

Clean Air Act (42 U.S.C. § 7401 et seq.)

- Greenhouse gases ("GHGs") – Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. (40 CFR 86.1818-12.)
- GHGs meet the Clean Air Act's definition of air pollutants, which the EPA must regulate. (*Massachusetts v. EPA* (2007) 127 S.Ct. 1438.)
- Endangerment & Cause or Contribute Findings – Current and projected concentrations of GHGs in the atmosphere threaten public health and welfare. Combined emissions of GHGs from new motor vehicles and new motor vehicle engines contribute to GHG pollution which threatens public health and welfare. (40 CFR 1.)
- Stationary Sources – Mandatory Reporting – Owners and operators of certain facilities that directly emit GHG as well as certain fossil fuel suppliers and industrial GHG suppliers must collect and report various emission data related to GHG. (40 CFR 98.)
- Mobile Sources – Model Years 2012-2016 – Fuel standards for Passenger Cars and Light Trucks – Vehicles must meet an estimated combined average mpg level of 34.1 by model year 2016. (40 CFR 85, 86, & 600; 49 CFR 531, 533, 536, et al.)
- The Clean Air Act (CAA) and any Environmental Protection Agency action authorized by the CAA precludes federal common law claims of interstate nuisance seeking abatement of carbon-dioxide emissions from fossil-fuel fired power plants. (*American Electric Power Co. v. Connecticut* (2011) ___ U.S. ___, 131 S.Ct. 2527.) Similarly, common law claims that seek to remedy climate change by way of damages or injunctive relief are barred by the CAA. (See *Alec L. v. Jackson* (D.D.C. 2012) 863 F.Supp.2d 11; *PPL Montana, LLC v. Montana* (2012) ___ U.S. ___, 132 S. Ct. 1215, 1235; *Comer v. Murphy Oil USA, Inc.* (S.D. Miss. 2012) 839 F.Supp.2d 849; *Native Village of Kivalina v. ExxonMobil Corp.* (9th Cir. 2012) 696 F.3d 849.)

National Environmental Policy Act (42 U.S.C. § 4321 et seq.)

- "Analyzing the impact of GHG emissions on climate change is precisely the kind of cumulative impact analysis that NEPA requires before major federal actions significantly affect the human environment." (*Center for Biological Diversity v. National Highway Traffic Safety Administration* (9th Cir. 2007) 538 F.3d 1172.)

Global Warming Solutions Act (Health & Saf. Code, § 38500)

- Greenhouse gases ("GHGs") – Carbon dioxide, methane; nitrous oxide, hydrofluorocarbons, perfluorocarbons; sulfur hexafluoride, nitrogen trifluoride. (Health & Saf. Code, § 38505 subd. (g).)
- Mandatory GHG reporting and verification for certain source categories including *but not limited to*: cement production; soda ash production; municipal solid waste landfills; manure management systems; industrial wastewater treatment; industrial waste landfills; fuel and carbon dioxide suppliers; electric power importers, exporters and retail providers; petroleum and natural gas systems. Exclusions apply for renewable energy, landfill methane, and agricultural irrigation pumps. (Cal. Code, Regs., tit. 17, §§ 95101 et seq.; Health & Saf. Code, § 38350.)
- CARB determined what the statewide GHG emissions level in 1990 was 427 million metric tonnes CO₂e. Returning to the 1990 level by 2020 requires a 29 percent reduction over business as usual. (Health & Saf. Code, § 38550.)
- CARB adopted a scoping plan for achieving the maximum technologically feasible and cost-effective reduction in GHG from sources of GHG by 2020. CARB is directed to adopt GHG emissions limits and emission reduction measures. (Health & Saf. Code, §§ 38561 & 38562.)
- Cap and Trade Regulations place a declining aggregate cap on GHG emissions from covered entities, comprised of major GHG emitting sources including but not limited to electricity generation, and large stationary sources such as refineries, cement production facilities, and oil and gas production facilities, as well as natural gas and propane fuel providers and transportation fuel providers. (Cal. Code Regs., tit. 17, §§ 95800 et seq.)
- CARB sold all 23.1 million carbon permits offered at a November 14, 2012 auction for the first compliance period of the program starting January 1, 2013. Carbon allowances sold out at \$10.09 a metric ton, lower than analysts forecasted. The next scheduled auction will be held on February 19, 2013. The California Chamber of Commerce filed a lawsuit November 13, 2012 against the auction claiming that it is an unconstitutional fee.

SB 375 (Chapter 728, Statutes 2008) (Gov. Code, §§ 14522.1, 14522.2, 65080, 65080.01, 65400, 65583, 65584.01, 65584.02, 65584.04, 65587, 65588; Pub. Resources Code, §§ 21061.3, 21155, 21155.1, 21155.2, 21155.3, 21159.28)

- CARB set passenger vehicle GHG emission reduction targets for 2020 and 2035 for each MPO. Each MPO must design a sustainable communities strategy (SCS) for inclusion in the regional transportation plan, to meet the targets.
- Status of SCS adoption:

Metropolitan Transit Commission / Association of Bay Area Governments	2013	Shasta MPO	2015
Sacramento Area Council of Governments	4/2012	Butte MPO	12/2012
San Diego Association of Governments	10/2011	San Luis Obispo MPO	2015
Southern California Association of Governments	4/2012	Santa Barbara MPO	2013
8 San Joaquin Valley MPOs	2013-14	Monterey Bay MPO	2013
Tahoe MPO	12/2012		

AB 1532 (Chapter 807, Statutes 2012) (Gov. Code § 12894; Health & Saf. Code §§ 39710 et seq.)

- An oversight bill to ensure cap and trade offsets comply with state law. Requires the Governor to make specified findings to ensure the offsets are appropriate and insulates the Governor's findings from judicial review.
- Creates the Greenhouse Gas Reduction Fund Investment Plan and Communities Revitalization Act to ensure that funds in the GHG Reduction Fund are used to achieve GHG reductions.
- Requires the Department of Finance to prepare a three-year investment plan to identify the state's GHG reduction goals and targets by sector, analyze gaps in meeting those goals, and identify priority investments in achieving GHG reduction goals pursuant to a public process, and to submit annual reports due on March 1 of each year starting March 1, 2014 to provide the status of projects funded and their outcomes. Companion to and conditioned upon enactment of Senate Bill 535 (De Leon) of the 2011-2012 Regular Session.

SB 535 (Chapter 830, Statutes 2012) (Health & Saf. Code §§ 39711, 39713, 39715, 39721, and 39723)

- Defines "disadvantaged communities" and requires California EPA to identify such communities for GHG reduction investment opportunities.
- Mandates that each three-year investment plan prepared by the Department of Finance allocate a minimum of 25 percent of monies in the GHG Reduction Fund to projects that provide benefits to disadvantaged communities, and further that the plans allocate a minimum of 10% of moneys in the GHG Reduction Fund to projects located within disadvantaged communities.
- Requires that the report submitted on March 1 of each year by the Department of Finance include a description of how the minimum funding requirements for projects in and benefiting disadvantaged communities have been fulfilled.
- Companion to and conditioned upon enactment of AB 1532 (Perez) of the 2011-12 Regular Session.

California Environmental Quality Act (CEQA) (Guidelines, Cal. Code Regs., tit. 14, §15000 et seq. and CEQA case law)

- Greenhouse Gas(es) (GHGs) include, but are not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. (CEQA Guidelines, § 15364.5.)
- Environmental Setting – The EIR shall discuss any inconsistencies between the project and applicable general plans, specific plans, and regional plans. Regional plans include blueprint plans and plans for the reduction of GHGs. (CEQA Guidelines, § 15125 subd. (d).)
- Mitigation Measures of GHG – Lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring and reporting, of mitigating the significant effects of GHG. Measures to mitigate include: 1) Measures in an existing plan or mitigation program; 2) Reductions in emissions from the project through measures such as those in Appendix F (Energy Conservation); 3) Off-site measures; 4) Sequestration; 5) In the case of the adoption of a plan, mitigation may include identification of specific measures that may be implemented on a project-by-project basis. (CEQA Guidelines, § 15126.4 subd. (c).)
- Cumulative Impacts – Analysis may include a plan for the reduction of greenhouse gas emissions. (CEQA Guidelines, § 15130 subd. (b)(1).)
- Tiering and Streamlining – Lead agencies may analyze and mitigate the significant effects of GHG at a programmatic level; project-specific environmental documents may rely on an EIR containing a programmatic analysis of GHG emissions. (CEQA Guidelines, § 15183.5 subd. (a).)

- Public agencies may choose to analyze and mitigate significant GHG impacts in a plan for the reduction of GHG (qualified CAP) which should: 1) Quantify GHG; 2) Establish a threshold of significance; 3) Identify and analyze the GHG resulting from specific actions; 4) Specify measures or that would collectively achieve the specified emissions level; 5) Establish a mechanism to monitor the plan's progress; 6) Be adopted in a public process following environmental review. (CEQA Guidelines, § 15183.5 subd. (b).)
- A plan for the reduction of greenhouse gas emissions may be used in the cumulative impacts analysis of later projects. Later environmental documents must identify and incorporate those requirements specified in the plan that apply to the project. (CEQA Guidelines, § 15183.5.)
- Environmental Checklist – Would the project a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment; or b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases? (CEQA Guidelines, Appendix G, § VII.)
- A mitigation measure requiring the city to submit a plan for achieving complete reduction of GHG emissions within one year of project approval constituted deferred mitigation. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70.)
- Implicit approval of AB 32 based numeric target. (*Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327.)
- CEQA requires analysis of project's impact on the environment, not the reverse. (*Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455.)
- An EIR's conclusion that the global climate change impact of the project was too speculative to evaluate is upheld given at the time the project was processed (pre-2008), there were no established legal or regulatory guidelines or accepted methodologies by which to measure the impact. (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899.)

Air Districts Thresholds

Bay Area Air Quality Management District (<http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES.aspx>)

- The adoption of the thresholds was held to be a "project" and set aside for failure to complete CEQA review of the proposed thresholds. The merits of the thresholds were not addressed. (*California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.*, No. RG10-548693 (March 5, 2012).)
- The thresholds may not be used as a generally applicable measure of the significance of air quality impacts, but the accompanying materials and tools may still be used by agencies solely for assistance in calculating air pollution emissions, obtaining information regarding the health impacts of air pollutants, and identifying potential mitigation measures.

San Joaquin Valley Air Pollution Control District (http://www.valleyair.org/Programs/CCAP/CCAP_menu.htm)

- Projects complying with an approved GHG emission reduction plan or GHG mitigation program have a less than significant individual and cumulative impact for GHG. CEQA Guidelines apply.
- Projects implementing Best Performance Standards ("BPS") do not require quantification of project-specific GHG emissions and have a less than significant individual and cumulative impact for GHG emissions.
- Projects not implementing BPS must quantify project specific GHG emissions and demonstrate that project specific GHG emissions will be reduced or mitigated by at least 29 percent, compared to Business-as-Usual. Projects achieving at least a 29 percent GHG emission reduction compared to BAU have a less than significant individual and cumulative impact for GHG.
- Other projects requiring preparation of an EIR require quantification of project specific GHG emissions. Projects implementing BPS or achieving at least a 29 percent GHG emission reduction compared to BAU have a less than significant individual and cumulative impact for GHG.