Study E-100 November 25, 1998

Memorandum 98-76

Environment Code: Comments on Tentative Recommendation

Note: The proposed Environment Code is intended to reorganize and continue existing environmental statutory law without substantive change.

BACKGROUND

In September 1997, the Commission distributed a request for public comment on a proposed outline of a new code that would consolidate the state's environmental and natural resource statutes. These statutes would be cleaned up and reorganized, but would not be changed substantively. Public reaction was mixed, with about half of those who expressed a preference favoring the idea and about half opposing it. In light of this mixed reaction, the Commission decided to proceeding incrementally, developing a first installment of the proposed Environment Code as a test. This would allow the public to consider a fully developed example and would require only a limited commitment of the Commission's resources to a project that ultimately might not proceed.

In July 1998, the Commission released a tentative recommendation setting out the first four divisions of the Environment Code. The tentative recommendation was circulated for three months of public comment. This memorandum reviews the comments we received in response to the tentative recommendation. **It is not necessary for Commissioners to bring a copy of the tentative recommendation to the meeting. The staff will bring two copies for reference purposes.** Comment letters are attached in the Exhibit as follows:

After considering these comments, the Commission should decide how to proceed with the study. Various alternatives are discussed at the end of this memorandum.

SUMMARY OF COMMENTARY

The response to the tentative recommendation was not favorable. Reactions ranged from doubt and concern to outright opposition. Most commentators focused on general matters, rather than on the specifics of the draft legislation.

Concerned. The Air Resources Board (ARB), Attorney General Lungren, the California Chamber of Commerce (the Chamber), and the Western States Petroleum Association (WSPA) have written to express doubts or concerns about the proposed reorganization. ARB's letter also includes a detailed analysis of Parts 1-4 of Division 4 of the proposed Environment Code.

Opposed. The California Council for Environmental and Economic Balance (CCEEB) and the California County Counsels' Association (CCA) have written in opposition to the proposed reorganization.

GENERAL CONCERNS

Three general concerns were expressed: (1) The proposed reorganization may not be necessary or useful. (2) The benefits of reorganization may not justify the costs of reorganization. (3) Inadvertent substantive changes seem inevitable given the scale of the proposed reorganization. These concerns are discussed below.

Reorganization Unnecessary

Environmental statutes already sufficiently accessible. The Attorney General and CCEEB point out that existing electronic research tools and commercially produced practice materials already make the environmental statutes reasonably accessible to those who use them. They suggest that reorganization of environmental statutes would add little to improve accessibility. See Exhibit pp. 1, 10-11. This may be true. However, there are benefits to reorganization and consolidation other than improvements to accessibility. See Benefits of Reorganization, below.

No demonstrated need for reorganization. CCA states that it is "unaware of major inconsistencies among 'environmental' statutes nor is it aware of a need to undertake a project of this scope." They urge the Commission to consider the "threshold" question of whether the reorganization of environmental and natural resource statutes is useful or necessary. See Exhibit p. 5.

Costs of Reorganization

A number of commentators are concerned about the costs that would result from a substantial reorganization of environmental statutes. These costs are real and should not be minimized. The question is whether the benefits of reorganization justify the costs. See Benefits of Reorganization, below. The following costs were identified by commentators:

Learning new numbering. Reorganization and renumbering of sections would impose short term costs on those who work with the affected provisions and must learn the new organizational scheme. See Exhibit pp. 1, 11, 18. This would include the cost of replacing existing reference materials, as noted by CCEEB (see Exhibit p. 11):

> California businesses have spent millions of dollars on legal advice, compliance manuals, training programs, and internal inspection programs that are all based on the existing code section references. Putting these compliance documents out-of-date in a few sweeping actions is counter to the purpose of the environmental statutes — to achieve compliance. The time and money needed to update these documents would be better spent on efforts that achieve compliance.

Ongoing need to cross-refer. There is a considerable amount of decisional law relating to environmental statutes. In order to understand this law after the statutes have been reorganized, it would be necessary to refer to tables showing the relationship between prior section numbers and the reorganized section numbers. The same need would exist with respect to other materials, such as annotated codes, that refer to existing section numbers. See Exhibit pp. 1, 11, 18.

Regulatory changes. One consequence of statutory renumbering is the need to make conforming amendments to existing regulations that refer to the renumbered statutes. This would result in some cost to the state agencies responsible for those regulations. See Exhibit pp. 5, 11, 18. Fortunately, changes of this type would be considered "changes without regulatory effect" and could

be made without going through the regular rulemaking procedure. See 1 C.C.R. § 100 (publication of "changes without regulatory effect"). This would substantially simplify and expedite the process. Despite the availability of the simplified process, the cost of necessary regulatory changes might still be significant.

Consumption of legislative resources. ARB is concerned that a nonsubstantive reorganization on the scale proposed might "deflect needed attention from important policy debate." See Exhibit p. 18. It is true that the large volume of materials involved in a broad reorganization of environmental statutes would require a significant commitment of legislative resources that might otherwise be used to consider substantive reform of environmental laws.

Inadvertent Policy Changes

The Commission has decided that the proposed reorganization of environmental statutes should not affect the substance of the reorganized provisions. Commentators approve of that decision and are, for the most part, encouraged by its implementation in the tentative recommendation. See Exhibit pp. 1, 4, 7, 10, 13, 18. However, there is still concern that the proposed reorganization would introduce substantive changes, for the reasons discussed below:

Other subjects more difficult to integrate. WSPA comments that the recommendations for the first four divisions

> have been well thought out, well organized and true to the proposal's goal that the reorganization be "without substantive change." On the other hand, we see Divisions 1-4 as the easiest to consolidate in the proposed Environment Code. Other divisions will not be as simple. For example, "Water Resources" will involve melding sections from the Public Resources Code, Harbors and Navigation Code, Fish and Game Code, Water Code, Health and Safety Code and the Government Code. That will be difficult without making substantive changes.

See Exhibit p. 7. This point is also made by the Chamber. See Exhibit pp. 15-16. It is true that we chose relatively straightforward material for the first installment of the proposed Environment Code. Later material may well be more challenging and controversial.

Legislative changes. There is some concern that substantive changes might be introduced in the legislative process. See, e.g., CCA's comments at exhibit p. 5:

> While the Commission's intent is to avoid policy revisions, the subject matter has historically been subject to special interest pressures. It is difficult to foresee an outcome that is free from such influence if the current and future drafts are forwarded to the Legislature.

The risk of unwelcome legislative change can be minimized by finding a legislative author who will agree not to accept amendments without first consulting the Commission. This approach has been taken by the Commission on other recommendations, with satisfactory results.

Disruption of compromise language. A number of commentators expressed concern that changes to eliminate ambiguity, redundancy, or inconsistency would inadvertently disturb the results of a legislative compromise. See, e.g., the comments of CCEEB, at Exhibit p. 12:

> Many of the environmental statutes were negotiated by multiple parties over long periods of time (e.g., the California Clean Air Act). In some cases, language which was key to the passage of a particular amendment or bill created an ambiguity or inconsistency which made the language acceptable as a compromise. This may not be desirable in the eyes of one reading the statutes with an eye toward clarity and logic.

The only practical way to determine whether an apparent drafting defect should actually be preserved as intentional is to solicit public comment on each proposed change. This was the approach taken by the Commission in developing the tentative recommendation — each proposed change was identified in a note following the section to be affected and these notes were cataloged in the preliminary part of the tentative recommendation.

None of the commentators identified any instance of inadvertent disruption of compromise language in the tentative recommendation. This might reflect an absence of such problems or it might reflect the difficulty commentators had reviewing the voluminous material in the time provided. As discussed below, some commentators were concerned about the time available for public review and comment.

Application of general definitions. When a section is moved from one code to another it is important that all definitions applicable to that section be carried

forward into the new code, especially where a term is defined differently in different locations. The staff recognized this early on and the tentative recommendation was carefully prepared with this concern in mind.

The definition of "person" in the California Environmental Quality Act (CEQA) is not continued in the proposed Environment Code. Instead, the general code-wide definition of "person" would apply to CEQA. The staff determined that this general definition was consistent with the CEQA definition. The Attorney General points out an apparent error resulting from this approach. See Exhibit p. 2. The CEQA definition of "person" has recently been amended to include the United States, its agencies, and political subdivisions, making it broader than the proposed Environment Code definition of "person." Consequently, application of the general definition for the purposes of CEQA would result in a substantive change.

While this observation is correct, it does not demonstrate an error in the tentative recommendation, which was drafted *before* the CEQA definition was amended. Rather, it demonstrates the need to update the tentative recommendation draft to account for changes made in the 1998 legislative session. The need for such an update was anticipated by the staff and has been completed. See Memorandum 98-83. The problem identified by the Attorney General had already been identified and addressed before his letter was received.

Headings. The Commission felt that CEQA would be more accessible if descriptive article headings were added to break up large blocks of undifferentiated sections. For example, Chapter 2.6 of CEQA (commencing with Section 21080 of the Public Resources Code) contains over sixty sections, without any article divisions. In the tentative recommendation, that chapter (renumbered as Chapter 4) is divided into twelve articles, as follows:

Article 1. Application of Division
Article 2. Determination Whether Environmental Impact Report Required
Article 3. Exemptions
Article 4. Findings by Agency
Article 5. Environmental Impact Reports and Negative Declarations
Article 6. CEQA Guidelines
Article 7. Fees
Article 8. Determination of "Project"
Article 9. Public Notice and Review
Article 10. Duties of Lead Agency
Article 11. Tiered Reports

Article 12. Special Requirements.

The Attorney General is concerned that the addition of these article headings may be misleading. He points out that some provisions of Article 1 can be characterized as exemptions while one section of Article 3 might be better characterized as governing application of the division. See Exhibit pp. 2-3. He also notes that one provision of Article 8 does not seem to fit the description in that article heading. *Id.*

Unfortunately, there is no way to create entirely coherent articles without moving sections around. The Commission decided not to reorder and renumber CEQA sections, in order to minimize the transitional costs for CEQA practitioners. It was recognized that this approach would preserve existing organizational problems. Adding article headings would not remedy those problems, but would provide some helpful guidance in navigating a long and complex act. The staff believes that the benefit of the new article headings would outweigh any disadvantage that would result from minor inconsistencies in the composition of those articles.

Furthermore, while the new article headings might be misleading, they would not create any substantive changes. Proposed Section 5 provides:

> Code, division, part, title, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of this code.

The Attorney General is also concerned that some section headings may be slightly inaccurate. See Exhibit pp. 2-3. Minor inaccuracies in the section headings are of even less concern than problems with article headings. Section headings are purely editorial and *would not be part of any legislation*.

BENEFITS OF REORGANIZATION

Although no commentator wrote in support of the proposal, the staff believes that there would be significant benefits to reorganizing the environmental statutes in the manner proposed. To allow the Commission to weigh these benefits against the costs and risks discussed by the commentators, the staff has briefly summarized these benefits below:

Consolidation of Scattered Provisions

Under existing law, environmental statutes are located in at least nine different codes. Consolidating these laws into a single code, divided by subject area, would simplify access to applicable statutory law. For example, a person researching a question relating to water resources under existing law might need to review various provisions of the Civil Code, Fish and Game Code, Harbors and Navigation Code, Health and Safety Code, Public Resources Code, and Water Code. After the proposed reorganization that person would only need to consult a single division of the Environment Code.

Consolidation of scattered sections should also encourage more orderly development of environmental law in the future. Under the current, fragmented scheme, the location of new environmental statutes in the codes may be arbitrary. The existence of a consolidated and well-organized Environment Code would encourage the logical placement of new environmental statutes.

Reorganization of Sections Within Divisions

In many cases, existing law is poorly organized at the level of articles, chapters, and parts. In some cases, dissimilar provisions have been grouped together inappropriately. The organization of these sections would be substantially improved by relocating them in appropriate organizational groups.

In other cases, sections are grouped together properly but are not further divided into useful subgroups. The organization of these sections would be improved by dividing them into appropriate subordinate organizational groups.

Unduly Long Sections

Many sections are very long and contain a number of related, but distinct provisions. These sections can be difficult to understand, and their length complicates any subsequent amendment. It is the Commission's practice, and good drafting practice generally, to divide long sections into shorter sections, where this can be done without affecting the meaning of the section. In the tentative recommendation, unduly long sections have been divided into shorter sections. In many cases, the resulting sections have been organized into one or more articles.

Obsolete Provisions

The Commission has identified a number of provisions that appear to be obsolete and could be deleted in reorganizing the environmental statutes. These

provisions include dates on which events occurred or legal conditions changed, lapsed deadlines for state action, provisions governing transitions that already occurred, and provisions with failed operation contingencies or satisfied sunset conditions.

Miscellaneous Drafting Improvements.

A number of miscellaneous drafting improvements have been made in the tentative recommendation. These correct obvious grammatical errors (such as the omission of an article) and inappropriate gender references, replace the term "such" where used inappropriately, enumerate undesignated subdivisions and paragraphs, and redraft provisions that are particularly difficult to understand.

SUGGESTED CHANGES

Specific Suggestions of the Air Resources Board

ARB provided very valuable assistance to the Commission by reviewing and offering detailed feedback on Parts 1-4 of Division 4 of the proposed Environment Code. See Exhibit pp. 20-31. The suggestions made by ARB can be summarized as follows:

1. Improvements to proposed organization. In a number of cases, ARB identified provisions that might be more sensibly placed in another location. The staff will need to carefully evaluate the suggested changes in order to determine how they might affect overall organization. Any movement of sections will also require renumbering and updated cross-referencing.

2. Answers to questions asked in notes. ARB answered most of the questions asked by the staff in the Notes following proposed sections. Many of these questions concerned the status of apparently obsolete provisions. Where ARB confirmed that a provision is obsolete, the staff will need to determine how to redraft the section that contains the obsolete provision in order to eliminate the obsolete part without disturbing the remainder. The Chamber suggests that we not make such changes without circulating the proposed language for public comment, to make sure that we do not inadvertently affect the meaning of the revised provision. See Exhibit p. 16. ARB agrees that correction of some obsolete provisions would involve redrafting that might result in substantive change. These changes would "require serious and concentrated legislative attention." See Exhibit p. 18.

3. Correction of errors. ARB identified a few technical errors. The staff does not believe that any of these errors would affect the substance of the provisions that contain them. Nonetheless, these errors demonstrate the importance of careful outside review.

Unfortunately, ARB was unable to review parts 5-9 of Division 4.

Public Participation

In order to reduce the risk of inadvertent substantive change, CCEEB, the Chamber, and WSPA all urge the Commission to take a slow pace in developing any further installments of a proposed Environment Code, with ample opportunity for public review and comment. See Exhibit pp. 8, 11-12, 16.

The staff agrees that it is desirable to have the broadest possible public participation. To that end, a request for public comment was circulated in September 1997, outlining the possible organization of an Environment Code and soliciting public reaction. In addition to our regular subscribers, this outline was mailed to 31 relevant state agencies, 26 environmental groups, and 12 trade and professional organizations (including CCEEB and WSPA). The component parts of the tentative recommendation were prepared over a span of seven months. Each part was circulated to interested parties for review and comment and considered by the Commission at a public meeting. The complete tentative recommendation was then circulated for three months of public review. If the Commission decides to proceed with the reorganization of other areas of environmental law, the staff recommends that similar procedures be used.

The pacing of the project presents a more difficult issue. Staff preparation of an installment requires several months. The installment must then be approved by the Commission and circulated as a tentative recommendation. Because of the large volume of material, a fairly long public comment period is necessary (in this case, three months). The public response to an installment will undoubtedly require some redrafting and possibly the recirculation of revised provisions. This redrafted installment must then be approved by the Commission in time for the introduction of legislation.

Assuming that we want to introduce an installment in each session, the only way to provide more time for public review would be to shorten the time taken to prepare an installment, either by increasing the commitment of staff resources or by reducing the size of the installment. The first option would detract from

other projects, the second would lengthen the time required to complete the project.

Transitional Provision

The proposed Environment Code contains a general transitional provision that would govern the effect of enactment of the new code and of any future changes to the code. See proposed Environment Code Section 4. CCA objects to application of the transitional provision to the act that enacts the new code — if the new code is an entirely nonsubstantive continuation of prior law, then there is no need for transitional rules governing the enactment of the code. See Exhibit p. 5. CCA raised this point once before and the Commission tentatively agreed to limit the application of the section to acts that make changes to the code, with the understanding that its application might be broadened to include the act that enacted the code if all interested parties were to unanimously agree to a particular substantive change in enacting the code.

It is now clear that a bill enacting the Environment Code and adding its first four divisions would not include any agreed upon substantive changes. Consequently, the staff recommends implementing the Commission's decision regarding proposed Section 4, by revising subdivision (a) as follows:

> 4. (a) As used in this section:
> (1) "New law" means ~~either of the following, as the case may be:~~
> ~~(A) The act that enacted this code.~~
> ~~(B) The~~ the act that makes a change in this code, whether effectuated by amendment, addition, or repeal of a provision of this code.
> (2) "Old law" means the applicable law in effect before the operative date of the new law.
> (3) "Operative date" means the operative date of the new law.
> …

Implication Drawn from Exclusion from Code

The Comment to Section 5 of the proposed Environment Code provides that:

> Location of a provision in this code, or relocation from another code, is strictly for organizational purposes and does not imply that the provision should necessarily be construed to give the provision an "environmental" emphasis.

The Attorney General suggests that the Comment be revised to state the converse as well. See Exhibit p. 3. The staff sees no problem with adding a sentence to the Comment along the following lines:

> Conversely, the fact that a provision is not included in this code does not imply that the provision should necessarily be construed to give the provision a "nonenvironmental" emphasis.

Proposed Site Cleanup Division

The Chamber suggests that the proposed Environment Code should include a separate division relating to "Contaminated Site Cleanup and Mitigation" that would be drawn from provisions of the Fish and Game Code, Harbors and Navigation Code, Health and Safety Code, Public Resources Code, and Water Code. See Exhibit p. 16. If the Commission decides to recommend the creation of a consolidated Environment Code, the staff will investigate the merits of this suggestion before developing the next installment of that code.

Statement Regarding Legislative Intent

WSPA and the Chamber are concerned that continuation of a provision in the Environment Code might wipe out the legislative intent applicable to the continued provision. See Exhibit p. 8, 16. This concern could be addressed by revising proposed Section 2 as follows:

> 2. (a) A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation of the previously existing provision and not as a new enactment, and a reference in a statute to the provision of this code shall be deemed to include a reference to the previously existing provision unless a contrary intent appears.
>
> (b) A statement of legislative intent applicable to a previously existing provision that is restated and continued in this code applies to the same extent to the provision of this code that restates and continues the previously existing provision.

Governor's Reorganization Plan

The Governor's Reorganization Plan Number 1 of 1991 (the "Plan") substantially reorganized the environmental responsibilities of California's administrative agencies. A Governor's Reorganization Plan suspends prior inconsistent statutory law. Ordinarily, approval of a Governor's Reorganization Plan is followed by conforming legislation to codify its effect. However, in this

case, a conforming statute was never adopted. Consequently, environmental statutes affected by the Plan do not accurately reflect controlling law.

The Commission learned that the failure to enact a statute codifying the effect of the Plan was the result of political differences over the results of the Plan. It appears that the differences regarding the Plan may be resolved legislatively in the next session. Therefore, the Commission decided to hold back the majority of the provisions affected by the Plan from the proposed law. Once the political issues have been resolved, these sections would be added to the proposed Environment Code in a subsequent bill, with appropriate changes to reflect the state of the law at that time.

The Chamber supports incorporation of the provisions affected by the Plan in the proposed Environment Code. See Exhibit p. 16. It isn't clear from its letter whether the Chamber is urging codification of the Plan in the first installment of the Environment Code or if the deferred codification proposed by the Commission would be satisfactory. The staff believes that the Commission's current approach to the Plan is appropriate and should be maintained.

Hazardous Substances Account Act

The Chamber suggests that "Health and Safety Code Chapter 6.8 be considered for incorporation into the new Environment Code even though … Chapter 6.8 will sunset January 1, 1999." See Exhibit p. 16. The Chamber appears to be referring to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code — the Carpenter-Presley-Tanner Hazardous Substance Account Act. If the Commission decides to proceed with the creation of an Environment Code, the staff will keep the Chamber's suggestion in mind. However, it appears that Chapter 6.8 will have been repealed by its own terms by then. If so, restoring the chapter would be a substantive change and beyond the scope of the reorganization project.

CONCLUSION

The prevailing view among the commentators is that a broad nonsubstantive reorganization and cleanup of environmental statutes might well do more harm than good. The unanimity of this reaction is fairly persuasive. It is worth recalling that the original policy goal of the consolidation was to improve the accessibility of environmental laws for businesses subject to those laws. We now have an organization representing such businesses (CCEEB) telling us that the

reorganization would have the opposite effect. The other business groups that commented (the Chamber and WSPA) did not directly oppose the proposal, but expressed significant concerns. This raises doubts about the wisdom of proceeding with the study, at least in its most ambitious form. Despite the benefits of consolidation identified by the staff, it may be correct that the disadvantages of reorganization would outweigh them.

At this point there are at least three ways that we can proceed:

(1) Recommend the creation of the Environment Code as proposed in the tentative recommendation. This would secure all of the benefits discussed in this memorandum, but would also carry the costs and risks identified by the commentators. It seems likely that such a recommendation would draw considerable political opposition and would have few (if any) champions.

A variant of this approach would be to proceed with the reorganization and cleanup of environmental statutes without creating a new code. The staff does not believe that this approach offers any real advantage over reorganization in a new code. The costs and risks identified by commentators would result from renumbering and from grouping provisions that were previously separate. Reorganization without the creation of a new code would still involve substantial renumbering and regrouping. For example, in order to reorganize the statutes relating to water resources and water quality, it would be necessary to combine sections from seven different codes. Regardless of which code these disparate provisions eventually wound up in, the result would involve renumbering and regrouping.

Either of these approaches would require further refinement of the draft legislation to incorporate the suggestions made by ARB.

(2) Recommend most of the organizational and technical improvements identified in the tentative recommendation, without creating a new code. If the Commission determines that it is not wise to consolidate and reorganize all of California's environmental statutes, it still might make sense to implement most of the improvements identified in the tentative recommendation. These have been scrutinized by the public and by ARB and no serious problems were identified. This would preserve the benefits of the work that has already been completed.

This approach would require further refinement of the draft legislation to incorporate the suggestions made by ARB and would also require significant

revision of the reorganized provisions to fit them back into the Health and Safety Code.

(3) Recommend only those technical improvements that would not involve renumbering. This would involve repealing obsolete provisions, correcting errors, redrafting ambiguous provisions, and making other improvements that could be made at the level of individual sections. This minimalist approach would secure some of the benefits of the work that has been completed, without creating the costs and potential for error identified by the commentators. Additional staff effort would still be required to evaluate and implement the suggestions made by ARB.

Respectfully submitted,

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November 5, 1998

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RE: Tentative Recommendation - Environment Code: Divisions 1-4 (July 1998)

Dear Commission Members:

On January 2, 1998, I submitted a letter to the Commission commenting on the advisability of reorganizing California's environmental and natural resources statutes into a new "Environment Code." I questioned whether a new Environment Code would make these statutes more accessible, given that the code would probably consist of up to 12 volumes, and that the statutes are already reasonably accessible through practice books and electronic research tools. I also expressed my concern about the costs of reorganization. These include the short-term cost of courts and practitioners needing to learn the new locations of the revised statutes, and the long-term cost due to the need to cross-reference statutes in order to apply the extensive body of law interpreting environmental statutes to the relocated statutes. Finally, I was concerned that, although the Commission has indicated that it does not intend to alter environmental policies, reorganization will likely result in inadvertent policy changes.

Responding in part to concerns such as those which I expressed about inadvertent changes, the Commission subsequently decided to draft a proposed Environment Code in stages. The Commission is currently circulating its first stage draft which primarily covers the California Environmental Quality Act and air resources statutes. (Tentative Recommendation - Environment Code: Divisions 1-4 (July 1998).)

Although I appreciate the Commission's efforts to minimize inadvertent policy changes through its incremental approach, I retain my concern that such changes are likely to occur. I also retain my concern about the unavoidable costs which will be incurred by a new

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code, and question a new code's benefits. With those reservations in mind, I offer a number of specific comments regarding the Commission's Tentative Recommendation. Please note that, given the volume of materials contained in the Tentative Recommendation, these comments are by no means comprehensive.

Probably the best example of an inadvertent change involves the use of generic definitions. As used in various statutory schemes, definitions of the same terms are often intentionally different. The draft code, for example, includes generic definitions of "person," "public agency" and "public entity." (See §§ 70 and 75, on page 65 of the Tentative Recommendation.) Read together, those terms exclude the United States, its agencies and political subdivisions. CEQA's definition of "person," however, was recently revised to include those entities. (See Pub. Resources Code § 21066, as amended by AB 2397, Bowen; 1998 Statutes, Chapter 272.) Other statutes contain more subtle distinctions. In contrast to the terms which the Tentative Recommendation uses to define "person," for example, Health and Safety Code section 25249.11(a) ("Proposition 65") uses the term "trust" (as opposed to "business trust") and adds the term "limited liability company" (a term which has been recently added to some other statutory definitions of "person" - e.g., Health & Saf. Code § 25319 [Hazardous Substance Account Act]; Water Code § 19.)

If the Commission proceeds with its project, it would be best to retain existing definitions. This would help to reduce inadvertent changes. In addition, under the current draft approach, definitions regarding a subject area appear in at least two locations: at the beginning of the code and then within a definitions chapter of the subject area. (For example, air resources definitions appear in draft §§ 50 through 80 [generic definitions], in §§ 30100 through 30505 [general air resources definitions], and in some of the sections governing specific programs [e.g., §§ 35850 through 35875, which apply to the South Coast Air Quality Management District].) Eliminating generic definitions would reduce the number of locations one would need to go to in order to find the definitions which apply to a particular subject area.

I am also concerned with the Commission's division of the CEQA sections into newly created "articles" within "chapters," and its labeling of these articles, as well as its renaming of many section headings. Although intended as improvements, some of these titles and revised headings are misleading, too limited for the context in which they are used, or otherwise confusing. A few examples serve to illustrate the point.

In Chapter 4, Article 1 is entitled "Application of Division" and Article 3 is entitled "Exemptions." (Tentative Recommendation, pp. 115 and 122.) In fact, however, much of Article 1 lists exemptions from CEQA. And Article 3 includes an application provision. (Section 21080.9 provides that certain California Coastal Commission certifications "shall be subject to the requirements of this division.") Article 8 (Tentative Recommendation, p. 136)

is entitled "Determination of 'Project'," but there are provisions within that article that involve a different subject: when certain environmental review is required (see second sentence in § 21090). Article 10 (Tentative Recommendation, p. 139) is entitled "Duties of Lead Agency," but it also includes duties of the California Environmental Protection Agency. (See § 21092.6(b).)

The renaming of sections is likewise problematic. Section 21080.4, for example, is renamed "Notice of determination"; section 21108 "Notification of project"; and section 21152 "Public notice." (Tentative Recommendation, pp. 120, 152, 158.) In practice, however, the latter two notices (which are notices filed by public agencies at the end of the CEQA process indicating that they have acted on projects) are called "notices of determination." (See 14 Ca. Code Regs. § 15094.) The section 21080.4 notice, in contrast, is filed when an agency is beginning to prepare an Environmental Impact Report for a proposed project, and is referred to as a "notice of preparation." (See 14 Ca. Code Regs. § 15082(a).)

Dividing the CEQA sections into "articles" and renaming headlines thus seems to add little and may be misleading.

Finally, to address the concern that the location of a particular provision in the Environment Code will create an implication as to the character of that provision, the Commission has included a comment under section 5 which provides that: "Location of a provision in this code, or relocation from another code, is strictly for organizational purposes and does not imply that the provision should necessarily be construed to give the provision an 'environmental' emphasis." (Tentative Revision, p. 63.) The converse should be addressed as well; i.e., the fact that a provision is not located in the Environment Code should not be construed to give that provision a nonenvironmental emphasis.

Again, I question whether the benefits of the Commission's project justify its costs. In the event that the project proceeds, however, I appreciate your consideration of these specific comments.

Sincerely,

DANIEL E. LUNGREN
Attorney General

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November 13, 1998

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Re: Draft Environment Code

Dear Commissioners:

As you are aware, the California County Counsels' Association (CCA) has been following the preparation of the Draft Environment Code. The draft of the first four divisions of this proposed code, totaling, in unannotated form, more than six hundred pages, has been circulated for comment. It appears, generally, that the staff of the California Law Revision Commission ("Commission") has maintained its effort to accomplish this task without making any substantive changes to existing statutes.

When this matter was first discussed by the Commission, it was conceded that lay persons would not benefit from a comprehensive Environment Code. Most professionals who commented at that time recommended against the undertaking. Expert consultants retained by the Commission could not recommend the task.

The Commission acted without regard to these sentiments on the belief that it had been charged by the Legislature to accomplish the consolidation of environmental laws into one code. Indeed, minutes of the Commission have been corrected to reflect that understanding.

The CCA continues to believe that the Commission should determine the threshold issue. Even now, after the work of your staff, the Commission may determine that the task is imprudent.

The legislative charge to the Commission provides that you determine:

"***Whether*** the laws within various codes relating to environmental quality and natural resources ***should be*** reorganized in order to

> simplify and consolidate relevant statutes, resolve inconsistencies between the statutes, and eliminate obsolete and unnecessarily duplicative statutes." (Stats. 1997, res. ch. 102) [Emphasis added.]

In keeping with this threshold inquiry, the CCA remains unaware of major inconsistencies among "environmental" statutes nor is it aware of a need to undertake a project of this scope. Therefore, we continue to urge the Commission to undertake the threshold inquiry with which it is charged before continuing with the preparation of this new Code.

The CCA continues to be of the opinion that this project is not desirable. Large bodies of case law have developed within discrete areas of what the Commission's staff have identified as "environmental" laws. Additionally, many of the statutes involved in this project are implemented through regulations promulgated by different state agencies. Regulatory revisions necessitated by a reorganization of the scope proposed would aggravate the complexities of the statutory changes.

While the Commission's intent is to avoid policy revisions, the subject matter has historically been subject to special interest pressures. It is difficult to foresee an outcome that is free from such influence if the current and future drafts are forwarded to the Legislature.

The Environment Code relies upon a determination that there is a substantive connection between and among those statutes identified as "environmental" and that their compilation will ease the search for related topics. In fact, the umbrella is too broad. There is no technical relationship between statutes governing the handling of hazardous materials and those governing endangered species. Indeed, it is logical to assume that the former would be found within a code dealing with health and safety while the latter would be found within a code dealing with fish and game.

Specifically, the CCA remains concerned regarding the language of Section 4 of the Code. It is understood that the language of this transition section is, in large part, identical to provisions in the Family Code and the Probate Code. However, the reorganization of the latter Codes accomplished substantive changes.

Absent substantive changes, there is no need to provide a mechanism for complying with the "new law" which includes the act adopting the Environment Code. No process should change as a result of its adoption nor should acts taken prior to that time need to be grandfathered to remain licit. Frankly, Section 4 assumes that there will be substantive changes to existing law.

On behalf of the County Counsels' Association I thank you for the opportunity to participate in this process. Concurrently, it is urged that the process be discontinued. Obviously, should the Commission continue this effort, the CCA remains committed to reviewing and commenting upon further drafts.

Sincerely,

ROBERT A. RYAN, JR.
County Counsel

cc: Mr. William Katzestein
Mr. Dan Montgomery
Mr. Lou Green
Mr. Tom Montgomery
Ms. Nancy Grisham
Ms. Ruth Sorensen

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KAHL/POWNALL ADVOCATES
Kahl/Pownall Companies

November 16, 1998

Via FAX - Comments On Behalf of the Western States Petroleum Association

Mr. Arthur K. Marshall, Chairperson
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Subject: Environmental Code (Study E-100) - Tentative Legislative Recommendation.

Dear Mr. Marshall,

Pursuant to Senate Concurrent Resolution No. 65 of July, 1998, your Commission was authorized to study "whether the laws within various codes relating to environmental quality and natural resources should be reorganized in order to simplify and consolidate relevant statures, resolve inconsistencies between the statutes, and eliminate obsolete and unnecessary duplicative statutes."

In July, 1998, your Commission published a tentative recommendation for an Environmental Code that would consist of 15 Divisions. At the same time you published recommended legislative language for Divisions 1-4.

On behalf of the Western States Petroleum Association (WSPA), we would like to make the following comments regarding your tentative recommendation to create a California Environmental Code.

We first note that your tentative recommendation was published in July and WSPA and its member companies did not find out about the proposal until very recently. We find the public awareness aspect of your process so important that we would ask you to ensure we are on the early distribution list for future proposals.

It appears that your recommendations for divisions 1-4 have been well thought out, well organized and true to the proposal's goal that the reorganization be "without substantive change." On the other hand, we see divisions 1-4 as the easiest to consolidate in the proposed Environmental Code.

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Other divisions will not be as simple. For example, "Water Resources" will involve melding sections from the Public Resources Code, Harbors and Navigation Code, Fish and Game Code, Water Code, Health and Safety Code and the Government Code. That will be difficult without making substantive changes.

Another concern is with what happens once your recommendations are considered by the Legislature. As you point out: "this reorganization would continue existing law without substantive change. However, while the proposed reorganization would be entirely nonsubstantive, it would facilitate subsequent reforms by exposing inconsistencies and redundancy within the law." As you know, most statutes have evolved from the Legislature's assessment of input from stakeholders with varying view points and are usually a carefully structured compromise with very specific meaning. We would not like to see changes to these carefully structured compromises under the guise of correcting inconsistencies and redundancies.

We believe that the above concerns are serious enough to recommend that your Commission not propose legislation at this time. Future code divisions need to be developed cautiously and with as much public input as possible. Once those divisions have been developed, a true assessment can be made on whether to proceed further. Again, we ask that any consolidation be without substantive change.

Finally, to provide an orderly transition from old law to the new Environmental Code, the consolidated statute must recognize the applicability of uncodified sections of old law such as legislative intent, legislative findings and conclusions, and letters to the Journal.

Thank you for considering our views. We would like to be included in your future deliberations. Please see that I am on your distribution list.

Sincerely,

Michael Kahl

Michael Kahl

California Council for Environmental and Economic Balance

100 Spear Street, Suite 805, San Francisco, CA 94105 • (415) 512-7890 • FAX (415) 512-7897

November 16, 1998

By Facsimile and U.S. Mail

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Attention: Mr. Brian Hebert

Re: **California Law Revision Commission Tentative Recommendation: Environment Code: Divisions 1-4**

Dear Commission Members:

The California Council for Environmental and Economic Balance ("CCEEB") is a nonpartisan, nonprofit coalition of business, labor and public leaders who work to develop and advance collaborative strategies to protect California's environment and at the same time maintain a sound economy. Over the last twenty-five years, CCEEB has actively participated in the development of California's environmental laws. Our Members work on a daily basis to comply with these laws. Following are CCEEB's comments regarding the California Law Revision Commission's (the "Commission's") July 1998 Tentative Recommendation to create an Environment Code (the "Tentative Recommendation").

1. PURPOSES OF THE RECOMMENDATION

Comment 1: The carrying out of some purposes of the Tentative Recommendation is likely to create more problems than benefits.

The Tentative Recommendation would reorganize and consolidate certain State environmental laws, including the air quality laws and the California Environmental Quality Act. In the Summary of the Tentative Recommendation, the Commission states the following purposes for this effort:

A) consolidating relevant statutes;
B) resolving inconsistencies between the statutes;

C) eliminating obsolete statutes;
D) eliminating unnecessarily duplicative statutes;
E) correcting drafting defects;
F) improving the organization of the statutes; and
G) not affecting the substance of the statutes.

Certainly, on the surface, all of these sound like appropriate goals. As explained below, however, because of the history behind California's environmental statutes, the carrying out of some of these purposes is likely to create more problems than benefits.

2. CONSOLIDATING THE STATUTES

Comment 2: CCEEB recommends that the environmental statutes not be consolidated. The consolidation is not necessary. The Commission has not fully analyzed the costs and resource demands that would be created by the consolidation.

As noted by the Commission, California's environmental statutes have developed in a piecemeal fashion. The current system with placement of the provisions in multiple codes is not perfect. We follow the Commission's logic in wanting to have all of these statutes in the same code. At the same time, however, there is a logic to the existing organization. For example, there is a certain logic to having air quality and hazardous waste statutes in the "Health and Safety" Code. Water quality law is directly related to waters rights law - that is why the both areas of law are regulated by the State Water Resources Control Board and both areas of law are in the Water Code.

Most practitioners are familiar with the existing system. From an ease of reference standpoint, West Group has published a one-volume book which contains the vast majority of the environmental laws. It covers provisions from the following sources:

1) State Constitution;
2) Business and Professions Code;
3) Civil Code;
4) Code of Civil Procedure;
5) Fish and Game Code;
6) Food and Agricultural Code;
7) Government Code;
8) Harbors and Navigation Code;
9) Health and Safety Code;
10) Labor Code
11) Penal Code;
12) Public Resources Code;

13) Revenue and Taxation Code;
14) Vehicle Code; and
15) Water Code

This compilation is already available at a low cost.

A. Costs Not Included in the Commission's Analysis

On pages 7 and 8, the Tentative Recommendation includes a four-sentence analysis of the transitional costs for the consolidation of the environmental statutes. The Commission indicates that the renumbering of nearly all the environmental statutes would: 1) require those who use the statutes to learn the new numbering scheme and replace obsolete reference materials; and 2) make it necessary to consult a statutory disposition table in order to relate statutory references in prior case law to the renumbered section. The Commission concludes that the costs associated with these two aspects would be outweighed by the "long-term benefits" to be derived from a well-organized Environment Code.

Several costs have not been included in this analysis:

a) Annotations in the annotated versions of the Code would have to refer to both systems. Once old codes were disposed of, determining the legislative history for code provisions would become increasingly difficult;

b) The State's extensive environmental regulations are set forth in numerous titles of the California Code of Regulations (e.g., Titles 13, 17, 22, 23, and 26). These extensive regulations contain numerous references to code sections based on the existing organization. To be understandable, the regulations would have to be reviewed and amended. The notes to the regulations which cite the underlying authorities would also have to be reviewed and amended.

c) California businesses have spent millions of dollars on legal advice, compliance manuals, training programs, and internal inspection programs that are all based on the existing code section references. Putting these compliance documents out-of-date in a few sweeping actions is counter to the purpose of the environmental statutes - to achieve compliance. The time and money needed to update these documents would be better spent on efforts that achieve compliance.

We recommend that the Commission consider these additional costs in deciding whether the benefits of this effort outweigh the costs. If the Commission does decide to move forward with a recommendation for the consolidation of the environmental statues, that

recommendation should include a recommendation that sufficient time and opportunity for public review be provided.

3. RESOLVING INCONSISTENCIES, CORRECTING AMBIGUITIES, ELIMINATING DUPLICATIVE STATUTES, AND CORRECTING DRAFTING DEFECTS

The correction of "defects" has the potential to create new problems. Specifically:

Comment 3: Inconsistencies: The Commission should not recommend changes to correct a compilation of inconsistencies (other than outright errors) because such changes are likely to resolve in substantive changes.

Comment 4: Ambiguities: The Commission should not recommend changes to resolve a compilation of ambiguities because such changes are likely to resolve in substantive changes.

Comment 5: Duplicative Statutes: The elimination of truly duplicative statutes may be appropriate - but the determination of what is "truly duplicative" would have to be examined closely on a case-by-case-basis.

Comment 6: Outright Errors: The correction of outright errors is appropriate (e.g., cross-references to sections that do not exist).

Comment 7: Obsolete Provisions: The deletion of truly obsolete provisions is appropriate. (The Commission correctly notes that some provisions which can appear to be obsolete have "continuing relevance.")

Many of the environmental statutes were negotiated by multiple parties over long periods of time (e.g., the California Clean Air Act). In some cases, language which was key to the passage of a particular amendment or bill created an ambiguity or inconsistency which made the language acceptable as a compromise. This may not be desirable in the eyes of one reading the statutes with an eye toward clarity and logic. But, of course, it is the nature of the democratic development of our laws.

It is not CCEEB's position that such inconsistencies and ambiguities should never be addressed. Historically, as bills are passed to amend specific statutory sections, such issues are often resolved. As you know, "clean-up" bills are often introduced for that single purpose. Our concern is that a large-scale effort to resolve ambiguities and inconsistencies is likely to create unintended substantive effects and make compliance efforts even more complicated.

4. NOT AFFECTING THE SUBSTANCE OF THE STATUTES

Comment 8: CCEEB concurs with the Commission's goal of not affecting the substance of the statutes.

Consistent with the previous comments, we concur with the Commission's goal of not affecting the substance of the statutes via this effort.

5. CONCLUSION

The Commission's intent in this effort is laudable. Unfortunately, as articulated above, the carrying out of some purposes of the Tentative Recommendation is likely to create more problems and costs than benefits.

Comment 9: Accordingly, CCEEB urges the Commission to:

1) not recommend the consolidation of the environmental statutes;

2) not propose a package to "resolve" inconsistencies and ambiguities;

3) focus on:

a) correcting outright errors;

b) deleting truly obsolete provisions; and

c) deleting truly duplicative provisions.

Thank you for considering CCEEB's comments. If you have any questions, please call me at (415) 512-7890 or Ms. Cindy Tuck at (916) 446-3970.

Sincerely,

Victor Weisser /by CKT

VICTOR WEISSER
President

VW/CKT;ad
cc: Bill Quinn
Jackson Gualco

CALIFORNIA CHAMBER of COMMERCE

November 16, 1998

Mr. Arthur K. Marshall, Chairperson
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Subject: **California Law Revision Commission's Proposed Environmental Code (Study E-100)**

Dear Mr. Marshall:

The California Chamber of Commerce would like to make the following comments and observations regarding your tentative recommendation to create a California Environmental Code.

While the Chamber agrees that California's environmental statues are not well organized and contain numerous obsolete provisions, we are concerned about the potential outcomes of using the Commission's observations for legislative recommendations. Although the Commission recommends making nonsubstantive changes to environmental statutes, we are concerned that making some changes to the statutes would wipe off some of the intent language from long negotiated legislative bills that have been beneficial to the business community. Changes that might be adopted to correct inconsistencies and redundancy may actually change the meaning of a carefully structured compromise and have a negative impact on persons and facilities.

In July 1998, your Commission published a tentative recommendation for an Environmental Code that would consist of 15 Divisions, including sections on the California Environmental Quality Act (CEQA), air quality, water resources, pesticides, radiation, solid and hazardous waste, land use, coastal management, wildlife, parks and noise pollution. It appears that the first four divisions dealing with the general provisions, air quality and CEQA were relatively easy to establish. However, other

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sections dealing with the other above issues will not follow the same path. To prepare for the arduous task that lies before you, we recommend the following thoughts:

Recommendation No. 1

We recommend the Commission take a more cautious and methodical path in developing future Divisions with as much public input as possible. When, the Commission's tentative recommendation reaches the Legislature, it should be as close as possible to a recommendation "without substantive change" that can be adopted with little, if any, change by the Legislature.

Recommendation No. 2

We recommend that you consider adding a Division to address "Contaminated Site Cleanup and Mitigation." We believe that site cleanup and mitigation might warrant its own Division that could consolidate the numerous site cleanup and mitigation provisions in the Fish and Game Code, Public Resources Code, Harbors and Navigation Code, Water Code and Health and Safety Code.

Recommendation No. 3

Division 1 Section 4 provides for an orderly transition from the old law to the new Environmental Code. It may be appropriate for this section to include language to deal with the applicability of uncodified sections of old law such as "intent," "findings and conclusions" and letters to the Journal related to codified code sections in the new law.

Recommendation No. 4

We recommend that provisions of GRP 1 and Health and Safety Code Chapter 6.8 be considered for incorporation into the new Environmental Code even though GRP 1 has never been codified and Chapter 6.8 will sunset January 1, 1999. For example, the definition of "hazardous substance" used throughout California's environmental statutes comes from Chapter 6.8 and should be continued.

Recommendation No. 5

In numerous sections of Division 3 and 4, obsolete dates are referenced. We have no problem with these dates being deleted from those sections, but in many cases the wording for the sentence will have to be amended. We suggest that where language is

amended to delete obsolete dates, that language be circulated for public input in case the meaning of the sentence has been changed.

Again, the Chamber believes future Divisions should be developed slowly and carefully and with maximum input from the public. The Chamber looks forward to working with the Commission and the Legislature to ensure that the Environmental Code is accomplished without substantive change to existing environmental statutes.

Thank you for considering our views.

Sincerely,

Brian E. White, Director
Air & Waste Management

Peter M. Rooney
Secretary for Environmental Protection

Air Resources Board

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Pete Wilson
Governor

November 18, 1998

Mr. Brian Hebert
Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

RE: ENVIRONMENTAL CODE: PARTS 1-4 OF DIVISION 4 (AIR RESOURCES)

Dear Mr. Hebert:

The Air Resources Board (ARB) has reviewed proposed Parts 1-4 of Division 4 of the proposed Environment Code. These parts pertain to air pollution control and bring together the nonvehicular provisions currently in Division 26 of the Health and Safety Code. The purpose of the proposal is to reorganize the statutes in a non-policy, non-substantive manner to facilitate access to an increasingly complex and disjointed body of law. We believe that the staff has reorganized Parts 1-4 in a generally logical format which accomplishes this goal and has identified obsolete provisions which may be eliminated without substantive impact.

While it was tempting to engage in a more ambitious, substantive review of the air resources provisions at issue, we agree that any substantive changes would generate considerable controversy and relegate the project to failure. Therefore, we have confined our comments to responses to the staff notes and observations that follow many of the provisions. We have also provided suggestions for organizing the sections in a more logical sequence. In a few cases we have identified duplicative or obsolete provisions which were not addressed by the staff.

We remain concerned about the effect of the consolidation and renumbering on the job of the practitioner. Agency regulations, court cases, and academic reference materials will continue to cite the "old" section numbers, and considerable research time will be spent ferreting out proper citations unless a comprehensive and useable derivation table is developed. Further, many provisions are obsolete in a way that cannot be remedied by mere deletions of dates and contingencies. Changes to these sections would be substantive, however, and require serious and concentrated legislative attention. We fear this "cosmetic" code consolidation may deflect needed attention from important policy debate. Thus, although we are not convinced the benefits of consolidation outweigh the dangers and difficulties, we have approached this project as a resource agency for the CLRC staff due to our unique position as the agency responsible for encouraging, coordinating, and reviewing the efforts of all agencies implementing Parts 1-4 of proposed Division 4.

Our detailed comments and suggestions are attached. Please continue to call on me if you require further assistance. I hope the information supplied in the comments will be useful to you.

Sincerely,

Merla Hoig for

Leslie M. Krinsk
Senior Staff Counsel

Enclosure

Air Resources Board Comments

ENVIRONMENT CODE: DIVISION 4, PART 1

Chapter 1. General Provisions

§30003 "Responsible agency" is a bad title for this section, as it has a well-known, different meaning under CEQA. We suggest "General state responsibilities" instead.

§30004 This section belongs with the civil and criminal penalties provisions, not here.

Chapter 2. Definitions

§30125 The definition of "air contaminant" should be updated, although it manages through breadth to cover everything.

§30140-
§30145 References to the "Bay District" and "Bay District Board" are redundant and not necessary, because the code addresses this in detail infra. (The same comment applies to the definitions of other legislatively created districts, i.e. sections 30320, 30325; 30410, 30415; and 30440, 30445.)

§30150 In response to the staff inquiry, the contingencies referenced have not all been fulfilled, and are not likely to occur. The ARB is continuing to track their status.

§30165 Reference to the "Motor Vehicle Pollution Control Board" is no longer appropriate, as those functions have been taken over by the ARB.

§30190 The ARB's "Emission Warranty Parts List" was amended February 22, 1985 and is referenced in 13 CCR [not CAC] section 2036(f), not (c).

§30230 The Revenue and Taxation Code should be checked to see if this definition is still current: the figure seems low, given inflation.

§30235 The definition should be amended to be more clear and descriptive, or eliminated.

§30240 The definition of "emission standards" should be updated to reference the federal definition in section 302 of the Clean Air Act.

§30285 This section defines "implement of husbandry" by reference to an entire chapter of the Vehicle Code - is there one section that could be cited instead?

§30380 This section refers to liability only under current Part 4 of Division 26 - it should be broadened to include liability for violations of provisions relating to toxic air contaminants currently set forth in Part 2.

§30435 The definition of "solid waste dump," should reference the definition used by the Integrated Waste Management Board, if there is one.

§30465 This provision sets forth a better definition than section 30235 for "trading programs w/capped emissions," and we suggest deleting section 30235 as redundant as well as unclear.

Chapter 3. Minor Violations

This entire chapter, beginning with section 30600, should be placed with the other penalty provisions currently in Part 4 of Division 26 and proposed for chapter 7 of Title 7 "Enforcement."

ENVIRONMENT CODE: DIVISION 4, PART 2

Chapter 1. General.

No comment

Chapter 2. Administration

§31105 Reference to "chairman" should be gender-neutral, as section 31102.

Chapter 3. Powers and Duties

§31206 This provision pertains to recertification of equipment and the issuance of permits and should be moved to the permit provisions set forth later in the code; in the alternative, title it "precertification of equipment" or "permit assistance."

§31251 The task has been completed and this provision is obsolete and should be deleted; Mojove Desert Air Basin is in existence.

§31252 This section should be more artfully drafted, using a verb ("is attaining") instead of "in attainment," and "is not attaining" instead of "in nonattainment." In subsection (b), put quotation marks around the designations for clarity.

§31300 The requirements have been met and the deadlines are obsolete, although a committee continues to meet periodically to discuss the "prospective exposure" issue.

§31301 The January 1, 1998 date is still current and useful to keep as reference.

§31303 The deadline is obsolete, as the task has been completed and updated twice as required.

§31350 The methodology was adopted and approved by the Office of Administrative Law in May, 1998. Delete the date and include this provision with the banking provisions, currently at section 40709 et. seq. of Division 26 and proposed for inclusion in Chapter 1 of Title 2.

§31450 et seq. These provisions, which address market-based Incentive Programs, should be relocated, perhaps near the permit provisions or after the California Clean Air Act requirements (section 40910 et seq. of the current Division 26), since it refers to attainment measures.

§31453 This section refers to the South Coast Air Quality Management District's RECLAIM program, which is already operational, and is obsolete.

Article 7 Should not be titled "Mobile Sources," a much broader subject addressed in Part 5 of the proposal.

§31500 This section should be placed near the other provisions dealing with emission reduction credits and banking, currently at section 40709 et seq. of Division 26.

§31501 "Refrigerated trailers" is totally lost here and belongs in the "vehicular pollution" parts.

§31550 This provision refers to PM10 and PM2.5; it should follow section 31300 re: evaluating air quality.

Chapter 4. Toxic Air Contaminants

§31757 This provision should go near the provisions regarding municipal waste (section 39100 et seq.) and incineration of toxic materials (section 38600 et seq.), which we have elsewhere recommended be co-located. Also, the requirements of subdivision (c) have been satisfied and the report is available; the deadline is no longer necessary.

§31758 In areas of toxic substance control, the ARB works with the Office of Environmental Health Hazard Assessment (OEHHA). Reference to the Department of Health Services should be changed to refer to OEHHA, but the provision should remain in this location.

§31807 This report was prepared and the date is no longer necessary.

§31808 The guidelines have been prepared and the deadline is no longer necessary.

§31809 - §31810 The reference to the Budget Act in Stats. 1987 is no longer useful.

§31858 The dates for staggering terms have been complied with and are no longer necessary.

§31901 We agree with the staff conclusion on current section 39675(b).

Chapter 5. Research

§32007 This provision should cite the Health and Safety Code sections comprising Connelly Act for clarity and ease of reference.

Chapter 6. Subvention

§32158(c) Reference to "approval of plan" by ARB pursuant to section 41500 is incomplete, as section 41500 refers to review and not approval of attainment plans; section 41603 does not exist.

Chapter 7. Acid Deposition

§32301 Substitute "anthropogenic" for "man-made."

§32302(b) Substitute "anthropogenic" for "man-made."

§32304(b) Place a comma after "Kapiloff Acid Deposition Act."

§32304(c) Place a comma after "Kapiloff Acid Deposition Act."

DIVISION 4, PART 3 - AIR POLLUTION CONTROL DISTRICTS

§32000 My version (April 16, 1988) repeats section number already given to "Research," etc.

§32005 Should not be called "Regulations, which is too general; instead, call it "indirect, areawide, and transportation control measures" or similar, or combine it with section 32004, which does deal with regulations generally.

§32150 This provision should be titled "Applicability" and perhaps Article 4 "Budget Process" should be modified to refer to larger districts for clarity and ease of reference.

§32303 This provision should be titled "Public Notice."

Article 3, commencing with section 32400, should be titled "Socioeconomic Impact Analysis," and section 32400 should be titled "Applicability" and combined with section 32402.

Chapter 3, "Hearing Boards," should be followed immediately by the chapter on variances and abatement orders, currently at section 42350 et seq. of Division 26.

Chapter 1 of Title 2, beginning with section 32700 and titled "emission reductions," should be titled "Emission Reduction Credit Banking" or "Banking" because it does not really deal with reductions in emissions, which are accomplished by control measures.

§32750 should be titled "Tracking System" because nonattainment areas are addressed in detail later.

Article 3, commencing with section 32800 should be included in the "Special Provisions" of Article 2, and sections 32800 and 32801 should have different titles. Section 32802 should cite the appropriate sections instead of "article" if proposed Article 3 is moved.

§32851 The date of 12/31/94 is relevant because it would still act to limit applicability - if the District regulations didn't provide for federal creation of ERCs from a military base as of that date, the Legislature directed that such facilities cannot apply for ERCs. It would be a substantive change to delete the date.

The ARB methodology adopted pursuant to AB 1777 should follow section 32856 in proposed Article 4, perhaps as an Article 5 titled "Calculation of Interchangeable Credits."

Article 3 "Private Entities," commencing with section 33000, should be included in Article 2, "Indirect Sources," as should Article 5, "Event Centers," because these provisions all refer to indirect sources, i.e. those facilities such as shopping centers and sports arenas which attract vehicles and their emissions. The section on event centers, now section 33100, is appropriately located among provisions dealing with transportation.

§33150 Employer trip reduction requirements are appropriately located in this chapter, along with other TCM provisions relating to transportation control measures, perhaps following section 33000.

Chapter 3. District Attainment Plans

§33201 The deadlines have been met, but they still serve a purpose as a baseline for the submittal of the required triennial plan updates.

Article 3 (commencing with section 33300) should be called "Specific Content Requirements," rather than "Special Content Requirements," because these are the guts of the plan, not really "special."

§33352 This provision does not pertain to the other "no net increase" provisions, and should be moved to the "Banking" provisions proposed for inclusion in Chapter 1 of Title 2.

Article 6, Commencing with section 33450 - §33450 add "Revision" to the title, i.e. "Review, Revision, and Reporting Requirements"

Chapter 4. Other Responsibilities

§33500 and
§33501 There may be other monitoring provisions that should go here as well.

§33550- The maps have been prepared and the 1990 date is obsolete.

§33552 The criteria were published and the date is no longer necessary.

§33554 The maps have been prepared and are updated as appropriate - the date is obsolete.

§33555 There is a typographical error in this provision; we don't want to "prevent . . . maintenance." The word "attainment" should be placed between "with" and "or" before the word "maintenance."

TITLE 3. TYPES OF DISTRICTS

Chapter 1. County Air Pollution Control Districts

§33651(a) This provision should include the date - July 1, 1994 - or omit the phrase "including any district formed on or after that date" as unnecessary.

§34053 Either include the date (July 1, 1994) or omit reference to it in subdivision (a).

§34400 Either include the date, or omit reference to "on or after that date" in subdivision (a).

TITLE 4. SPECIFIC DISTRICTS

§35000 The dates pertaining to the adoption of transportation control measures by the Bay Area Air Quality Management District are obsolete, as the provisions have been complied with.

§35003 The report has been completed and the three agencies responsible for developing and approving transportation control measures in the Bay Area Air Quality Management District continue to work on the project.

§35103 This section is obsolete, as the events already occurred.

§35201 The first sentence is no longer useful; the second sentence can perhaps be included in section 35200.

§35202 and §35204 This task has been accomplished; the deadlines are obsolete.

§35252 This provision is obsolete.

§35403 This provision regarding the Sacramento district is obsolete.

§35700 The Sacramento Air Quality Management District has adopted the strategies in response to other provisions of state law which substantially suffice to comply with this provision. The deadline, therefore, is obsolete.

§35805 This section is obsolete - delete.

§35806(c) The date is obsolete, the task has been accomplished.

§35855(b) "New source standards of performance" refer to emission standards promulgated by the federal EPA for specified categories of sources pursuant to section 111 of the federal Clean Air Act. The subsection is saying LAER can never be allowed to be less stringent than an applicable NSPS, if any, and should be retained.

§35904 Subdivision (b) is obsolete.

§35910 Reference to the "chairman" should be gender-neutral, as in section 31102.

§35954	Task completed and date obsolete; eliminate provision.
§36001	Subdivision (a) and the first clause of subdivision (b) are obsolete.
§36005	This section is obsolete - delete.
§36009	The language appears correct to the Air Resources Board staff, but District Counsel should be contacted.
§36054	The first quotation mark should precede "consideration" rather than "regulatory."
§36057(a)-§36057(c)	This task has been completed and the provision is of historical interest only.
§36100	The assumption of the staff is correct; "plan" is the South Coast AQMP. The requirement was met and the January 31, 1979 deadline is not necessary. Reference to section 36108(a), regarding plan revisions/updates, should remain.
§36114	This provision should be moved to section 36101 as subdivision (b), since that section discusses the responsibilities of SCAG.
§36115	The "plan" referred to is the AQMP.
§36152	There should be a comma after "inclusive" in the first sentence. This section would be more clear if it directly followed section 36150.
§36156	The first sentence, as staff surmised, is obsolete and should be deleted.
§36211	The construction projects referred to which began construction before May 24, 1985 are all complete; hence, the date is obsolete.
§36212	This section should be combined with sections 36213 and 36214, as the subject matter is the same - there could be one section with three subdivisions.
§36250 - §36253	Article 10 should directly follow the provisions regarding the South Coast AQMP (i.e. Article 7, beginning with section 36100) for the sake of clarity and continuity.

DIVISION 4, PART 4. NONVEHICLULAR AIR POLLUTION CONTROL

§37002	Should go near section 38700.
§37300 et seq.	These provisions deal with fees; other fee provisions should be moved here (or vice-versa) for ease of reference and clarity, including all permit fee provisions.
§37006	These procedures have been established and the deadline is no longer useful.
§37100	We have not been able to locate section 40717.2.
§37101	This section refers to plans prepared by the Bay Area Air Quality Management District and we agree with staff that the reference to "this title" should refer instead to "this division."
§37402	The staff note following this provision, re: sections 41518-20, is correct.
§37450	The question asked in the staff note is answered in the affirmative.
§37604	This section should go with provisions dealing with nonagricultural burning, i.e. near section 37900 or 37950, instead of near the provisions dealing with opacity.
§37605	This section should go with the other provisions governing district adoption of rules and regulations.
§38001	This provision should remain in effect to inform section 38008, and both sections could be combined.
§38002 - §38003	Should be combined with section 38008 in case updated reports are required
§38004- §38005	The guidelines and screening questionnaire have been completed and the dates are no longer relevant except for historical reference.
§38009	This section, by its own terms, would apply only to a Class III site in Kings County permitted by January 1991. If there is no such facility, the provision should be deleted. (We have so far been unable to confirm its existence.)
§38262	The committee was created and the deadline is unnecessary.
§38300	The committee was created and the date is obsolete.

§38554 The references to two different "Chapter 7" are confusing as drafted. Also, subdivision (b) is not necessary because violations before 1981 have already been dealt with.

§38602 The study has been completed; the section is obsolete.

§38651 This section should be referenced in the section dealing with visible emission limit prohibitions, i.e. section 37602, or in section 37603 (exemptions).

§38652 The study and report to the Legislature were completed and the compliance schedule was adopted by the ARB.

§38655 This provision should be placed in the article on variances, after the section addressing compliance schedules.

§38657 This section should go with the district permitting provisions, as offsets generally are required when sources are constructed or modified. (section 38750 et seq.)

Title 7. Enforcement - the provisions re: "minor violations and notice to comply" should go here instead of in section 30600 et seq.

§38803-
§38808 These provisions should go after §38701 in the "General Provisions" chapter related to enforcement, not in the permit procedures article.

§38854 We agree that subdivision (I) of Health and Safety Code section 42311 is obsolete.

§38950 It is highly unlikely that any outstanding permits meet these criteria; hence, the provision is obsolete and should be deleted.

§38952 This provision deals with the effective dates of district rules, and should be near the other provisions addressing district rule adoption.

§39052 Paragraphs (1) - (12) be lettered subdivisions (a) - (l), for consistency in citation methodology.

§39100 These provisions and sections 38600 - 38604 should be set forth in the same place since they address similar subjects (i.e. incineration of waste).

§39150 This section should go along with other provisions pertaining to permit issuance and offsets.

§39154 This section should go in banking provisions or with the cogen/resource recovery provisions in Part 4, Title 4.

§39155 This section should go where sections 39100-39104 go, since they concern the same subject matter.

§39156 This provision should go with other cogen/resource recovery provisions in Title 4 of Part 4.

§39158 The ARB does not know whether this report has been completed; the Resources Agency should be consulted.

§§39200 et seq. This chapter should also include sections 38751 and 38752 if possible, because they also address ways to streamline the permit issuance process.

Chapter 5. "Variances," commencing with section 39300, should be placed near "hearing boards," for clarity and ease of reference, as this is the major function of the district hearing board.

§39601 We agree with staff that this section as currently written is difficult to understand and believe that the proposed rewrite is an improvement.

§39605 The application of §39501, regarding each day of violation constituting a separate offence, is probably what the Legislature intended, and is how the ARB has always interpreted this provision. This interpretation gives more enforcement discretion to the Districts, thus keeping more cases out of court. If administrative penalties were limited to a total of $500.00 per offense, instead of for each day during which the offense continued, the discrepancy between penalties available under this provision and penalties available in court would greatly limit the efficacy of this provision.

§39654 We agree with the staff note.

§39700 - §39701 These provisions should be located near the minor violations/notice to comply program, suggested for relocation to Title 7, "Enforcement," commencing with section 38700, perhaps in a chapter titled "Compliance Programs," as they address similar subject matter.

Chapter 9, "Orders for Abatement," sections 39750 et seq. should go directly after "Chapter 5 Variances," and Chapter 6, "Product Variances," ending with section 39458, since they address the same subject matter and are two sides of the same coin.

§39801 The initial review was completed and the deadline is no longer necessary.