

# The Arnold Law Practice

## News from the Practice

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### In Times Of Trouble, Uneven Enforcement Is An Added Burden

A lot of clients feel pretty battered these days; tenants can't pay rent and government is demanding more and more "pay to play" fees because it can't pay its bills. Cal and Stanford, the 49ers and the Raiders are all



struggling. And, it is no fun trying to figure out when the stock market will "hit bottom". Our clients try to do "the right thing," but they can be hurt by uneven enforcement.

A recent study by the environmentalists shows an extraordinary variation in enforcement of the environmental laws in California. For instance, 92% of businesses are not inspected for water pollution, but only 30% are not inspected for air pollution. And, in San Diego 97% of wastewater violations are prosecuted, but in LA only 33% are prosecuted. *An Uneven Shield: The Record of Enforcement, etc.*, Natural Resources Defense Council. [www.nrdc.org/legislation/shield/shield.pdf](http://www.nrdc.org/legislation/shield/shield.pdf).

### Watch California Laws For The "New Regime" In Congress

When it came time a few years ago for Congress to enact a comprehensive regulatory program for underground tanks (USTs), it looked to California's laws. That law existed because Silicon Valley companies' USTs leaked into water people were drinking. Now, Congressman Waxman and Senator Boxer are the chairs of both the House and the Senate Environmental Committees. So, California will still be the "laboratory" for new federal environmental laws. We wish them well -- and tell them not to enact a national Prop. 65 law.

#### **WARNING**

**THIS FACILITY CONTAINS ONE OR MORE CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER, BIRTH DEFECTS OR REPRODUCTIVE HARM.**

CALIFORNIA HEALTH AND SAFETY CODE SEC. 25249.7

### Prove Your Case From The Beginning?

The decades-long fights over development or preservation of the San Mateo County coast are the source of many lawsuits. In one recent lawsuit, the City of Half Moon Bay faced a \$36 million judgment for turning private property into wetlands and then denying development permits. In another recent lawsuit, developers lost because they simply did not show up at a hearing on a citizen's appeal challenging approval of their project. Our experience says that "*Making a case on the facts as early as possible*" is often the only reasonable course of action. And, it really can all depend on simply "*showing up.*" *North Pacifica LLC v. California Coastal Comm'n*, No. B199446.



**Wishing you  
Happy Holidays  
From the Practice**



## San Joaquin Valley Builders Hammered By “Indirect Source Rule”

The San Joaquin Valley air pollution control district has a new rule on “indirect sources.” Developers of large residential and commercial projects must limit air pollution during construction and operational phases of the projects. Two legal challenges have failed recently, the most recent one in Sacramento federal court. The building industry claimed that the air pollution district’s “indirect source rule” is preempted by the federal Clean Air Act. *NAHB v. San Joaquin Valley UAPCD*, No. CV-F-07-0820-LJO-DLB.

## The “Governator” Vetoes Some Environmental Enforcement Bills



California’s Governor Schwarzenegger vetoed 415 bills, and signed 772 bills at the end of the recently concluded session of the California Legislature. Among the bills he vetoed was AB1946, which would have allowed local prosecutors to enforce the California water quality law (the Porter-Cologne Act), and which increased some penalties for violations. The governor explained that “increasing the frequency and severity of civil penalties via the court system” is not the way to go; instead as he explained, the regional and state water boards should be made “more accountable and effective.”

## Supreme Court to Take on “Divisibility” of Joint and Several Liability

What if 100% of the cleanup of a Superfund site is paid by the taxpayers because a pesticide distributor went bankrupt? What if a railroad and a chemical company could prove to a trial judge that they only contributed 15% of the spills? But, The Ninth Circuit Court of Appeals said the liability was not divisible, and so the railroad and the chemical company should pay 100%. This is the rule of “joint and several liability” -- “one for all and all for one.” The Supreme Court will review the case next year. *Burlington Northern & Santa Fe Railway Co. v. U.S.*, No. 07-1601. Jim Arnold explained, “This is a chance for the Supreme Court to radically change the last 28 years of Superfund law.” (Jim was chair of the ABA’s Superfund Committee in 1996-1998.)

*Comments? We would appreciate your comment on our newsletter. Please email us at [comments@arnoldlp.com](mailto:comments@arnoldlp.com)*

### The Arnold Law Practice Three Decades of Environmental Law

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**The Arnold Law Practice** represents companies and individuals in brownfields redevelopment litigation with claims of pollution, USTs, waste disposal practices, Prop. 65, claims as to site audits, Fish & Game civil penalty proceedings, condemnation for road expansion, failures of seller to disclose buried contamination, compliance with air pollution control laws, civil penalties from air quality management districts, spill response claims, toxics reporting and disclosure requirements, and UST closure and UST Fund matters.

**The Arnold Law Practice** represents companies and individuals in state and federal courts in a variety of lawsuits, including civil penalty claims as to permits, complaints for specific performance of real estate contracts, waste water treatment issues, defending and prosecuting construction claims, breach of contract, negligence, fraud, property trespass and damages, and related matters.

**The Arnold Law Practice** associates with specialized counsel in complex real estate closings, estate and trust planning, partition actions involving contamination, and transfers of real estate with indemnities and cleanup rights under the California UST Fund.

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