

January 6, 2012

TO: The Honorable, Mike Feuer, Chair, Assembly Judiciary Committee
The Honorable, Don Wagner, Vice Chair, Assembly Judiciary Committee
Members, Assembly Judiciary Committee

FROM:

Civil Justice Association of California	California Forestry Association
American Chemistry Council	California Hotel & Lodging Association
American Council of Engineering Companies of California	California Independent Oil Marketers Association
American Institute of Architects, California Council	California League of Food Processors
Apartment Association of Greater Los Angeles	California Manufacturers & Technology Association
Associated Builders and Contractors of California	California Metals Coalition
Associated General Contractors Building Owners & Managers Association of California	California New Car Dealers Association
California Aerospace Technology Association	California Retailers Association
California Apartment Association	California Surety Federation
California Association of Bed and Breakfast Inns	California Trucking Association
California Building Industry Association	Chemical Industry Council of California
California Business Properties Association	Citizens Against Lawsuit Abuse
California Chamber of Commerce	Commercial Real Estate Development Association, NAIOP of California
California Construction and Industrial Materials Association	Concrete Contractors Association, Inc.
California Farm Bureau Federation	Construction Employers' Association
California Fence Contractors' Association	Engineering Contractors' Association
California - Chapter of the American Fence Association	Flasher Barricade Association
	International Council of Shopping Centers
	International Fragrance Association North America
	Marin Builders' Association
	National Federation of Independent Business
	Pacific Merchant Shipping Association
	San Diego County Apartment Association
	Santa Barbara Rental Property Association
	Western Electrical Contractors Association

RE: AB 1207 (Furutani) As Amended January 4, 2012
Committee Hearing Date: January 10, 2012

POSITION: OPPOSE

The above-listed organizations are opposed to AB 1207 (Furutani) as amended January 4, 2012. This bill would expand the statute of limitations for lawsuits against property owners, developers, contractors, architects, engineers and other service providers alleging that property was exposed to a pollutant or hazardous substance.

The statute of limitations defines the period of time by which a potential plaintiff must file a claim after incurring harm. After the “statute has run,” or the time period has passed, no lawsuit may be brought. Statute of limitations provide certainty and notice to both plaintiffs and defendants about their obligations, duties, and remedies under the law. The Code of Civil Procedure Chapter Two, sets for a variety of time limits depending on the allegation. The code section this bill would amend (California Code of Civil Procedure §337.15) sets an outside limit on property defect claims that are less easily discovered in order to provide certainty and encourage construction in the state (*Chevron U.S.A. Inc. v. Superior Court*, 44 Cal. App.4th 1009 (1994)).

This bill would remove this outside limitation and thereby expand the statute of limitations on personal or real property lawsuits when there was an allegation of exposure to a hazardous material, even if it was in relation to remediation activities. In so doing, AB 1207 unnecessarily exposes a large number of industries to increased unjustified liability that may even lead to possible bankruptcy.

Federal and state law already provides an extensive and interwoven framework to hold companies responsible and mitigate actions that result in pollution or hazardous waste. Examples include: Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; Clean Air Act (42 USC 7401-7671q, P.L. 101-549, 104 Stat. 2399, Clean Water Act (33 USC 1251 - 1376, P.L. 845, 62 Stat. 1155; Ocean Dumping Act, 33 USC 1401-1445, 86 Stat. 1052 and 1061, P.L. 92-532; Emergency Planning and Community-Right-To-Know Act, 42 U.S.C. §§ 11001-11050; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f-300j; Solid Waste Disposal Act/Resource Conservation and Recovery Act, 42 U.S.C. §§6901-6991k; Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; CEQA, California Public Resources Code § 21000 *et seq.*, and the Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code §§ 25000-27001). Current law allows enforcement actions through both governmental prosecutors and in some cases even through private citizen lawsuits.

In addition to the private citizen lawsuits that may be brought under the myriad of federal and state environmental laws, injured plaintiffs may sue under other existing theories, such as negligence, strict liability, nuisance or trespass (*Mangini v. Aerojet-Gen. Corp.*, 230 Cal. App. 3d 1125 (1996), *United States v. S. California Edison Co.*, 300 F. Supp. 2d 964 (2004), *Elton v. Anheuser-Busch Beverage Group, Inc.*, 50 Cal. App. 4th 1301 (1996) and *Pierce v. Pac. Gas & Elec. Co.*, 166 Cal. App. 3d 68 (1985)). Significantly, the statute of limitations does not stop a lawsuit if the pollution is willful or knowingly caused or if the defendant is found to have had control of the land (Code of Civil Procedure § 337.15).

Injured plaintiffs in California have a wealth of legal options to use to seek redress. There is no need to further extend the statute of limitations for certain torts. This bill is both dangerous and unnecessary.

At a time when our economy is struggling to recover and when the state needs jobs, such an unjustified increased liability on businesses and governments is ill-advised. For these reasons we urge your “no” vote.

cc: Kevin Baker, Deputy Chief Counsel, Assembly Judiciary Committee
Mark Redmond, Judiciary Consultant, Assembly Republican Caucus
The Honorable Warren Furutani