infrastructure
- **Vehicular Emissions:** Positioning auto sector to “win the 21st century”
- **Power:** Achieving “carbon pollution free” power sector by 2035



Biden and Climate

- Return to the Paris Climate Treaty
- New round of GHG commitments extending to 2030 by 11/21 (Glasgow, Scotland)
- Executive orders with “unprecedented reach” working toward net zero emissions no later than 2050



The Biden Green New Deal Elements

- **\$2 trillion Clean Energy proposal**
- **Goal:** to achieve carbon neutrality by 2035
- Paid for by mix of tax increases on corporations and the wealth & deficit spending to stimulate the economy
- Emphasizes green infrastructure
- Energy efficiency in buildings & houses
- Promoting production of EVs
- EJ
- Clean energy
- Conservation in agriculture & industry



Subnational Leadership Initiative for Climate

- ❖ **Biden Administration Commitment:** Cut GHG emissions 50-52% by 2030 (2005 baseline)
- ❖ **Objective:** Catalyze climate action by cities, states, and regions worldwide
- ❖ **Beyond Oil & Gas Alliance:** Collaboration of countries & subnational governments advancing a “just transition away from oil and gas production”
 - CA is a member
- ❖ Newsom preventing new oil drilling near communities
- ❖ EO: CalGem ending new fracking permits by 2024 and phasing out oil extraction by 2045



U.S Climate Alliance

- In the wake of U.S. withdrawal from the UN Paris Agreement:
- Alliance members: CA, NY, WA, CT, DE, HI, MA, MN, OR, RI, Vt, VA, & Puerto Rico
- >100 cities
- 19 Attorney Generals
- >1,000 investors and businesses
- To “convene U.S. states committed to upholding the Paris accord and taking aggressive action on climate change.”
- Committed to cutting emissions by 26 – 28% from 2005 levels or exceeding the Clean Power Plan

Personnel is Policy

- **White House Office of Climate Policy:** To be led by Gina McCarthy to coordinate domestic policy
- **International Climate Envoy:** John Kerry
- **Dept. of Energy:** Jennifer Granholm
- **DOT:** Pete Buttigieg focusing on green infrastructure
- **EPA:** Michael Regan
- **CEQ:** Brenda Mallory: Experienced former environmental lawyer who spent 15 years at EPA
- **Dept. of Interior:** Deb Haaland expected to curtail oil and gas leasing on federal lands



Michael Regan's Mission



- Restore morale
- Emphasis science and integrity
- Remove barriers to promulgating new rules



New EPA Region 9 Administrator

Martha Guzman

- Formerly with CPUC
- Led CA's Interagency Solar Consumer Protection Task force, Tribal Land Policy, and Covid Arrears Response.
- Focused fiscal oversight on, utilities, water affordability & increasing access to clean energy programs for disadvantaged communities.



Department of Interior

- Deb Haaland
- Expected to curtail oil and gas leasing on federal lands



Council on Environmental Quality

Brenda Mallory

- Experienced former environmental lawyer who spent 15 years at EPA



Climate 21 Project

- NGO offers EPA cross-cutting agencies policies focused on:
- Emissions reductions
- Climate Diplomacy
- Adaptation/resilience
- **EPA's Office of Enforcement & Compliance Assurance:** to conduct “enforcement of power-sector regulations with climate co-benefits.”
- Move NEPA office back to OECA from Office of Policy:
- To collaborate with the rest of the agency on NEPA climate issues
- OECA to collaborate with DOE & DOI to speed renewable energy siting on public lands



Natural Sequestration -- Planting a Trillion Trees

- Planting trees over the size of the US would:
- Sequester carbon released by humans in the past 25 years
- Younger trees remove more carbon
- Promotes biodiversity
- **Most room for planting:** Russia, US, Canada, Australia, Brazil, & China

Source: Swiss Federal Institute of Technology

Catalyzing Clean Energy Industries & Jobs Through Federal Sustainability EO

- ❖ **Federal Footprint:** 300,000 buildings, 600,00 cars/trucks, \$650B in goods/services
- ❖ **EO Clean Power Objectives**
- ❖ **Agencies:**
 - Net-zero emissions for building portfolio by 2045 (50% cut by 2032)
 - Net zero emissions from overall federal operations by 2050 (65% cut by 2030)
- ❖ **EO Goals:**
 - Federal agencies to achieve 100% carbon-free electricity by 2030
 - Half must be locally supplied clean energy
 - 100% ZEV acquisitions by 2035 (100% ZEV light-duty vehicles by 2027)



Biden's Vehicular Standard Agenda

- ❖ **Tailpipe Emissions:** Biden granted CA's CAA waiver of preemption allowing it to regulate GHG and ZEVs
- ❖ **GHG Emissions:**
 - Biden expected to tighten GHG vehicle rules through model year 2026
- ❖ **GM Going all electric by 2035**
 - Abandoned Trump's rule preempting CA's vehicle GHG standard
 - Commits to "an all-electric, zero emission future."



Oil Companies Poised for Cleaner Energy

- Europe's big oil companies set carbon reduction targets
- Most have “net zero” goal for 2050 (embraced by EU and Great Britain)
- Shell ordered by Dutch Court to cut emissions by 45%
- **Strategy:** Selling more renewable energy & offsetting emissions with nature-based solutions (e.g., planting trees)



Global Momentum

- World's largest GHG emitter targeting net zero emissions by 2060
- Emissions to peak by 2030
- Japan joins EU's pledge for carbon neutrality
- Japan's carbon neutral goal by 2050
- Denmark Ending Oil & Gas Extraction:
 - Ending North Sea activities by 2050
 - Canceled latest licensing round



Biden Agenda vs. Green New Deal

GND	Biden	
Net-zero GHG Emissions by 2030	2035	<p>Conservation focus on agriculture industry</p> <ul style="list-style-type: none"> Emphasizes green infrastructure Energy efficiency in buildings & houses Promoting production of EVs EJ Clean energy Conservation in agriculture & industry
Abolish fracking?	Not abolishing fracking	Market forces: oil/gas companies are transitioning to renewables adding pressure to replace jobs with green jobs
Carbon Free Electricity	Yes \$2 trillion pledge	40% earmarked for legacy pollution & investments in disadvantaged communities
Building energy efficiency	Yes	
Green Transportation	Promoting EVs	Could see climate friendly policies in infrastructure & stimulus bills
Meet Paris Agreements limit to below 2C	Rejoined Paris Climate Agreement	

Increased Superfund Spending

Infrastructure Funding Bill

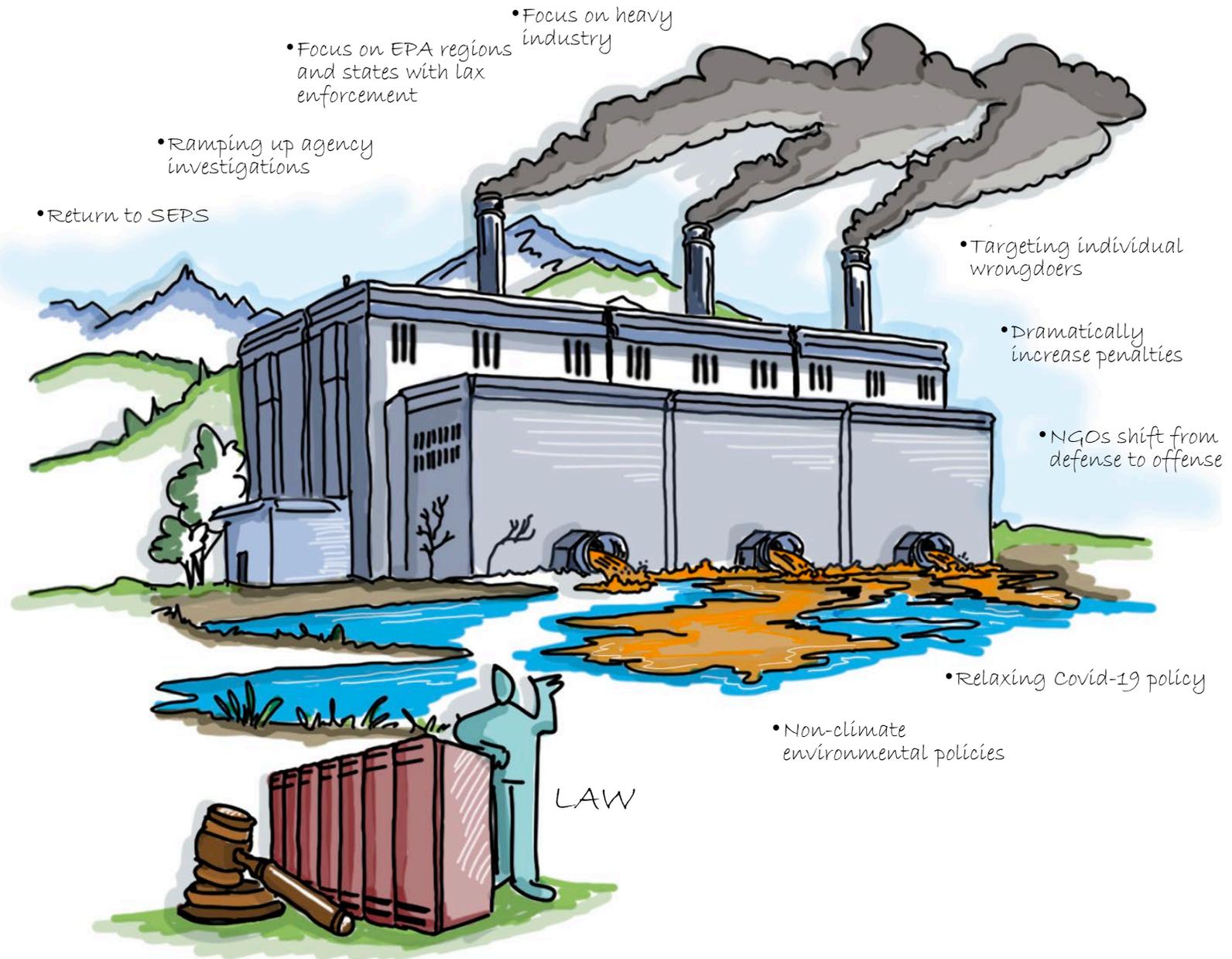
\$1 Trillion Infrastructure Investment & Jobs Act:

- ❖ \$1 B for 49 Superfund sites
- ❖ \$4.7 B: to cap and plug orphaned oil & gas wells
- ❖ EV Infrastructure: National network of 500K EV chargers
- ❖ \$7.4 B: Upgrading aging water infrastructure including lead pipe & paint action plan
- ❖ \$20 B: Office of Clean Energy Demonstrations: to scale up clean energy



Invigorated Enforcement

BIDEN ENFORCEMENT



Environmental Civil Penalties Rise Significantly

Federal Civil Penalties Inflation Adjustment Improvement Act of 2015

EPA Civil Penalties rose with inflation in 2020

Per day / Per violation Penalties:

- RCRA: \$102,638
- Clean Air Act: \$102,638
- Clean Water Act: \$56,460
- EPCRA: \$59,017
- CERCLA: \$59,017
- SDWA: \$50,018
- FIFRA: \$20,528

Scaling up Enforcement

- Returning to Ruckelhaus “fishbowl memo” that EPA serves as a “gorilla in the closet” to compel civil & criminal compliance through stringent oversight of state programs
- Rescinded DOJ EO banning SEPs in enforcement settlements
- Shift from National Compliance Initiatives to Enforcement focus
- Increased focus on states considered to be lax on enforcement
- Increased focus on heavy industry
- Reversing centralized enforcement, returning delegated authority to regions



Biden's Enforcement Reset

- ❖ Repeal memos prohibiting settlement payments to third parties (e.g., land trusts)
- ❖ Rescind 2018 memo prohibiting agency use of guidance documents as evidence in affirmative enforcement cases (even when relied on by regulators and regulated for years)
- ❖ Moving away from wide Covid discretionary enforcement policy easing enforcement; only allowing relief where truly needed
- ❖ Restoring EPA regional enforcement no longer requiring HQ permission & choosing cleanup remedies over \$50 M



DOJ Prosecution Focus

DOJ Environment Natural Resources Division prioritizing:

❖ Corporate Environmental Crimes including:

- Violations of environmental laws and fraud, conspiracy and obstruction of justice
- “Due care” throughout the supply chain.” If supplies originate from a criminally tainted source, [DOJ] ‘ will consider the criminal responsibility of all parts of that supply chain.’

❖ “Sector-wide” civil enforcement: If all or most of an entire sector is out-of-compliance, DOJ will focus on individual facilities in that sector

❖ Critical Enforcement nexus: Focusing on climate and violations of GHG rules and cases protecting carbon sinks (e.g., illegal logging) and protecting renewable energy programs from fraud

❖ EJ



OECA Enforcement for 2021

Office of Enforcement & Compliance Assurance

- ❖ \$8.5 billion in injunctive relief = highest dollar value amount in 4 years
- ❖ 28% from non-compliance in EJ communities
- ❖ EPA concluded more cases under its 5 national compliance initiatives than in the past 10 years



Covid 19 Environmental Actions/Enforcement

- ❖ Enforcement Discretion on civil violations
- ❖ No penalties involving routine monitoring & reporting
- ❖ Facilities must document decisions made to prevent or mitigate non-compliance & demonstrate how the noncompliance was caused by the pandemic
- ❖ EPA Interim Guidance for “response actions”:
 - ❖ Superfund,
 - ❖ RCRA corrective action,
 - ❖ TSCA PCB cleanup
 - ❖ Oil Pollution Act
 - ❖ UST program



Covid 19 Environmental Actions/Enforcement

- Interim Guidance on Site Field Work Decisions, Region-by-Region
- **Continuous Emission Monitoring:** If an affected unit is unable to complete monitoring or test by the applicable deadline due to current travel, plant access, and other safety restrictions implemented as a result of the COVID-19 national emergency, and actual CEMS monitoring data is otherwise valid, the reporting facility can continue to utilize actual monitoring data instead of submitting



Individual Liability for Corporate Wrongdoing

Focus on prosecuting Corporate fraud & other misconduct as deterrence

Yates Memo Guidance:

- Corporate Cooperation Credit: corporations must provide all relevant facts to DOJ regarding individual responsible for misconduct
- Investigations: focus on individual from inception of investigation
- Attorneys handling investigations should routinely communicate⁴. DOJ will not release culpable individuals for liability when resolving corporate matter
- DOJ attorneys should not resolve corporate matter without clear plan to resolve related individual cases
- Civil attorneys should consistently focus on individuals AND the company regardless of individual's ability to pay



**Few Significant Environmental
Regulatory Roll backs**

Promised Regulatory Rollbacks



Climate, Air Quality & Energy:

- Clean Power Plan/Affordable Clean Energy Rule
- Café Standards/Clean Air Act Waiver
- Methane standard for oil and gas
- Energy Efficiency
- POTW Air Toxics (NESHAP) Rule

Water:

- Clean Water Act jurisdiction
- Offshore Drilling



Promised Regulatory Rollbacks



Hazardous Materials/Waste:

- Risk Management Plans
- Coal Ash rules
- Formaldehyde Emissions (Wood products)

“NextGen” Enforcement

Endangered Species Act



Reality: The Trump Administration Is Reversing 100 Environmental Rules. Here's the Full List

NYT

	Completed	In progress	Total
Air pollution and emissions	19	8	27
Drilling and extraction	12	8	20
Infrastructure and planning	11	1	12
Animals	9	2	11
Toxic substances and safety	6	2	8
Water pollution	4	7	11
Other	5	6	11
All	66	34	100

<https://www.nytimes.com/interactive/2020/climate/trump-environment-rollbacks.html?smid=fb-nytimes&smtyp=cur>



Democratic Sweep & the Congressional Review Act

- Absent the CRA, withdrawing or repealing Trump orders & rules will take time (Requires APA notice and comment as a prelude)
- Late Trump rules issued in “Lookback” period could be retroactively repealed
 - Last 60 days when Congress is in session
- EPA cannot re-issue “substantially the same form” unless Congressionally authorized
- **New Legislative prospects:** Expect internecine fighting between the progressive and moderate wings



Repealed Trump Era Rules

- ❖ **Methane rule:** Congress repealed Trump methane rule (Congressional Review Act), thus rescinding Obama rule it replaced
- ❖ **Tailpipe Emissions:**
 - Strengthening vehicle GHG standards for model years 2023-2026
 - Restoration of CA's CAA waiver of federal preemption for auto standards
- ❖ **EPA Inspections:** EPA rescinded Trump-era rule governing EPA civil inspection practices limiting the agency's flexibility and discretion on case-by-case inspection scenarios



Greener Policy Direction

Reversing the Dismantling Deregulatory Policies

WOTUS:

- Either make targeted revisions OR
- Withdraw & replace
(which would be competing with staff time on Climate policies)
- NOTE: The Obama WOTUS rule
(presumption all water covered by CWA vs Trump's bright line balance between federal & state/local to determine land uses)



Trump Retained Fine Particulate NAAQS

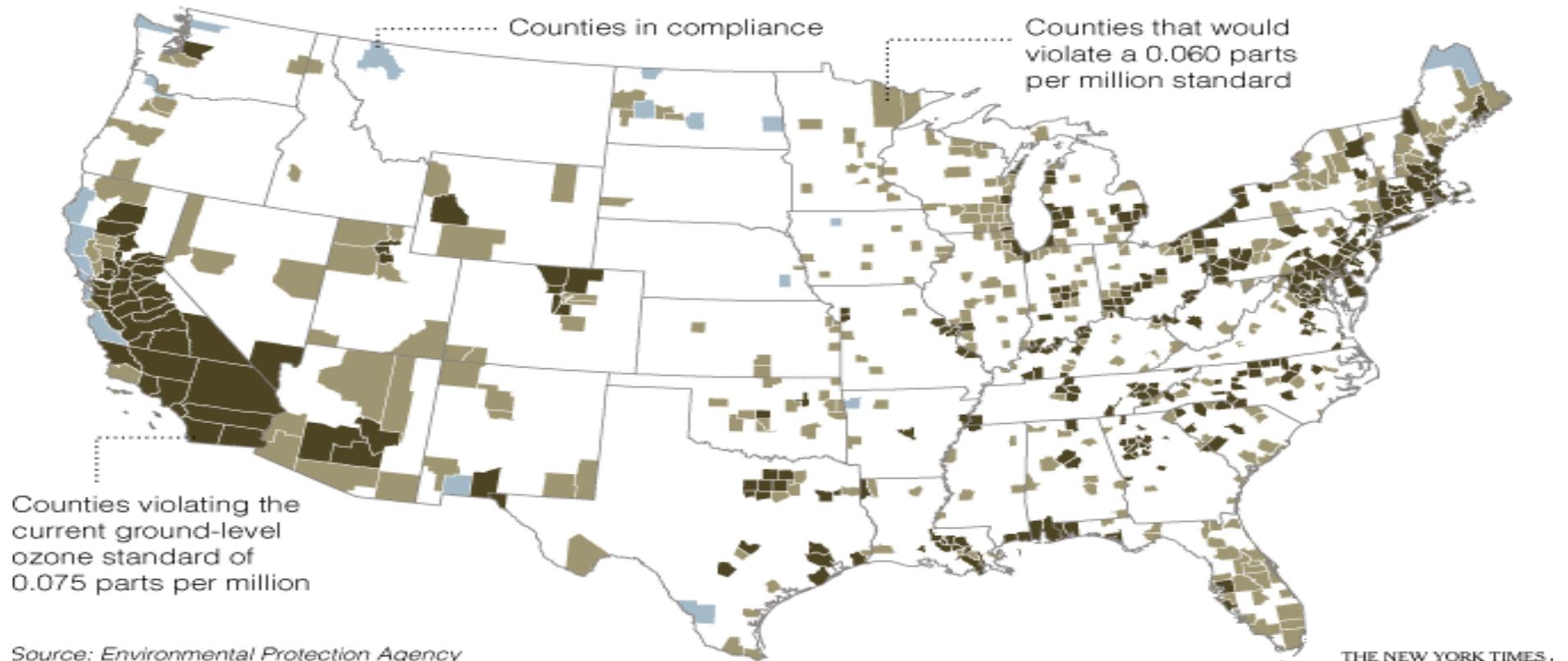
- Trump EPA retained fine particulate matter (PM 2.5) rule (12 micrograms/M3)
- Despite EPA's public health experts who say it contributes to 10s of thousands of premature deaths annually. EPA staff is split on this final rule
- NGOs, seeking a more health protective standard, will sue alleging the rule allows tens of thousands of preventable premature deaths annually



EPA Expanding Ozone Non-attainment Beyond Trump EPA Designations (Il, In, MO, WI)

Smog Standards

Based on a three-year average of data (2006-2008), there were 322 counties with ground-level ozone concentrations above the current air-quality compliance standard. If the new standard is adopted, an additional 328 counties would be beyond acceptable levels.



NEPA Streamlining Rule Rescinded

- Biden Executive Order rescinded NEPA guidance designed to:
- Supersede longstanding court precedent
- Would have established separate tests to determine if a federal action is “major” & whether it has a significant environmental impact
- “Environmental effect” definition would have dropped explicit requirements to consider “indirect” and “cumulative” effects
- Could have resulted in avoiding robust climate reviews.
- CEQ developing replacement regulations



NEPA Streamlining Rule

- Sets hard deadlines for completion of:
 - EIS: 2 year
 - EA:1 year
- Establishes categories of projects not requiring EAs
- NGOS & 54 law professors allege rule will:
 - “Narrow the range of impacts & alternatives agencies consider”
 - Make it harder to challenge flawed NEPA analyses in court.”
 - Unintended benefit of reaching net-zero carbon economy by 2050 by speeding renewable energy & low carbon projects & other green infrastructure



Stimulus & HFC Cuts

Phases out HFCs:

- EPA authorized to cut product & use of HFCs by 85% over 15 years
- Expected to save as much as half degree Celsius of warming by end of 2100
- \$35 billion for renewable energy including tax credit extensions for solar, wind, and energy storage (\$4B), energy efficiency products, electric grid upgrades, sustainable transportation (\$2.6B), carbon capture research (\$6B), \$1.7 B for low-income families to install renewable energy, nuclear (\$11B)
- Reauthorizes EPA program to cut diesel engine emissions
- DOE: Must prioritize funding research with 100% “clean, renewable, or zero-emission energy sources”



EU struck deal to Cap Super-warming F-gases

- EU finalized tentative deal on limiting the use in fridges and air conditioners of fluorinated gases that have a global warming potential thousands of times greater than carbon dioxide
- Introduce a cap to achieve a 79% reduction by 2030 on hydrofluorocarbons (HFCs)
- Includes bans on the use of HFCs in new equipment in some business sectors by 2022 and prevent their use for servicing and maintenance of old equipment



“Ignitability” Waste Rule

- “Modernizing Ignitable Liquids Determination” updates and codifies test methods for determining ignitability.
- Offers industry flexibility & cost-saving opportunities using modernized test procedures
- Eliminates uses of mercury thermometers in analytical methods
- Defines “aqueous” as “50% water by weight” which partially excludes alcohols from the definition of “ignitability”

Repealing Trump Era Rules In Process

- ❖ **Mercury & Air Toxics Standards for Power Plants:**
restoring Obama’s “appropriate & necessary” finding underlying the standards
- ❖ **Controversial Clean Air Act deregulatory guidance policies**
 - i.e., Returning to EPA’s ability to project facilities’ potential future air emissions to trigger NSR instead of deferring to company’s own assessment on applicability
- ❖ **SEPs:** DOJ stalled in revoking Trump-era rule banning SEPs in settlements



Water Cyber Security Initiative

Biden Administration Initiative's industrial control system includes wastewater and drinking water systems underway

- ❖ Increased monitoring
- ❖ Tougher access
- ❖ Improved planning & mitigation
- ❖ Additional safety controls



PFAS Policies

- Drinking water limits (using emergency powers to establish)
- Drinking water of ~110 M Americans may be contaminated by PFAS (per & polyfluoroalkyl substances)
- Setting PFAS Superfund hazardous substances designation
- Prioritizing substitutes through procurement
- Accelerating toxicity studies
- List as a CWA toxic



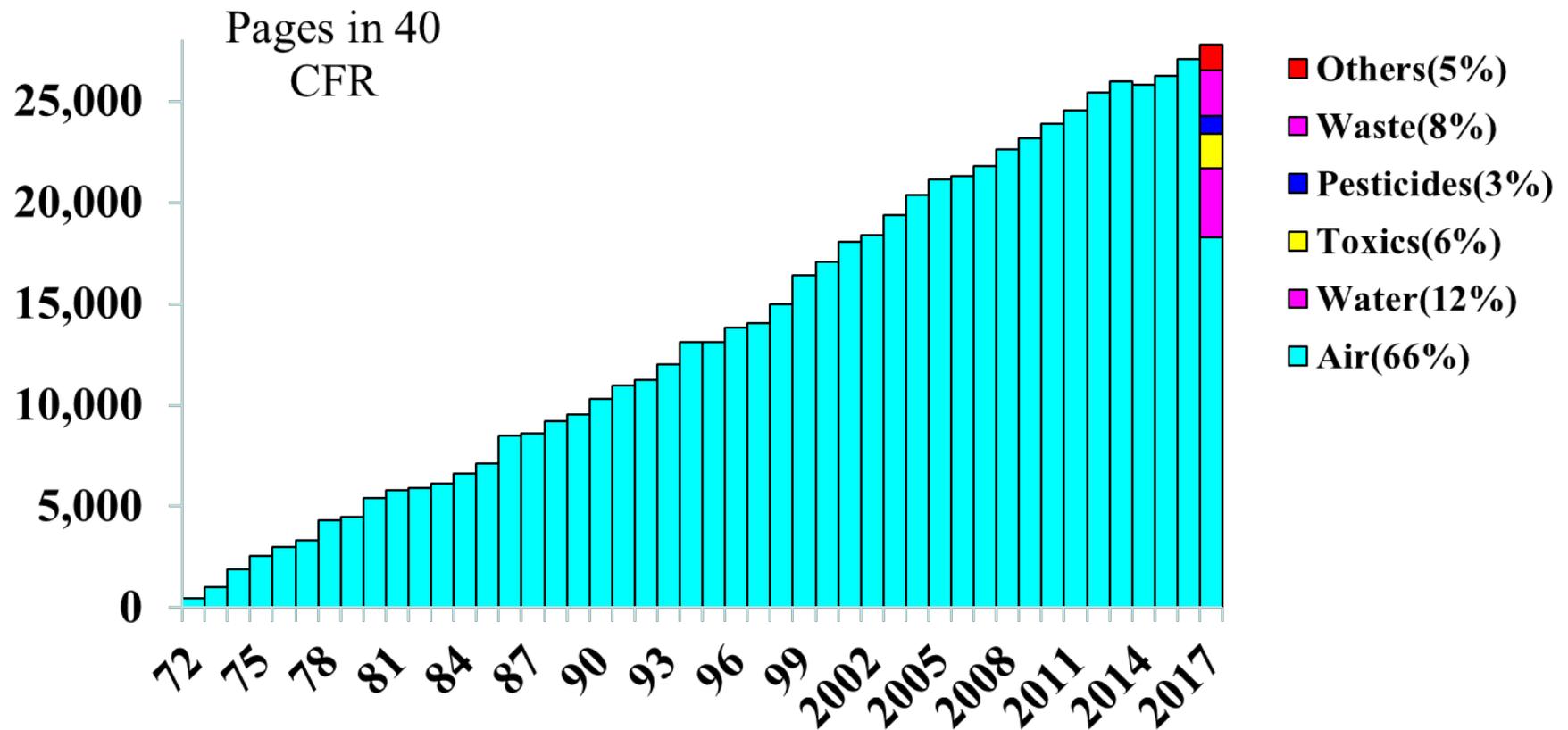
Vapor Intrusion

- Adopting California's assertive rules managing risks of vapor contaminant inhalation.
- **Supplemental Guidance:** Screening & Evaluating Vapor Intrusion by DTSC & SWRCB:
- More specific than federal guidance for sampling & “focuses on prioritizing & screening buildings more quickly.”
- Framework for deciding when cleanup &/or mitigation is necessary
- Guidance on EPA's 2015 attenuation factors
- Establishing 4 step evaluation process to assess vapor intrusion
- Increased focus on collection & evaluation of indoor air & sub-slab soil gas samples



EPA Regulations continue to grow

Over 27,000 pages in 2017; Increase of almost 700 pages

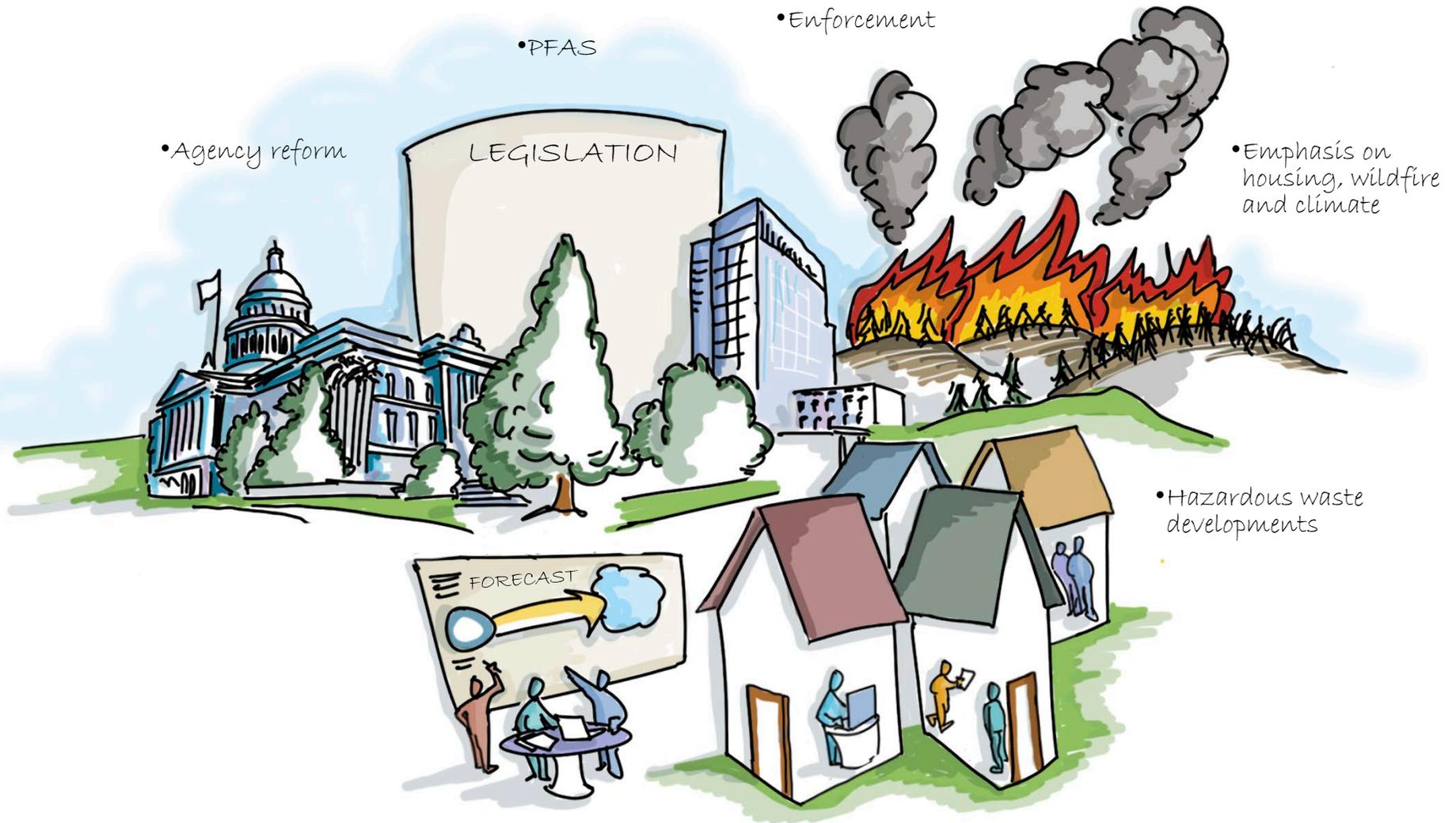


Source: U.S. Code of Federal Regulations
Courtesy: Larry Cahill

California

Environmental Regulatory Developments & Enforcement

CALIFORNIA POLICY AND ENFORCEMENT



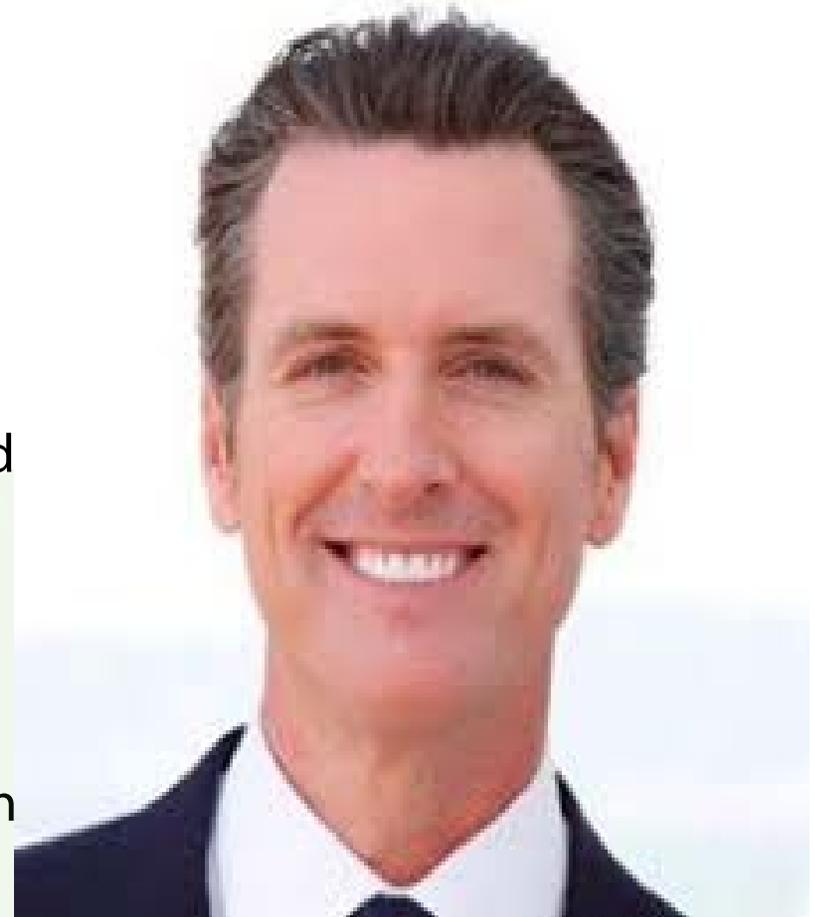
CA Environmental Legislative Regulatory Developments

- Climate Change
- Air Quality
- Hazardous Waste
- Hazardous Materials
- Green Chemistry
- Water Quality
- Sustainability
- Health & Safety
- Enforcement
- Forecast



Governor Newsom's Vision

- “Yes/and” not “either/or”
- No more binary farmers vs. environment
- **Housing for All:** 3.5 M housing units by 2025
- Local govt. \$ to update Land use planning
- Wildfire funding & policies
- Limited Highspeed Rail (Merced to Bakersfield)
- Central Valley Focus
- “Water Fix”--Just One Tunnel, not Two
- “Saving Sacramento-San Joaquin Bay Delta”
- Fiscal Prudence: “We will prepare for uncertain



Democratic Dominance

- Historic ultra-supermajority in both houses with a Democratic governor
- Both houses led by members who have a deep interest in environmental issues
- What would the Legislature do with this opportunity?

Newsom Agency Challenges

- CDFW—budget, program
- DTSC—budget, program
- Cal Recycle—solid waste and recycling crisis
 - National Sword
 - Bottle bill
- **Air Resources Board**
 - Meeting Climate Targets
 - Localized Pollution
- Source: Kip Lipper

Newsom Executive Orders

❖ Phasing out hydraulic fracking

❖ CA must:

- Stop issuing hydraulic fracking permits by 2024
- End all fossil-fuel drilling by 2045
- Pending SB 467 would ban offshore oil drilling

❖ **Conserving 30% of land & coastal water by 2030:** To offset loss of biodiversity



Decarbonizing California

A Nation State

- Reduce GHG emissions:
 - 40% below 1990 levels by 2030
 - 80% below 1990 levels by 2050
- Carbon neutral by 2035 (modified from 2045)
- 60% Renewable energy by 2030
- 100% Renewable energy by 2045
- 1.5 million ZEVs by 2025
- 5 million ZEVs by 2030
- Half petroleum use by 2030
- 100% electric appliances by 2030/2035
- 50% of all trucks sold must be EV by 2035



Climate Solutions Revolution

Newsom's \$22.5 B Budget (over 5 years) addressing Climate:

- Lithium Capital of the World in “Lithium Valley”
- Zero-emission vehicles & clean transportation & energy
- Establish an equitable “global model” for the world:
- Training community health workers in “climate health”, “health-resilience planning” & health/disease monitoring and air quality monitoring
- Climate resilience (forest & wildfire, “nature-based” solutions for extreme heat, coastal resilience & community resilience).



California Accelerating Climate Change Ambitions

- **Sparked by wildfires:** Fast tracking on top of leading the nation in decarbonizing the economy fast tracking goals
- Roughly \$2 billion in new funding for CalFire, OES, other state agencies for landscape/forestry management (2020)
- **CalEPA & Natural Resources Agency to specifically adapt strategies:**
 - More EVs
 - Electrify transportation
 - More dynamic & deliberative Land Use efforts
 - Revisit soil, industrial, and agricultural policies

Specific Targets

- ❖ **ZEVs:** 100% ZEVs by 2030/2035
- ❖ **Appliances:** 100% electric appliances by 2030/2035

Source: Achieving Carbon Neutrality in CA PATHWAYS Scenarios Developed for the CA ARB



Sea Level Rise Mitigation & Adaptation Act

- ❖ Sea level projected to rise 7 feet by 2100
- ❖ ~ 2/3s of the state's residents live in coastal counties
- ❖ LAO further states that waiting too long to initiate adaption efforts likely will cost the state and its economy new billions of dollars.
- ❖ SB 1: First comprehensive sea level rise program to prepare for sea level rise:
 - Assess & mitigate sea level rise: Directs the California Coastal Commission to take into account sea level rise in coastal planning, development, & mitigation efforts
 - Assist local governments and communities in response



GHG Reduction from Cement

California's 8 cement plants:

- ❖ Second largest cement producing state, accounting for 10-15% of the cement production
- ❖ Accounting for 1.8% of the CA's GHG emissions.
- ❖ Largest consumer of coal in the state.

- ❖ **SB 596** requires ARB to establish a strategy to reduce achieve carbon neutrality (net zero) no later than 2045

- ❖ Develop strategy to reduce GHG emissions from the concrete and cement used in California by 40% (from 2019 levels) by 2030 and to or



Natural & Working Lands

Climate Smart Strategy

- ❖ SB 27 addresses concerns about negative emission technologies (NETs) that arguably prolong the use of polluting technologies
- ❖ SB 27 establishes Carbon Sequestration & Resilience and Project Registry:
 - To maintain list of eligible but unfunded projects, which then may be funded to mitigate GHG emissions
 - Maximizes carbon capture in soil, grasslands, farmland, wetlands, forests
 - Prohibits registry projects from offsetting emission reduction obligations or being involved in market-based compliance mechanisms,
 - Requires ARB to add carbon sequestration targets to the state's climate change scoping plan.



Air Quality



Warehouse Indirect Source Rule

SCAQMD Indirect Source Rule (ISR)—Rule 2305: Requires warehouse operators to annually earn specified # of points from menu of items by acquiring or using:

- Near Zero Emissions &/or Zero Emissions on-road trucks
- Zero emission cargo handling equipment
- Zero Emission charging/fueling infrastructure, solar panels or particulate filters for nearby sensitive land uses

Estimated to reduce NOx emissions by up to 15%



Smog Check for Heavy-duty Diesel Trucks

Smog check program for heavy-duty diesel trucks

- Beginning in 2023:
- Biannual emissions testing
- Registration blocked upon failure
- Quarterly testing for trucks with on-board diagnostic systems
- Out-of-state trucks required certificates demonstrating compliance.



California's EV Focus

ARB's Advanced Clean Truck Rule:

- Beginning 2024, Automakers must sell a minimum number of zero-emission big rigs, delivery vans, and large pickups weighing more than 8,500 lbs.)
- By 2035, most new trucks in California will be zero emission



Electric Vehicles & Infrastructure Legislation

AB 970: Sets permit approval time frames & reduces the number of required parking spaces to accommodate the EV charging stations

SB 957: Opens carpool lanes to low-income drivers using electric vehicles

AB 193: Rebate on purchases of batteries for used zero-emission cars

AB 2885: Instructs the ARB to promote clean vehicle rebates in low-income communities

SB 1403: Instructs the ARB to review incentive programs for zero-emission vehicles

AB 2006: Makes permanent agricultural vanpool program using electric vehicles



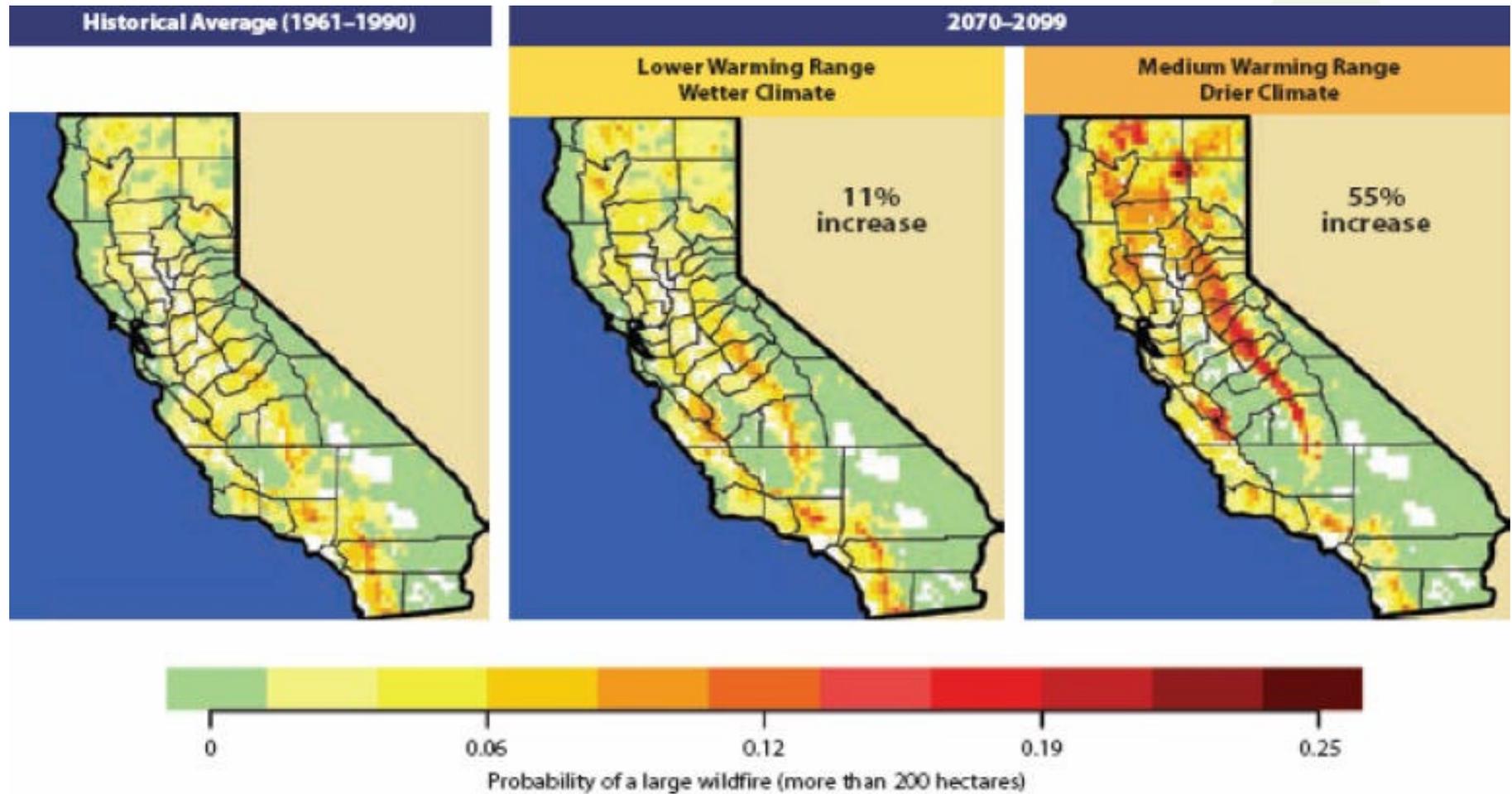
Electrification of Off-road Engines

AB 1346: Requires zero emissions for small off-road engines (SORE):

- Small off-road engines Lawn & other outdoor equipment (2024)
- New portable generators & specified commercial pressure washers (by 2028)
- Remote emissions monitoring devices to be used to ID high-emitting vehicles subject to follow-up compliance testing



Global Warming and Wild Fire Risk



Wildfire Legislative Package

- Focus on prevention, response, & recovery
- Fuel Reduction
- Mitigation Plans
- Fire-hardening homes
- Evacuation
- Cost recovery from utilities

Wildfire Legislation (2018)

SB 901: Aimed at reducing fuel loading emphasizing removal of small/mid-sized trees

AB 2126: Leverages CCC forestry expertise

SB 465: Funding for ember-resistant roofs, dual-paned windows, ignition resistant decks, walls, and patio covers

AB 2911: Fire safety planning and defensible space and building standards

AB 1956: Local assistance grant program for fire prevention

AB 1492, AB 1954, AB 2889: Timber Harvest **Plans**

More Wildfire Legislation (2018)

- **AB2518:** Innovative forest products and manufacturing
- **AB 2551:** Prescribed burning
- **SB 1260:** CAL FIRE & local planning collaboration
- **SB 833, SB 821 & AB 2380:** Emergency Notification
- **SB 30:** Natural infrastructure to reduce risk
- **AB 1800:** Consumer protections for insurance

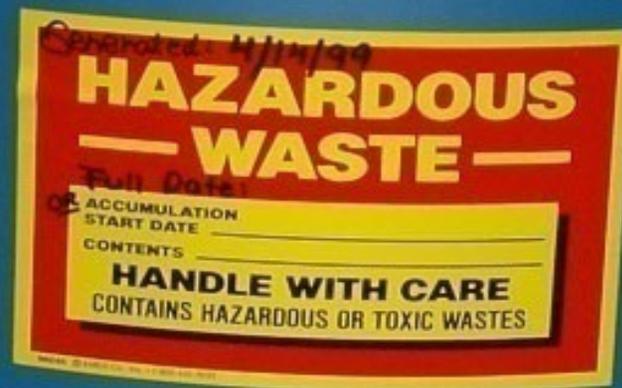
Buy Clean California Act

AB 262:

- Dept. of General Services must publish maximum acceptable global warming potential (GWP) for category for eligible materials
- Beginning 7/1/19: bidders must submit Environmental Product Declaration not exceeding GWP

Hazardous Waste Developments

LABEL MUST ALWAYS FACE OUT



Hazardous Waste Generator Improvements Rule

- Major overhaul of RCRA
- Took effect May 2017
- Major Changes:
- Reorganization of 40 CFR 262
- Expanded Emergency Preparedness Requirements
- Bolstered rules for Biennial Reporting
- Relief for Episodic generation events impacting generator status
- New Marking/labeling requirements for HW tanks & containers
- California must adopt rule by 7/1/19

Generator Improvement Rule

State Delegation

AB 698:

- ❖ Updates terms within the California Hazardous Waste Control Law to conform to recent changes in federal hazardous waste regulation promulgated by the EPA under GIR.
- ❖ Replaces the terms “CESQG” with “very small quantity generator” / “VSQG”
- ❖ Recasts provisions regarding the amount of hazardous waste and which hazardous wastes are included in, or excluded from, that calculation.

❖ Labeling:

- “Episodic Hazardous Waste”
- Indicate hazards (i.e., ignitable, corrosive, reactive, or toxic)
- Date: Episodic event began
- Accumulation: Up to 60 days
- Manifest required for off-site shipments
- Records:
 - Beginning & ending dates of episodic event
 - Description of episodic event
 - Types and quantities of HW generated during event
 - Description of fate of HW managed
 - Name of transporter
 - EPA approval letter (as appropriate)



Generator Improvement Rule

Monthly Thresholds

Large Quantity Generators

- $> \text{ or } = 1,000 \text{ kg/mo.}$ of non-acute HW
- $\geq 1 \text{ kg/mo.}$ of acute HW
- $\geq 100 \text{ kg}$ clean-up residues of acute HW

Small Quantity Generators

- $100 \text{ to } 1,000 \text{ kg/mo.}$ of non-acute HW
- $< \text{ or } = 1 \text{ kg/mo.}$ acute HW
- $< \text{ or } = 100 \text{ kg/mo.}$ clean-up residues of acute HW
- Note: Accumulation of 6,000 kg at any one time requires a one-year storage permit

Very Small Quantity Generators

- $< \text{ or } = 100 \text{ kg/mo.}$ non-acute HW (Recognized as SQG under CA law)
- $< \text{ or } = 1 \text{ kg/mo.}$ acute HW
- $< \text{ or } = 100 \text{ kg/mo.}$ clean-up residues of acute HW



DTSC Oversight Board

Vetoed

AB 995 would have created Board of Environmental Safety within CalEPA

- Providing DTSC policy direction & oversight, & established new
- Increased fees to raise an estimated \$22 million to “begin fiscal stability in the department
- Heard & decided appeals of hazardous waste facility permit decisions & certain financial assurance decisions
- Held public hearings on individual permitted or remediation sites;
- Set priorities for each program for each year
- Reviewed how the department is coordinating with other regulatory agencies
- Required the board, by Jan. 1, 2022, to establish guidelines for site prioritization under the site mitigation program, including orphan sites.



DTSC Reform

❖ **SB 158 Designed to:**

- Review & monitor DTSC's strategic plan and reorganization
 - Audit remediation cost recovery
 - Add personnel to improve permit backlogs and business operations
 - Improve enforcement.
- ❖ Funding closes historical structural budgetary deficits impacting programs and activities.
- ❖ Establishes a 5-member Board of Environmental Safety within the agency authorized to:
- Review and approve annual priorities & adopt performance metrics
 - Develop long-term goals for DTSC's programs
 - Address appeals of DTSC hazardous waste facility permit decisions
 - Offer public hearings on DTSC's permit and remediation decisions
 - Evaluate the agency fee structure annually aligning charges for HWCA and TSCA
 - Develop recommendations to improve coordination between programs & reduce or eliminate duplication/overlap.



TSDF Permit Clarifications

- ❖ TSDF permits, including a standardized permits, must be for a fixed term,
 - Not to exceed 10 years
 - Regardless of the type of hazardous waste facility.
- ❖ Provides for the extension of an existing hazardous waste facilities permit or standardized permit if owner or operator of the hazardous waste facility submits renewal Part A & Part B application before expiration the application is deemed complete.
- ❖ Deemed extended until DTSC approves the renewal application and a new permit is effective or the department denies the permit renewal application and all parties have exhausted all applicable rights of appeal.
- ❖ TSDF permits expiring before 1/1/ 2025, seeking to renew the permit to submit a Part A and Part B application to DTSC at least 180 days before the end of the permit's fixed term.



TSDF Permit Clarifications

- ❖ Within 90 days of receiving TSDF application (including a standardized permit), DTSC must provide a timeline with process milestones
- ❖ If DTSC fails to make a timely decision,, it must issue a public report with an explanation & a proposed schedule for issuing permit decision
- ❖
- ❖ DTSC prohibited from issuing permit unless TSDF owner or operator establishes and maintains financial assurances for the costs of corrective action, closure, and post-closure
- ❖ DTSC must request cost estimate from TSDF owner or operator for corrective actions involving releases and require entering into a schedule of compliance for assurances of financial responsibility for completing the corrective action.



Treated Waste Wood

- ❖ AB 332 permanently authorizes TWW to be managed under alternative management standards instead of managed as hazardous waste.
- ❖ Variances granted by DTSC before AB 332 are inoperative
- ❖ **Storage of TWW in “normal course of business”:** off ground (on blocks, concrete surfaces, or containers):
 - Store up to 90 days (block and tarp)
 - Store up to 180 days (containment pad)
 - Store up to 1 year (container and storage building)
- ❖ Cover during inclement weather
- ❖ Accumulate away from public access
- ❖ Do not burn
- ❖ Segregate from other wastes



Revised the Mercury Thermostat Collection

AB 707 requires thermostat manufacturers to:

- Fully fund program costs to collect, transport, & recycle mercury thermostats including education and outreach campaign
- Develop & implement a convenient, cost-effective, and efficient program for the collection, transportation, recycling, & disposal of out-of-service mercury-added thermostats.
- Collection locations must be convenient & accessible statewide, including in rural, disadvantaged, & low-income communities.



Consolidated Manifesting

Retail Hazardous Waste

- **AB 2920** Retail hazardous waste eligible for consolidated manifesting for California-only HW (i.e., unsold consumer products in its original retail sales packaging that is determined by the retailer to be a hazardous waste).
- **Original list:** household bleach/cleaning products, light bulbs, pool chemicals, laundry detergent, cat litter, potting soil, and fertilizers, used oil, brake fluid, antifreeze, "paint-related" wastes, and dry cleaning solvents.
- Waste streams no longer have to individually listed on the manifest and in its own container, saving extra vehicle
- ****Under consolidated manifesting procedures, the generator is exempt from filling out a hazardous waste manifest, and instead the transporter completes both the generator and transporter section of the manifest.**



Hazardous Materials Developments



Chemical Releases

- ❖ AB 480 authorizes UPAs & CUPAs to respond to HW releases if it “reasonably determines poses an imminent and substantial endangerment to public health”
- **Prior:** CUPAs needed to persuade a local district attorney to go to court to seek an injunction against the offending business, even while the dangerous conditions persist.
- **Note:** Recent incidents involved releases of hexavalent chrome in Paramount and Long Beach, a large fire and magnesium release in Maywood and releases from a chemical facility in Richmond
- ❖ Clarifies that “unregulated” facilities must report a release “upon discovery of an actual release resulting in an emergency response”



PFAS Prohibitions

AB 652

- ❖ Prohibits the sale or distribution any juvenile products containing PFAS, on or after July 1, 2023
- ❖ Manufacturers must use the least toxic alternative when replacing PFAS chemicals in a juvenile product

AB 1200

- ❖ Prohibits selling food packaging containing PFAS beginning 1/1/23
- ❖ Cookware manufacturers must label product if it contains an intentionally added chemical on specified lists (1/1/24)
- ❖ Manufacturers must use the least toxic alternative when replacing PFAS chemicals for cookware



California Safe Cosmetics Act

- SB 312 closes “loopholes” that allow chemicals in personal care and cosmetics products to be categorized as “fragrance”
- Fragrance chemicals can be found in more than 95% of shampoos, conditioners, hair styling products, antiperspirants and shaving products as well as fine fragrances, body spray and lotions, and 1/3 of the fragrance chemicals currently in use have been linked to negative health impacts ranging from allergic reactions to reproductive harm and increased risk of breast cancer.
- Cosmetic manufacturers, by January 1, 2022, must disclose product information to DPH re cosmetic products containing a fragrance ingredient or flavor ingredient
- Agencies must post on database associated health hazards.



Cosmetics Product Safety

- **Prior Law:** FDA and CA DPH did not require premarket safety testing, review, or approval of cosmetic products.
- **AB 2762** bans a list of specified ingredients from cosmetics products consistent with the European Union's (EU) Annex II of regulation No 1223/2009 including carcinogens, reproductive toxicants, and endocrine disruptors
- Prohibits, beginning January 1, 2025, the manufacture, sale, delivery, holding, or offering for sale in commerce of any cosmetic product containing specified intentionally added ingredients.



Menstrual Products Right to Know Act of 2020

AB 1989:

- Requires disclosure of all ingredients in menstrual products including tampons, pads, cups, disks, sponges, and menstrual underwear which contain: Phthalates, Bisphenols, Parabens, and [per- and polyfluoroalkyl substances].
- Packaging containing menstrual products must be conspicuously labeled with a list of all ingredients in the product



EPCRA TRI Reporting

Now Includes PFAS

- Per- and polyfluoroalkyl substances (PFAS) added to Toxic Release Inventory under the Emergency Planning & Community Right to Know Act
- Includes 172 PFAS chemicals
- Facilities that manufacture, process or use 100 lbs. or more of PFAs chemicals must report by 7/1/21 for all of 2020 activity

40 CFR 372.29

Ban on Fire Fighting Foams with PFAS

SB 1044 bans firefighting foam from containing per- and polyfluoroalkyl substances (PFAS)



Pipeline & Hazardous Materials Safety Rules

- Changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements
- Amends Hazardous Materials Table (Section 172.1010)
- Classification system for articles containing hazardous materials without a proper shipping name.
- Regulates hazardous materials residues present in articles
- Lithium battery shipping requirements Corrosive mixture packing requirements

California Solid Waste Developments



Solid Waste & Recycling

SB 343

- ❖ Tightens the requirements around the permissible use of the “chasing arrows” recycling symbol and when claims regarding recyclability
- ❖ CalRecycle must publish the types and forms of recyclable products and packaging
- ❖ Greenwashing: Adds symbols & language associated with recycling, which are often associated with being eco-friendly, to the list of labels that are specifically regulated

AB 881 reclassifies the export of mixed plastic waste as disposal, while allowing truly recyclable plastic to continue to be counted towards our recycling goals.



Solid Waste & Composting

AB 1201

- ❖ Updates California's environmental advertising laws regarding independent, third-party certification of compliance with degradability requirements
- ❖ Prohibits products with PFAS ("forever chemicals") from being labeled as compostable.
- ❖ CalRecycle must develop labeling requirements for compostable products to ensure that they are readily identifiable by both consumers and composting facilities



Plastic Bottle Minimum Recycled Content

- AB 793 sets a minimum recycled content standard for plastic bottles in California.
- Requires producers of plastic beverage containers to incorporate postconsumer recycled content
- Requires the total number of plastic beverage containers to contain, on average, no less than 50% postconsumer recycled plastic content per year on and after January 1, 2030



Water Quality/Supply Developments



Storm Water

- ❖ SB 273 authorizes municipal wastewater agencies to enter into voluntary agreements with entities responsible for stormwater management to acquire, construct, expand, operate, maintain, & provide facilities to manage stormwater and dry weather runoff
- ❖ **Prior law:** Obtained through piecemeal legislation, only a handful of municipal wastewater agencies are granted the explicit authority to capture and treat stormwater under existing law



Lead-Free Piping

- ❖ Expands on (AB 1953 2006) that banned the sale & use of any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that is not "lead free."
- ❖ **"Lead free" does not mean lead free:** California's "lead free" plumbing statute reduced the allowable amount of lead in plumbing fixtures, but still allows for lead, which can, & does, leach into the water.
- ❖ AB 100 requires endpoint plumbing device (e.g., faucets, fixtures, & water fountains) to meet a performance standard to comply with the requirement to be "lead free."
- ❖ Prevents sale in California of endpoint devices that leach more than one $\mu\text{g}/\text{L}$ of lead.



Increases penalties for oil spills

- **AB 3214** responds to the largest oil spill California in over 25 years doubles maximum and minimum criminal penalties for companies that knowingly spill oil into state waters.
- Plains All American Pipeline was convicted of one felony and eight misdemeanors for failing to maintain the pipeline along with mishandling the response to the spill.
- Paid a ~\$3 million



BCDC Enforcement

AB 2809 mandates actions by the San Francisco Bay Conservation and Development Commission (BCDC) re enforcement, penalties, & implementation of the Suisun Marsh Preservation Act.

BCDC must create & implement a procedure to:

- Provide managerial review of staff decisions in enforcement cases
- Timelines for resolving enforcement cases,
- Penalty matrix for assessing fines and civil penalties,
- Method for assessing civil penalties in cases involving multiple violations.



Point Source Discharges Through Groundwater

Ruling

- **Issue:** does “pollution that reaches navigable waters only through groundwater [is] pollution that is ‘from’ a point source” requiring an NPDES permit?
- **No bright line in 6-3 SCOTUS Ruling:** An NPDES permit is required “when there is a direct discharge from a point source into a navigable water or when there is the functional equivalent of a direct discharge” from a point source. *County of Maui v Hawaii Wildlife Fund* 2020
- **“Functional Equivalent” factors:**
 - Pollutant travel time
 - Between discharge point & navigable water
 - Distance traveled
 - Material through which discharge travels
 - Dilution or chemical change during travel

CWA 401

Cooperative Federalism

- Limits scope of state reviews of federally permitted projects' water quality impacts
- Overturns Supreme Court ruling: Section 401 should be read to authorize additional conditions & limitations on permitted activity as a whole, not merely discharges. (PUD No. 1 of Jefferson Co of Tacoma v. Washington DEP (1994))
- Using Clarence Thomas dissenting opinion: "Text & structure of Section 401 allow states to only impose those conditions related to discharges."
- **Implications:** Will prevent states from raising climate change and other non-water quality issues.

ESA General Permit Ruling

- SCOTUS confirms General Permit OK for most pipeline construction
- Lifted national injunction on use of nationwide permit 12 for new oil & gas pipelines

Lowered Bromide Levels for Wastewater

- AWWA seeking zero liquid discharge requirement for wastewater from power plants (flue gas desulfurization)
- Bromide controls mercury releases from coal power plants & increases carcinogenic brominated disinfection byproducts (e.g., trihalomethanes)

Banning Offshore Drilling

SB 834 and AB 1775

- Response to Trumps move to drill offshore
- 15 coastal governors oppose offshore drilling (1/3 are Republican governors)
- Brown: “We will not let the federal government pillage public lands and destroy our treasured coast.”
- Bans construction of the infrastructure to support rigs pipelines and docks

“Waters of the United States”

- EPA to publish new policy later 2022
- EPA and U.S. Army Corps of Engineers issued definitional clarity in an effort to clarify the scope of protected waters “clearer, simpler, & faster
- Three Categories of Waters:
- Jurisdictional in all instances
- Subject to case-by-case analysis to determine whether jurisdictional
- Excluded in all instances
- Seeks to clarify the Rapanos decision, which left confusion as to which waters fell under the governments jurisdiction



“Waters of the United States” (Cont.)

- Jurisdictional in all instances: Traditional navigable waters, interstate waters, territorial seas, impoundments, tributaries & waters “adjacent” to jurisdictional waters
- Subject to case-by-case analysis to determine whether jurisdictional include geographical clusters:
- Water sheds with a “significant nexus”
- Waters within 100 year floodplain & within 4,000 feet of high tide line
- Excluded: converted croplands, waste treatment systems, “ditches”, storm water control treatment /storage structures, cooling ponds on dry land.
- Sixth Circuit: Issued temporary stay



“Waters of the United States” (Cont.)

- **Jurisdictional in all instances:** Traditional navigable waters, interstate waters, territorial seas, impoundments, tributaries & waters “adjacent” to jurisdictional waters
- Subject to case-by-case analysis to determine whether jurisdictional include geographical clusters:
- Water sheds with a “significant nexus”
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- Excluded: converted croplands, waste treatment systems, “ditches”, storm water control treatment /storage structures, cooling ponds on dry land.

Environmental Analysis Programs

Making Informed Decisions



CEQA & Housing

Jobs & Economic Improvement Through Environmental

SB 7 authorizes Governor (until 1/1/24) to certify projects meeting “sustainability performance” for CEQA streamlining

“Expands the Leadership Act to include smaller housing projects for housing project resulting in investment between \$15 million - \$100 million, provided at least 15% of the project is affordable to lower income households

Adds additional construction labor requirements for all eligible projects.

Clarifies that the 270-day judicial review deadline is counted in business days and includes appeals to the court of appeal or Supreme Court.



CEQA Notices

- ❖ AB 819 allows CEQA lead agencies to:
 - ❖ mail or email environmental review notices, and to post them its agency's internet website.
 - ❖ Lead agency must electronically submit to the State Clearinghouse:
 - ❖ Draft environmental impact report,
 - ❖ Proposed negative declaration, or
 - ❖ Proposed mitigated negative declaration



California Hazardous Substances/Cleanup Developments



Remediation Oversight

AB 304

- ❖ Strengthens oversight of cleanups overseen by local health officers helping ensure they have the necessary expertise, knowledge, & resources to carry out remediation responsibilities to protect public health.
- ❖ Requires local health officers to conduct a public notification process & provide documents outlining the remedial action & certification of cleanup goals to the responsible party and to the public via GeoTracker.
- ❖ Setting certain requirements for local health officers overseeing contaminated site cleanup including electronic reporting, public notification, & written notice to DTSC & SWRCB detailing technical resources available for the cleanup.



Superfund Preemption

- Superfund does not preempt state court oversight of damages pursuant to state tort law
- SCOTUS (8-1) preserved EPA's ultimate cleanup authority: Finding landowners seeking a more extensive cleanup remedy through tort claims must first obtain EPA approval

Atlantic Richfield Company v. Gregory Christian



Expansive Statute of Limitation Rulings Superfund

- Cost recovery actions under Section 107 not time barred by 6-year statute of limitations
- Reset allowed for distinct remediation projects addressing problems different than those in initial cleanup plan
- **Ct. of Appeals:** *MPM Silicones v Union Carbide 2020 & Arconic, Inc. v APC Investment Co.*

Superfund Listing based on Vapor Intrusion

Obama-rule:

- **Note:** Approximately 1,073 site possibly qualify for NPL due to subsurface intrusion
- **Hazard Ranking System rule:** allows regulators to list contaminated sites on NPL solely upon presence of vapor or water intrusion
- Rule “requires consideration of permanent vapor mitigation systems in scoring sites for consideration on the NPL.”

Guam v US

- Unanimous SCOTUS:
- Broadly interprets CERCLA: To trigger a contribution claim under CERCLA, a settlement must by its terms resolve CERCLA liability (not CWA or RCRA liability).
- Settlements under non-CERCLA laws do not trigger contribution
- Holding: Parties potentially liable for contribution costs under CERCLA because the statute of limitations had not run



Litigation Reset



Pivot from Defense

Blue State AGs and NGO shifting from Defense

Red States likely to go on Offense



Biden Litigation Step back

- Likely to drop legal defenses
- No more friend-of-the-court briefs on behalf of industry
 - ACE
 - Navigable Waters Protection Rule (replaced Obama's WOTUS)
 - NEPA overhaul
 - Clean Air Act waiver & vehicle GHG rules
- Reset in pending litigation over DJT rollbacks:
 - Oil & gas GHG rules
 - Vehicle GHG standards



SCOTUS Outlook

- 6-3 conservative majority
- May try narrowing legal standing for petitioners challenging environmental rules & policies
- *Juliana v. US* could be a test case
- One-third of appellate judges appointed by Trump
- Narrowing the Chevron Doctrine: which grants agencies discretion interpreting ambiguous statutes



Looking forward...



Pending Water Quality Legislation 2022

SB 832 water meter challenges: Uses evapotranspiration as proxy to measure water diversion..

SB 1157 water conservation: Builds on 55 gallons per capital down to 50 gallons per capita. Will lower the standard in 2025 to 47 gallons per capital daily and 2032 down to 42 gallons....

SB 1197 Water innovation drought resiliency program: To fund innovation with water use

AB 2108 SWRCB Tribal Representation: To review permits for EJ impacts evaluation & to change WDRs issued already



Pending Hazardous Materials Legislation

PFAS

- ❖ AB 1817 would ban PFAS in textiles
- ❖ AB 2771 would ban PFAS in cosmetics
- ❖ AB 2247 would enhance PFAS public disclosures
- ❖ OEEHA is working on public health goal for PFAS drinking water MCL



Pending Ocean Legislation 2022

- ❖ **Oil & gas Lease Termination:** SB 953 would require SLC to terminate 3 leases on state platforms in Orange county in one year
- ❖ **Offshore Wind:** SB 1274 would establish streamlined permitting for offshore wind and clean energy transmission upgrades from offshore wind



Pending Legislation for Solid Waste/Plastics

Plastics Legislation:

- ❖ **Recycling ballot initiative:** Anti plastics initiative is polling well
- ❖ **Plastic Pollution Responsibility Act** addressing single use plastics: SB 54
- ❖
- ❖ **Beverage Container Recycling Act 2022:** SB 38 would be similar to used mattresses & would be run by the beverage manufacturers
- ❖ **Prohibiting Online retailers using Styrofoam & plastic packages** AB 2026 & creates at store recycling program
- ❖ Increasing State goal to 85% recycling



Pending Wildfire Legislation

- ❖ SB 1062 Fire Storage Act would address fire suppression equipment
- ❖ SB 926 would address insurance risk barriers to prescribed fires
- ❖ AB 2005: Would establish wildfire forest resiliency plan task force to thin forest to prevent fires and fuel load reduction



Pending Air Quality/EV Legislation

- ❖ AB 2075 would require the CEC to adopt EV charging standards as part of building code
- ❖ SB1482 & AB 1738 would update building code for minimum access to level 2 charging for multi family units
- ❖ SB 1010: would establish a 100% target for EV heavy duty vehicles over 19K lbs. by 2035 for new vehicles



Pending Climate Change Legislation

- ❖ SB 1078 would address voluntary buy out of vulnerable properties from climate change
- ❖ SB 905 SB 1101 would address carbon sequestration/carbon capture in deep wells
- ❖ AB 2238 & AB 2076 AB 2243 would address extreme heat to coordinate programmatically
- ❖ AB 2076 OPR would be a hub for grants and coordinated response to manage extreme heat and mitigation
- ❖ SB 260 Climate Corporate Accountability Act would require corporations with over \$1B annual revenue and supply chain to report all scopes 1 2 3 emissions
- ❖ SB 833 & AB 1640 regional scale cc adaptation and resilience
- ❖ SB1217 would require regional collaboration to establish strategies to help regional agencies manage climate resilience



Pending Climate Legislation

- ❖ SB 1173 requires CalPERS & Cal Stirs liquidate fossil fuel investments
- ❖ SB 1322 Oil Refinery Cost Disclosure Act
- ❖ AB 1634 create office of just transition to ensure workers not left behind
- ❖ AB 2419 **CA Justice 40**: 40 percent of climate money to disadvantaged communities
- ❖ AB 2645 would require emergency plans for counties for extreme, heat and cold,
- ❖ AB 2632 ecosystem restoration & climate change adaptation: interagency working group to streamline permitting
- ❖ AB 2446 would reduce carbon intensity of embedded carbon in construction materials
- ❖ SB 1206 would ban the sale of HFC (low and high Global warming potential) by specified dates



Pending Air Quality Legislation

AB 2563 would require that booster fuels/on demand mobile fueling be regulated using by air districts using BACT



So What?

Your Strategy

Beyond Compliance Strategy Assumptions

- Environmental Risk is heightened with the Biden Administration
- **Stake holders overwhelmingly care about your environmental performance & corporate values**
 - Public image and compliance are tied together
 - Greenwashing Law
- **Your reputation and license to operate are on the line**



Beyond Compliance Risk Management Strategy

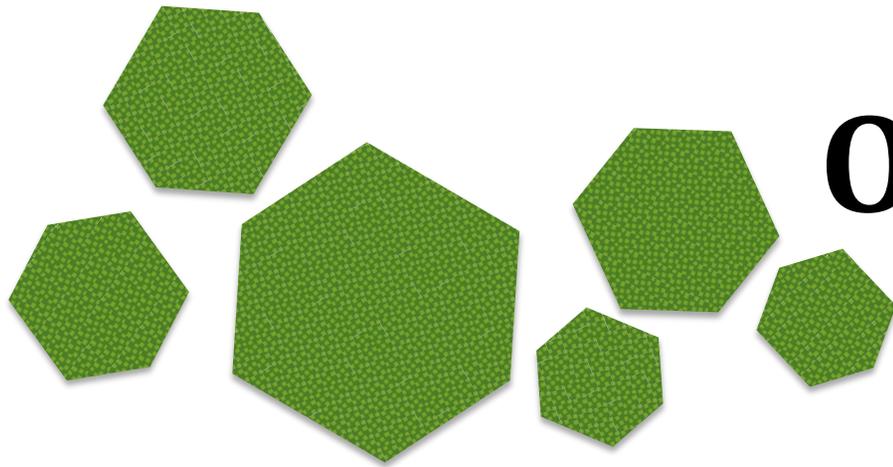
Objective: Maintain values-based, proactive, long term approach to manage risk and optimize performance

- **Continue investing in environmental assurance programs**
- **Invest in your human your human capital**
- **Strive toward Operational Excellence**
- **Sustain Culture & Accountability**

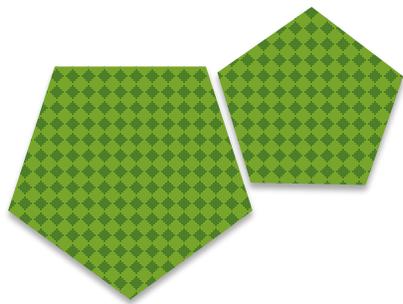


The background of the slide is a green-tinted photograph of a forest. A paved road with a double yellow line in the center curves through the trees, leading towards the background. The trees are tall and thin, and the overall scene is peaceful and natural.

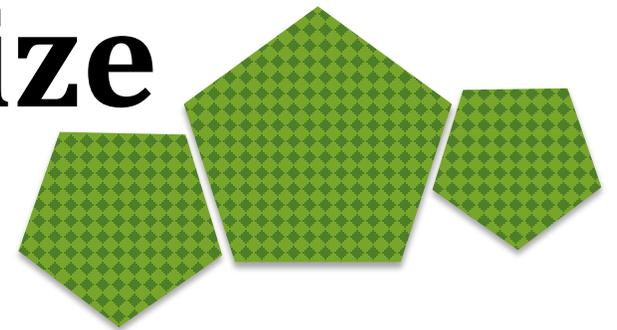
Following Our Compliance Assurance
Strategy Promotes a Resilient Environmental
Assurance Strategy that Manages Risks and
Protects Your Investment & Your Brand



Operationalize



Proceduralize



Institutionalize



Beyond Compliance Assurance Strategies: Operationalize

Legal Registry:

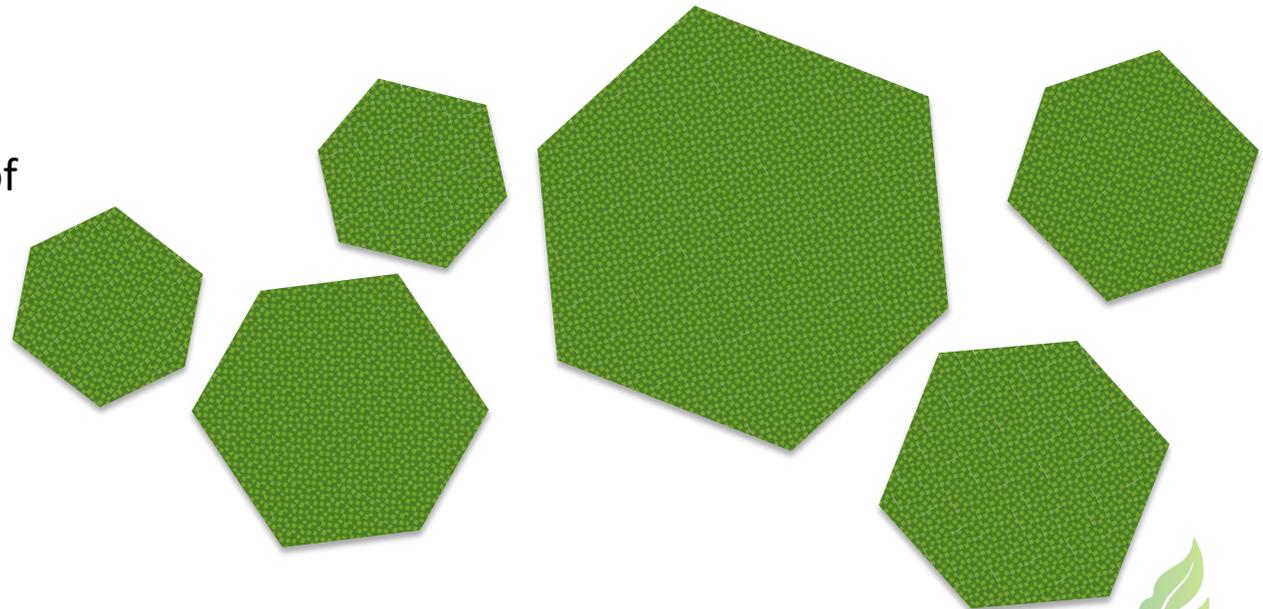
- Identify all potentially applicable EHS requirements
- Confirm exempt operations
- Prove the Negative

SOPs/Compliance Calendar:

- “who, what, when, and how” of obligations
- Spill Management/Release Reporting

Compliance calendar:

- Identify specific compliance tasks (e.g., permit renewals, monitoring frequencies, report submittals, training deadlines, etc.) and action items.
- **Roles and responsibilities** for implementing the compliance calendar



Beyond Compliance Assurance Strategies: Operationalize

Training programs (Required & Advisory)

- Training Matrix (Who & When)
- Including Contractors

Updates:

- Identify & cascade developments into tools

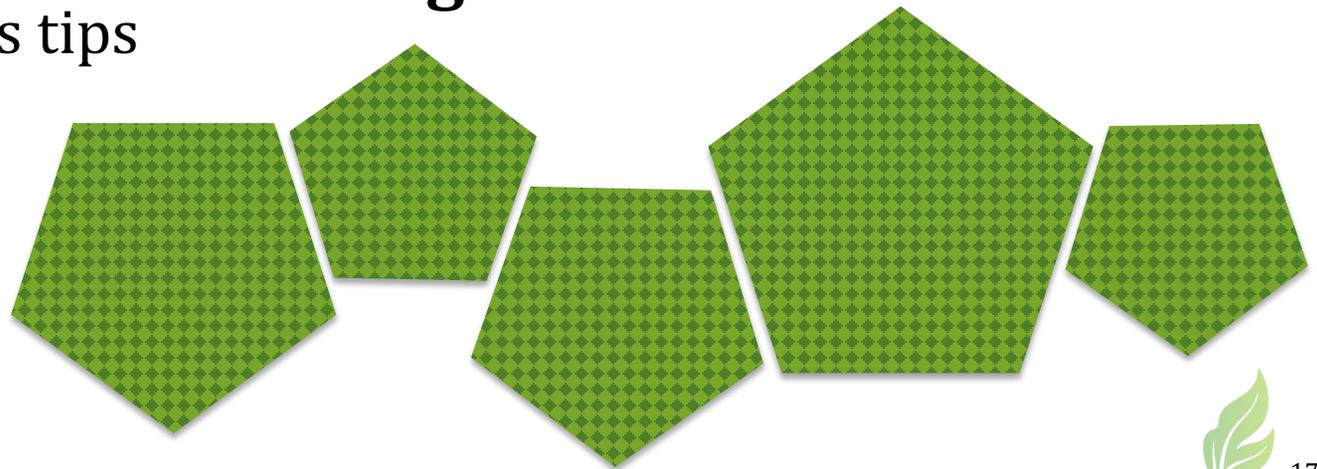
Hotline: Anonymous tips

Management of Change:

- Transitioning staff & contractors & organizations to re-direct resources, business process, budgets

Enterprise Information Management System

Strategy for Dealing with Regulators



Beyond Compliance Assurance Strategies: Operationalize

Self Inspections:

- Internal ground truthing

Third Party Auditing:

- EHS assessment by third party

Operational Excellence

- Facilitation
- Anonymous Deep Dive Assessment

CAPA/Root Cause:

- Corrective Action Preventive Action support & implementation

Culture & Accountability



Green Washing & the Law

No misrepresentation, directly or by implication, that a **product/package/service** offers a general environmental benefit, or that such product is:

- **Compostable:** Support claims with competent & reliable evidence that all materials break down into compostable materials in a timely way.
- **Carbon Offsets:** Support claims with competent & reliable evidence using appropriate accounting methods to ensure not selling ERCs more than once.
- **Non-Toxic:** Support claims with competent & reliable evidence the produce is safe for people AND the environment
- **Degradable:** Must prove “entire produce or package breaks down completely & returns to nature in reasonably short time”
- **Recyclable:** Must be available to 60% of consumers or communities
- **Made from Recycled Content:** Must qualify claims for products or packages made partly from recycled material e.g., “Made from 30% recycled material.”





Earnest Company LLC EHS Compliance Assurance Guide

Hazardous Waste & Hazardous
Materials Management
Federal and California Guide

June 2020
by Beyond Compliance Law

Sample Environmental Legal Registry

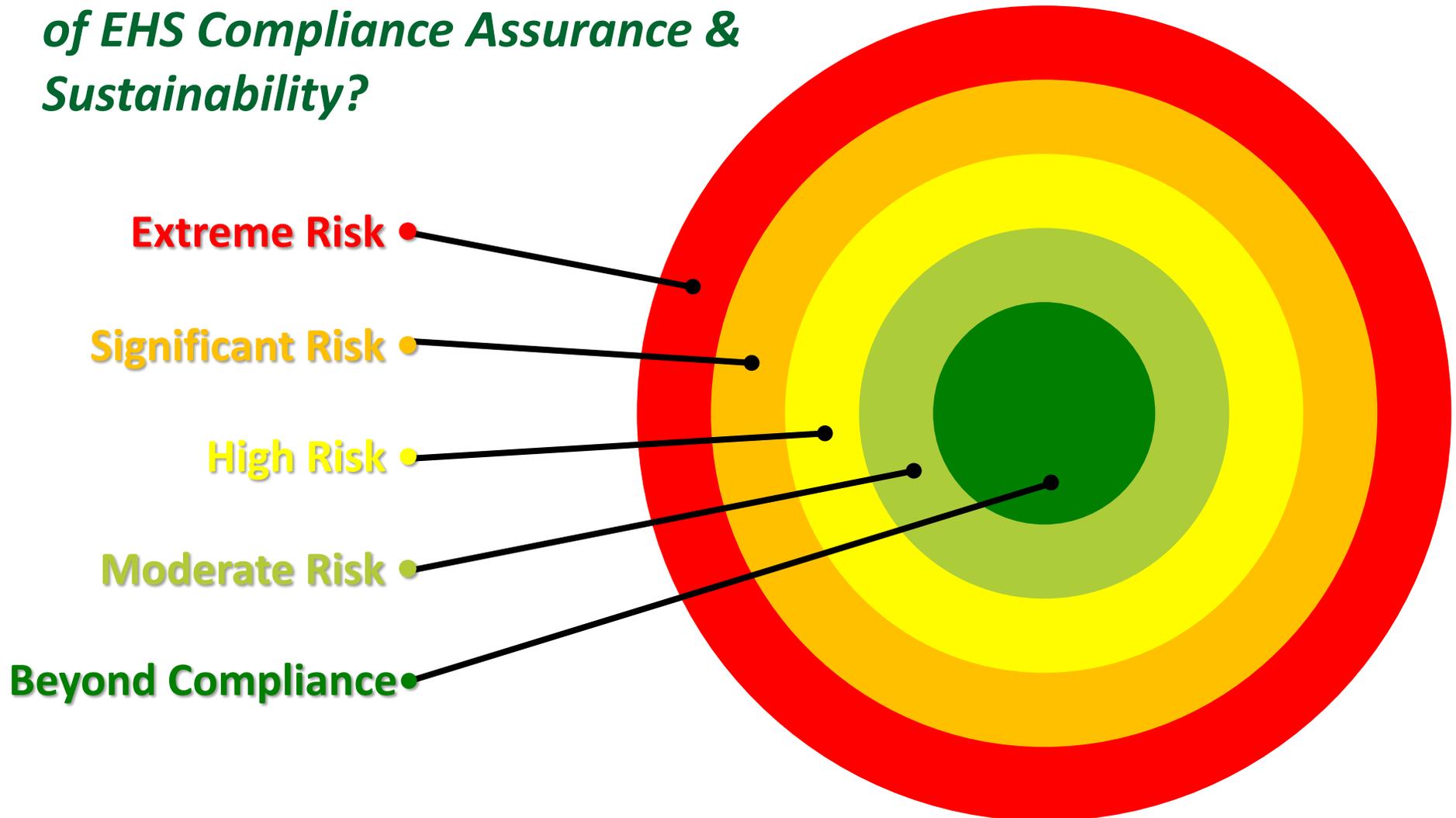
Regulation Topic	Regulatory Citation (Federal/State/ Local/City)	Regulatory Requirement	Threshold Requirement (i.e., threshold limits/ quantities/volumes)
EPA Identification Number	Cal H&SC 25205.16	Facility should verify that information provided DTSC and EPA w/ regard to hazardous waste generating activity is accurate and current. Provide waste codes associated with the four largest hazardous waste streams. This fee will be due 30 days after the applicable DTSC notice is received.	>1000 kg/mo. of hazardous waste, or >1 kg/mo. of acutely hazardous waste
Hazardous Waste Tanks	22 CCR 66265.191-194	For each existing hazardous waste tank system, the facility will meet tank integrity standards, tank and system component design and construction standards, containment and release detection requirements, and operating, overfill and spill prevention requirements.	Applies to all hazardous waste tanks
SPCC Plan	40VFR Part 112	Spill Prevention Control & Countermeasure Plan: Facilities with greater than 1,320 gallons of combined oil capacity are required to complete an SPCC Plan. Oil includes diesel fuel, gasoline, motor oil, transformer oil, hydraulic elevator oil, vegetable oil, used oil, and cooking grease.	> 1,320 gallons of oil capacity

The background of the slide is a green-tinted photograph of a forest. In the foreground, a paved road with a double yellow line curves through the trees. The trees are tall and thin, and the overall scene is bathed in a uniform green light.

This is what I do with my clients
to ensure that they manage compliance
risk and sustainability performance

From Risk to Opportunity

Where are you on the Continuum of EHS Compliance Assurance & Sustainability?

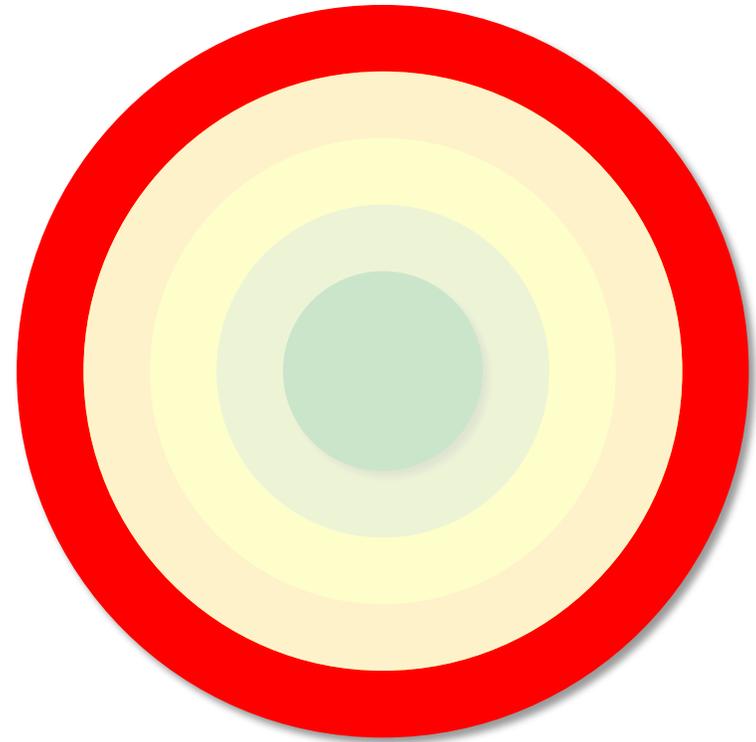


We are All Speeding



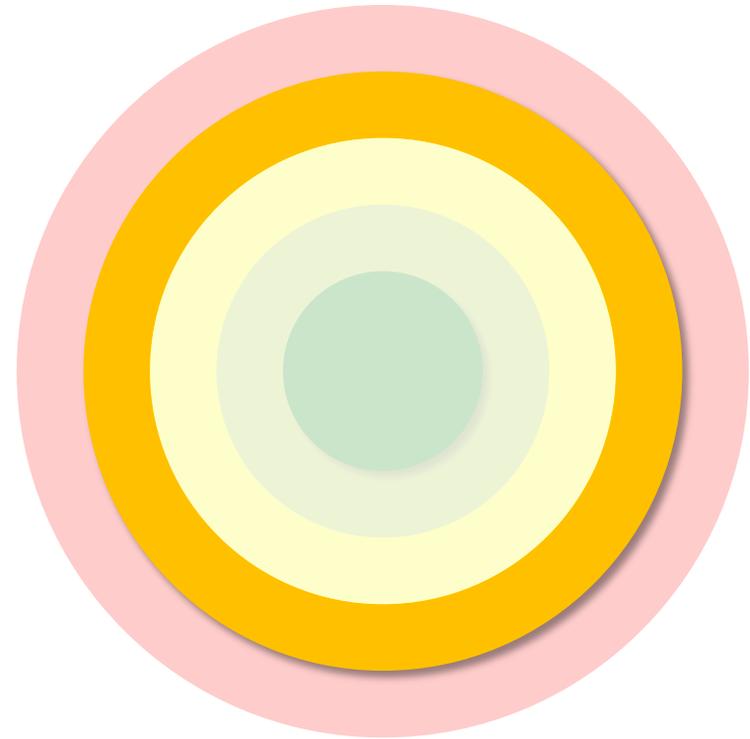
Compliance Category – **EXTREME RISK**

- No meaningful effort to comply
- No environmental programs or systems in place
- No accountability for employee actions



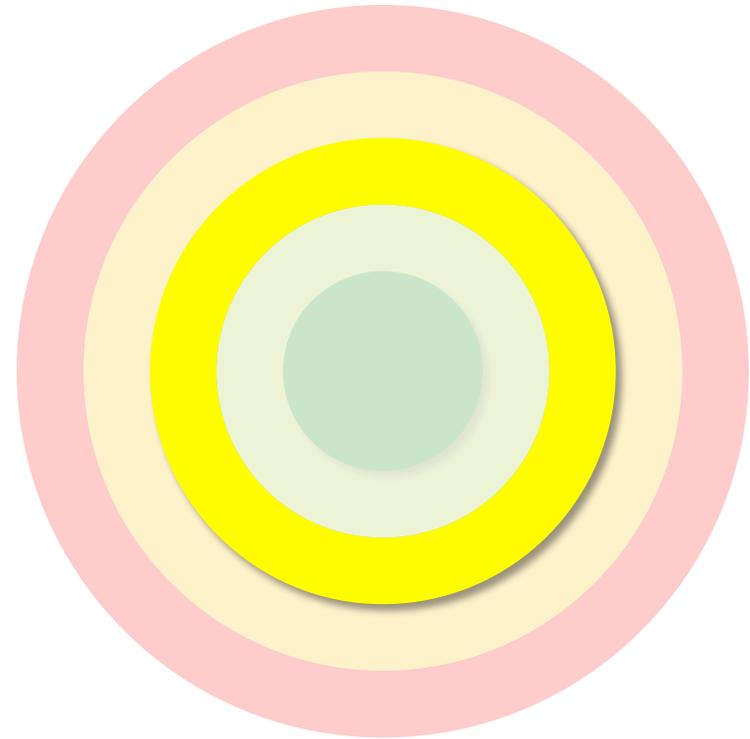
Compliance Category – **SIGNIFICANT RISK**

- Just barely getting by
- New company or one with an incomplete compliance system
- Reactive management responding to fines and penalties from regulators



Compliance Category – HIGH RISK

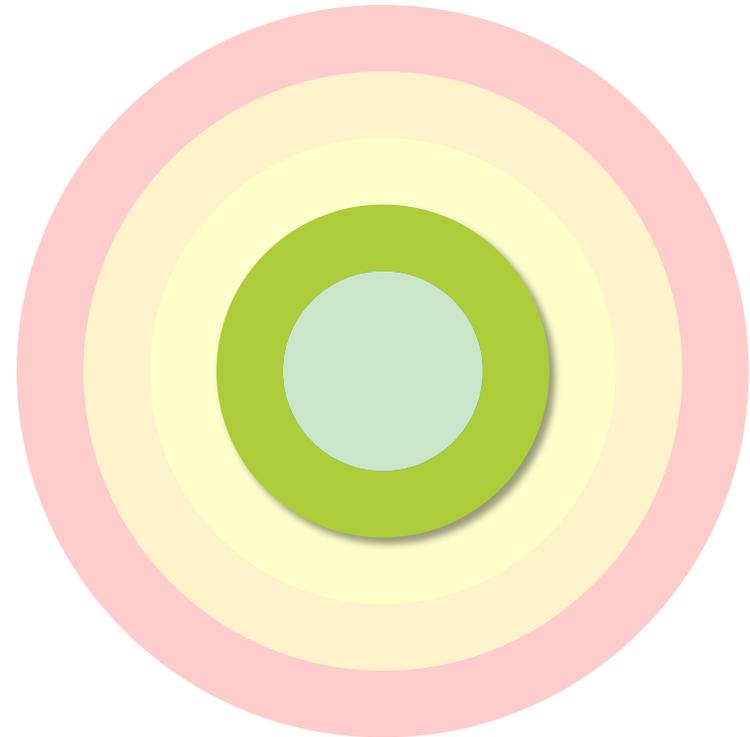
- Managing, still reactive and exposed
- Basic, piecemeal approach and understanding of applicable EHS regulations
- Basic programs in place
 - Training
 - Some self inspections
 - Other important programs missing
- Rudimentary recordkeeping



Compliance Category – MODERATE RISK

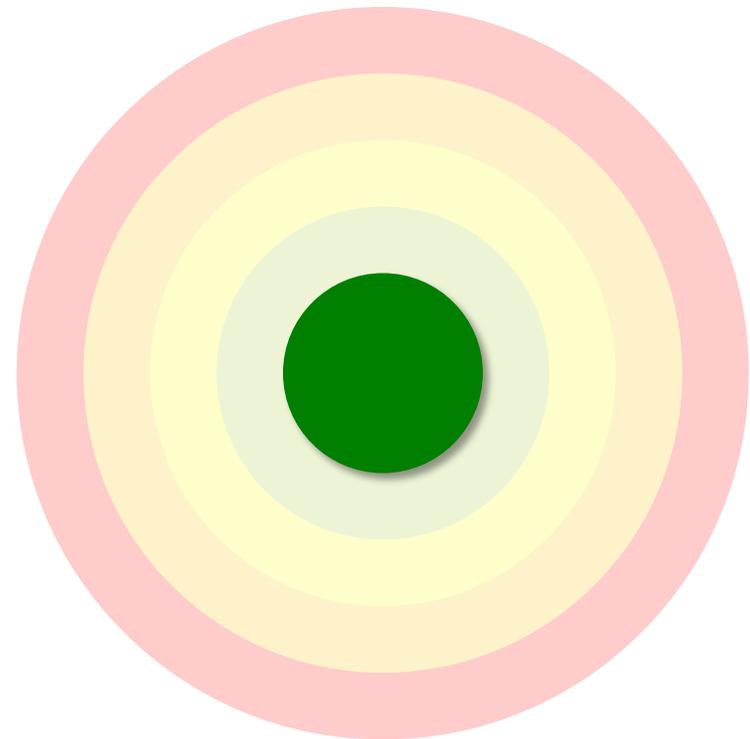
Proactive Compliance

- EHS Compliance Management System (CMP)
- Regulatory applicability Analysis in place
- Permit and other requirements translated into standard operating procedures (SOPs)
- Staff accountability
- Proactive training programs (with regulatory updates)
- Clearly identified roles/responsibilities
- Tickler system scheduling schedules to comply
- Robust self-inspection program
- Management of Change
- Third party environmental auditing system in place
- Strong corporate environmental policy
- Knowledge of which laws apply and the resources to follow through
- Capable staff and adequate resources
- Healthy Corporate Culture & Accountability



Compliance Category – Beyond Compliance

- Beyond Compliance Leadership/Proactive environmental compliance
- Sustainability framework and Performance goals and commitment
- Lean production and profit optimization
- Management Systems
- Possible ISO 14001 Certification
- Possible OSHAS 18001 Certification
- Voluntary Protection Program (VPP)
- Able to anticipate regulatory changes
- Strong regulatory systems & well-resourced compliance personnel
- *Doing well by doing good*



Your Next Step

What's your Company's Compliance Risk?

Take the Beyond Compliance EHS Assessment

You will get:

1. Critical insight into your exposure
2. Understanding of strategy gaps
3. Road map to your next steps for assuring compliance

Go to: beyondcompliancelaw.com/assessment

Contact Me

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www.beyondcompliance.net

beyond compliance law
compliance assurance counseling





10 MOST CITED OSHA VIOLATIONS (2021)



[LION.COM/OSHA](https://lion.com/osha)

10

MACHINE GUARDING

Number of violations:

⚠️ 1,113

Machine guarding can prevent injuries that occur at the point of operation, from rotating or moving parts, or from flying chips and sparks.

9

POWERED INDUSTRIAL TRUCKS

Number of violations:

⚠️ 1,420

Failure to properly train, certify, and re-certify forklift operators are among the most frequently cited violations.

8

EYE AND FACE PROTECTION

Number of violations:

⚠️ 1,452

Employers must ensure employees use eye and face protection to protect from flying objects and chemical exposures.

7

FALL PROTECTION *TRAINING REQUIREMENTS*

Number of violations:

⚠️ 1,666

Construction industry employers must provide fall protection training to each covered employee.

6

LOCKOUT/TAGOUT

Number of violations:

⚠️ 1,698

Failure to provide required training on lockout/tagout procedures is a big reason LOTO makes this list every year.

5

HAZARD COMMUNICATION

Number of violations:

⚠️ 1,947

Employers must inform workers about hazardous chemicals at work through training, Safety Data sheets, container labels, etc.

4

SCAFFOLDING

Number of violations:

⚠️ 1,948

OSHA rules for scaffolds in the construction industry include specific weight limits, construction requirements, and other rules.

3

LADDERS

Number of violations:

⚠️ 2,026

Ladder violations climbed two rungs higher on OSHA's Top 10 list this year, from #5 in 2020 to #3.

2

RESPIRATORY PROTECTION

Number of violations:

⚠️ 2,527

Respiratory protection training, fit testing, and medical evals were emphasized this year in response to COVID-19.

1

FALL PROTECTION *GENERAL REQUIREMENTS*

Number of violations:

⚠️ 5,295

Failure to provide proper PPE and fall arrest systems for employees keeps fall protection atop this list year after year.

slido



Audience Q&A Session

ⓘ Start presenting to display the audience questions on this slide.