



specifications for eight properties of gasoline (sulfur, benzene, olefin, oxygen, and aromatic hydrocarbon contents, the 50% and 90% distillation temperatures, and the Reid vapor pressure (RVP)), and are designed to achieve the maximum reductions in emissions of criteria pollutants and toxic air contaminants (TACs) from gasoline-powered motor vehicles. California gasoline will in most cases have to meet the Phase 2 RFG specifications beginning March 1, 1996. If approved, the regulatory changes will allow gasoline producers the option to use the "California predictive model" to assign specifications to an alternative gasoline formulation, which could then be used in lieu of meeting either the flat or averaging limits applicable to gasoline being supplied from production and import facilities. [14:4 CRLR 143-44] At this writing, these regulatory changes have yet to be submitted to OAL for review and approval.

- The Board's April 1994 rulemaking package adopting new section 90800.5 and amending section 90803, Title 17 of the CCR, which establishes the fee rate which APCDs and AQMDs must pay ARB to offset the state costs of air pollution control programs related to non-vehicular sources during the sixth year of ARB's implementation of the California Clean Air Act of 1988, was approved by OAL on November 28. [14:4 CRLR 144; 14:2&3 CRLR 154]

- ARB's February 1994 amendments to section 1976, Title 13 of the CCR, and the incorporated document entitled *California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles*, which conform ARB's evaporative emissions standards and test procedures for motor vehicles and engines with new federal procedures and apply the enhanced procedures to the heavy complete medium-duty vehicle class (8,501-14,000 lbs., gross vehicle weight rating), was approved by OAL on December 15. [14:4 CRLR 144; 14:2&3 CRLR 154]

- ARB's January 1994 adoption of new sections 2410-2440 (nonconsecutive), Title 13 of the CCR, which contain important new regulations establishing emission standards, test procedures, certification procedures, and labeling and registration requirements for 1997 and later model year "off-highway recreational vehicles" (defined to include off-road motorcycles, all-terrain vehicles, golf carts, go-karts, and specialty vehicles such as hotel and airport shuttle vehicles), was disapproved by OAL on January 10. OAL found that the regulations do not comply with the clarity and consistency standards of Gov-

ernment Code section 11349.1. At this writing, ARB plans to correct these deficiencies and resubmit the rulemaking file to OAL by the end of January. [14:4 CRLR 144; 14:2&3 CRLR 154-55]

- ARB's November 1993 amendments to sections 70300-70306 and Appendices 1-4 thereto, Title 17 of the CCR, which change the criteria used by the Board in designating areas of California as non-attainment, attainment, or unclassified for state ambient air quality standards, were approved by OAL on November 10. [14:4 CRLR 144; 14:1 CRLR 120; 13:1 CRLR 97]

- The Board's November 1993 amendments to its area designations in sections 60200-60209, Title 17 of the CCR, which (1) change the requirements for determining complete data—when less than three years of data area available—to exclude data affected by highly irregular or infrequent events before using the maximum pollutant concentration to determine if the data meet the completeness criteria, and (2) change the emission screening value for the annual emissions of oxides of nitrogen in an air basin to reflect ARB staff's improved procedure for estimating oxides of nitrogen emissions, were also approved by OAL on November 10. [14:4 CRLR 144; 14:1 CRLR 120]

- The Board's September 1993 adoption of new sections 2259, 2283, and 2293.5, amendments to sections 2251.5, 2258, 2263, and 2267, and repeal of section 2298, Title 13 of the CCR, would enhance the effectiveness of its wintertime oxygenated gasoline program which started last year and proved successful in reducing carbon monoxide levels. [13:4 CRLR 140; 13:2&3 CRLR 157] In September 1994, OAL approved all of the proposed regulatory changes except the adoption of 2259, 2283, and 2293.5, and the amendment of sections 2251.5 and 2267; these sections which establish a process whereby any person may request an exemption from the motor vehicle fuel requirements for various types of fuels used in test programs. Because this type of exemption requires a permit, OAL found that ARB must comply with the Permit Reform Act by establishing permit application processing time periods; because ARB failed to set forth its processing times, OAL rejected the exemption program sections. [14:4 CRLR 144] ARB corrected this error and resubmitted the rulemaking file on the rejected provisions to OAL on January 4; at this writing, it is pending at OAL.

■ LITIGATION

Citizens for a Better Environment—California v. California Air Resources Board, No. 378401 (filed June 14, 1994)

is still pending in Sacramento County Superior Court. In this action, Citizens for a Better Environment—California (CBE), a nonprofit environmental organization, challenges ARB's March 10 decision to permit implementation of the South Coast Air Quality Management District's (SCAQMD) recently approved Regional Clean Air Incentives Market (RECLAIM) program. RECLAIM is a market-based pollution control strategy which allows industries in Los Angeles, Orange, Riverside, and San Bernardino counties an annual pollution limit and then lets them choose the cheapest way to stay within the limit, including trading of pollution credits. [14:2&3 CRLR 153; 14:1 CRLR 125; 13:4 CRLR 145-46]

CBE alleges that ARB should not have approved RECLAIM because it will fail to achieve equivalent pollution reductions compared with the District's 1991 Air Quality Management Plan; it will delay, postpone, or hinder compliance with state ambient air quality standards; it fails to require the installation of the best available retrofit control technology at all existing sources; it fails to show expeditious progress toward attainment of state ambient air quality standards; it fails to assure the earliest practicable attainment date for ambient air quality standards; and it fails to maintain progress toward attainment of state ambient air quality standards.

■ FUTURE MEETINGS

January 26 in Sacramento.
February 23 in Sacramento.
March 23 in Sacramento.
April 27 in Sacramento.
May 25 in Sacramento.
June 29-30 in Sacramento (tentative).
July 27-28 in Sacramento (tentative).
September 28-29 in Sacramento (tentative).

CALIFORNIA INTEGRATED WASTE MANAGEMENT AND RECYCLING BOARD

Executive Director:
Ralph E. Chandler
Chair: Jesse Huff
(916) 255-2200

The California Integrated Waste Management and Recycling Board (CIWMB) was created by AB 939 (Sher) (Chapter 1095, Statutes of 1989), the California Integrated Waste Management Act of 1989. The Act is codified in Public Resources Code (PRC) section 40000 *et seq.* AB 939 abolished CIWMB's predecessor,



the California Waste Management Board. [9:4 CRLR 110-11] CIWMB is located within the California Environmental Protection Agency (Cal-EPA).

CIWMB reviews and issues permits for landfill disposal sites and oversees the operation of all existing landfill disposal sites. The Board requires counties and cities to prepare Countywide Integrated Waste Management Plans (CoIWMPs), upon which the Board reviews, permits, inspects, and regulates solid waste handling and disposal facilities. Alternatively, local governments may join together to form regional agencies which must file Regional Agency Integrated Waste Management Plans (RAIWMPs). Approved CoIWMPs or RAIWMPs must outline the means by which the locality will meet AB 939's required 25% waste stream reduction by 1995 and 50% waste stream reduction by 2000. Under AB 939, the primary components of waste stream reduction are recycling, source reduction, and composting.

CoIWMPs and RAIWMPs are comprised of several elements. Each area must produce a source reduction and recycling (SRR) element, which describes the constituent materials which compose solid waste within the area affected by the element, and identifies the methods the city will use to divert a sufficient amount of solid waste through recycling, source reduction, and composting to comply with the requirements of AB 939. Each area must also produce a household hazardous waste (HHW) element which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes which are generated by households in the area and should be separated from the solid waste stream. The siting element describes the methods and criteria a jurisdiction will use in the process of siting a new or expanding an existing solid waste disposal and transformation facility. The nondisposal facility (NDF) element must include a description of new facilities or expansion of existing facilities that will be needed to reach AB 939's mandated disposal reduction goals, and must identify transfer stations to be used by the local jurisdiction. Once a CoIWMP or RAIWMP is certified by the Board, the responsibility for enforcing its terms is delegated to a CIWMB-approved local enforcement agency (LEA).

The statutory duties of CIWMB also include conducting studies regarding new or improved methods of solid waste management, implementing public awareness programs, and rendering technical assistance to state and local agencies in planning and operating solid waste programs.

Additionally, CIWMB staff is responsible for inspecting solid waste facilities such as landfills and transfer stations, and reporting its findings to the Board. The Board is authorized to adopt implementing regulations, which are codified in Division 7, Title 14 of the California Code of Regulations (CCR).

CIWMB is composed of six full-time salaried members: one member who has private sector experience in the solid waste industry (appointed by the Governor); one member who has served as an elected or appointed official of a nonprofit environmental protection organization whose principal purpose is to promote recycling and the protection of air and water quality (appointed by the Governor); two public members appointed by the Governor; one public member appointed by the Senate Rules Committee; and one public member appointed by the Speaker of the Assembly.

Issues before the Board are delegated to any of six committees; each committee includes two Board members and is chaired by a third. The Permitting and Enforcement Committee handles all matters pertaining to the issuance and enforcement of solid waste facilities permits and state standards for solid waste. The Legislation and Public Affairs Committee recommends positions to the Board regarding relevant legislation, and oversees Board involvement in public affairs activities. The Policy, Research, and Technical Assistance Committee is responsible for all issues and policy development regarding research, development, and special wastes activities. The term "special wastes" refers to those wastes which require unique collection, handling, or disposal methods, such as HHW, sludge, and medical wastes. The Integrated Waste Management Planning Committee deals with the CoIWMPs and local waste reduction plans submitted by cities and counties, and helps cities and counties implement their plans. The Market Development Committee is responsible for developing new markets for recycled materials. The Administration Committee is responsible for contracts entered into by the Board, and for issues that do not clearly belong to any other committee.

In November, Assembly Speaker Willie Brown appointed Janet Lee Gotch, wife of outgoing San Diego Assemblymember Mike Gotch, to the Board. Gotch's appointment runs until January 1998, and requires no confirmation by the Senate; the Board position includes a \$95,403 annual salary. A statement issued by Speaker Brown's office gave no indication that Gotch has any particular background in

waste management; prior to her appointment, Gotch was a retail manager for Free-mark Abbey Wines in the Napa Valley town of St. Helena.

MAJOR PROJECTS

New Legislation May Signal CIWMB Consolidation, Abolition. Since Governor Wilson's January 1994 "State of the State" address, which proposed to abolish and consolidate both CIWMB and the Department of Conservation's (DOC) Division of Recycling (DOR) in order to streamline overlapping and duplicative state agencies, several pieces of legislation have been introduced to carry out the Governor's proposal. SB 2026 (Bergeson) would have abolished CIWMB and DOR, created the Department of Waste Management (DWM) within Cal-EPA, and transferred both agencies' duties to DWM. However, in April 1994, the Senate Governmental Organization Committee rejected SB 2026 by a 7-2 vote. [14:4 CRLR 148; 14:2&3 CRLR 160-62] The next legislative effort, AB 3392 (Sher), sought to streamline the overlapping activities of the CIWMB, DOC, and the Department of Toxic Substances Control (DTSC) by requiring a memorandum of understanding (MOU) between DOC and CIWMB to be prepared, adopted, and submitted to the Governor and the legislature, and establishing an interagency task force to coordinate the overlapping activities of CIWMB, DOC, and DTSC. However, Governor Wilson vetoed AB 3392 in September 1994 (see below). [14:4 CRLR 148, 151]

Currently, another effort to eliminate the duplicative activities of CIWMB, DOC, and DTSC may be evolving in the form of AB 59 (Sher). AB 939 authorizes CIWMB to establish a comprehensive research and development program by creating cooperative research and development facilities at universities and colleges in California; AB 59 would require CIWMB and DOC to form the comprehensive research and development program in cooperation. Further, AB 59 would require CIWMB and DTSC to end the overlap in the permitting process between the two agencies; existing law requires facilities accepting both hazardous and other solid wastes to obtain both a hazardous waste facilities permit from DTSC and a solid waste facilities permit from CIWMB. Although AB 59 would limit CIWMB and DOC "cooperation" and the CIWMB and DTSC overlap to specified areas, the legislative track record of SB 2026 and AB 3392 suggests that AB 59 is prone to amendment for further reform and consolidation of CIWMB. Ultimately, AB 59 may be affected by Governor Wilson's



January 1995 "State of the State" address, which again contained his promise to streamline government (see LEGISLATION).

CIWMB/DOC Memorandum of Understanding for Interagency Coordination at a Standstill. The CIWMB-approved memorandum of understanding (MOU) with DOC's Division of Recycling, aimed at better coordinating the operations of the two agencies and reducing duplication, was not signed by DOC. [14:4 CRLR 148-49] Following CIWMB's approval of the MOU in August 1994, DOC notified CIWMB that it was modifying the document and expected to return it to CIWMB for the Board's agreement to the revisions and/or amendments. Ironically, the agencies' failure to finalize the agreement comes after Governor Wilson's veto of AB 3392 (Sher) (see above), and his assurance that CIWMB and DOC "have identified areas of overlap and duplication and initiated administrative steps to ensure that coordination takes place."

At this writing, CIWMB staff expects to review DOC's revisions to the MOU at the January 18 meeting of CIWMB's Administration Committee; thereafter, the Board may review the MOU revisions and/or amendments at a future Board meeting.

CIWMB Waste Diversion Goals on Target. Following up on similar statements made at the Board's July and August 1994 meetings, CIWMB Chair Jesse Huff announced at the Board's October 26-27 and December 14 meetings that California is projected to meet AB 939's required 25% waste stream reduction from landfills by 1995 and 50% waste stream reduction by 2000 for each county and city. [14:4 CRLR 154] CIWMB made its prediction after surveying the waste stream reduction plans of 70 of the 529 city and county plans required to be submitted for review to the Board; the waste diversion plans, officially known as Source Reduction and Recycling Elements (SRREs), include such programs as residential collection of recyclables, yard waste collection and composting programs, development of school curricula on waste management, and commercial/industrial collection of recyclables. All counties and cities throughout California were expected to submit their SRREs by December 31, 1994.

CIWMB particularly acknowledged 39 Los Angeles County cities whose waste stream diversion plans have been approved by the Board; the 39 cities have projected an average diversion of 32% in 1995 and 52% by 2000. The remaining plans for Los Angeles County's 49 other

cities are expected to come before the Board within the next few months.

Board Adopts Policy for Granting Exemptions to the 50% Diversion Requirement by 2000. PRC section 41780 requires each county and incorporated city to divert 50% of its solid waste from landfill disposal through waste prevention, recycling, and composting by the year 2000; PRC section 41782 allowed exceptions to be made to this mandate under specified circumstances. However, AB 688 (Sher) (Chapter 1227, Statutes of 1994), effective January 1, 1995, repealed PRC section 41782 and added PRC section 41787, which specifies the requirements that jurisdictions must meet in order to be eligible to petition for exemption. In addition to small geographic size or low population density and small amount of waste generated, petitioning jurisdictions must now be in the process of implementing a source reduction and recycling program designed to handle the predominant classes and types of solid waste generated within the rural city and rural county; a public sector diversion and procurement program; and a public information and education program. AB 688 also requires that eligible jurisdictions have a population of 200,000 or less and be located in a rural area; AB 688 requires CIWMB to adopt regulations defining the term "rural area" in a manner that establishes criteria and conditions applicable only to cities and counties located in those areas of the state that are rural in character. Those criteria shall include, but are not limited to, the requirement that those cities and counties are located in agricultural or mountainous areas of the state and are geographically distant from markets for recyclable materials.

At its October 27 meeting, CIWMB agreed to evaluate the following five main criteria when determining if it is feasible for a jurisdiction to attain the 50% diversion goal: waste stream criteria; geographic, demographic, and economic factors; current programs and short-term goal achievement; proposed programs; and unique criteria. With regard to waste stream criteria, the Board will evaluate whether there is a lower than average waste generation rate; how the total waste loading compares to the statewide total; what percentage of waste stream is residential, commercial, and industrial; whether there are significant waste types for which no programs have been implemented or for which programs are inadequate; whether there are large waste types that cannot be recycled; and whether there is a significant waste generator in the jurisdiction that is not diverting materials. Under geographic, demographic, and economic factors, the Board will consider whether

the climate hinders the implementation of waste diversion programs; whether there are major geographical barriers that hinder the planning and implementation of programs; whether the jurisdiction is located a significant distance from the major markets for its materials; whether the population is widely dispersed; whether the jurisdiction's tax base is limited by significant state or federal ownership of land; whether the jurisdiction is experiencing severe economic distress; and whether the jurisdiction is pursuing every feasible means of generating revenue to fund waste diversion programs. With regard to the current programs and short-term goal achievement criteria, CIWMB will consider whether the jurisdiction achieved the 1995 goal of 25% diversion; the effectiveness of diversion programs currently in place; whether the jurisdiction is working cooperatively with other jurisdictions; and whether the jurisdiction is receiving diversion or market assistance from the Board. Under the proposed programs criteria, CIWMB will consider whether waste diversion programs are proposed to increase the level of diversion; and whether it is feasible to develop additional programs or bolster existing programs to increase the level of diversion. Finally, under unique criteria, the Board will evaluate the circumstances which are specific to each jurisdiction. Based on the Board's findings, CIWMB may approve, modify, or disapprove a request for reduction in or exemption from the 50% requirement; the Board may also set an appropriate, alternative medium-term diversion level.

Waste Tire Hauler Registration and Recycling Programs. At its November 16 meeting, CIWMB adopted sections 18449-18469, Title 14 of the CCR, emergency regulations implementing the Waste Tire Hauler Registration Program, as mandated by SB 744 (McCorquodale) (Chapter 511, Statutes of 1994). Among other things, the Waste Tire Hauler Registration Program requires that on and after January 1, 1995, every person who engages in the transportation of waste tires must hold a valid waste tire hauler registration, unless exempt as specified. In addition, PRC section 42951 requires that as of January 1, 1995, any person who gives, contracts, or arranges with another person to transport waste tires shall only utilize a person holding a waste tire registration from the Board; under PRC section 42962, hauling or contracting with a hauler without a valid registration may result in civil and/or administrative penalties for the hauler, contractor, and/or receiving facility. The Program also provides for specific exemptions from registration. For exam-



ple, an exemption may be granted to a licensed or franchised solid waste collector transporting no more than nine waste tires at a time per vehicle; a person transporting no more than four waste tires at any one time; a person transporting waste tires in a vehicle owned or operated by the United States, the State of California, or any county, city, town, or municipality in the state; a person transporting solid waste if the waste tires were inadvertently mixed with solid waste and it is not economical or safe to remove or recover the waste tires; and a person transporting waste tires from outside the state with no loading or unloading of waste tires within California.

CIWMB's emergency regulations—which are valid for 120 days from the date of approval by the Office of Administrative Law (OAL)—set forth definitions, registration and general provisions, and information on registration renewal, suspension, and revocation. In the future, the Board is expected to commence the rulemaking process to adopt the regulations on a permanent basis; at that time, CIWMB is expected to add enforcement-related regulations to the rulemaking package. At this writing, the emergency regulations are being reviewed by OAL.

In December, CIWMB began encouraging interested businesses to apply for grants funded by the Waste Tire Recycling Program; the grants are the result of fees collected from the Program, as established in sections 17225.701–18499 (non-consecutive), Title 14 of the CCR. [14:1 CRLR 129; 13:4 CRLR 149; 13:1 CRLR 102] A 25-cent fee is assessed for each tire left for disposal with a tire dealer or storage facility; the collected fees are deposited into the California Tire Recycling Management Fund. The grants, funded by the collected fees, are intended to divert tires from disposal in California landfills by helping to foster new businesses which seek to promote innovative research and encourage recycling programs at the local level. Grants of up to \$75,000 are available for each project; application materials are available by calling the Board's Grants Hotline at (916) 225-2577.

CIWMB Approves Recycling Loans to Five California Businesses in RMDZs. In November, CIWMB approved low-interest loans totalling \$2.14 million to five California businesses that plan to create 74 new jobs and divert more than 23,800 tons of glass dust, metal, wood, paper, plastic, and other waste materials from landfills. The firms are located in four of California's 29 recycling market development zones (RMDZs), geographic areas defined by local jurisdictions working with CIWMB to attract businesses that

utilize waste diversion materials and methods. [14:1 CRLR 129; 13:4 CRLR 150; 13:2&3 CRLR 164] To date, CIWMB has approved 34 low-interest loans totalling \$12.6 million to 33 businesses. The five recent businesses selected to receive loans are California Fiberloft (City of Los Angeles RMDZ), \$1 million; Firma, Inc. (County of Los Angeles RMDZ), \$500,000; Productivity California, Inc. (County of Los Angeles RMDZ), \$266,000; Pure Tech Recycling of California (Kern County/City of Lancaster RMDZ), \$300,000; and Into the Woods (Sonoma/Mendocino Counties RMDZ), \$75,000.

RMDZ Designation Regulations. On November 18, CIWMB published notice of its intent to amend sections 17914 and 17914.5, Title 14 of the CCR, to specify procedures for the redesignation of RMDZs. Sections 17914 and 17914.5 describe the redesignation process; according to CIWMB, however, the sections fail to include sufficient detail on the specific information which must be included in the redesignation application, particularly if the application is for a zone expansion. Accordingly, CIWMB's proposed changes would clarify the procedures for zone redesignation, define categories of redesignation, and specify application requirements for each category. CIWMB accepted public comments on the proposal until January 2; at this writing, no public hearing is scheduled. The changes await adoption by the Board and review and approval by OAL.

Rulemaking Update. The following is a status update on other CIWMB rulemaking proposals discussed in detail in recent issues of the Reporter:

• **Regulatory Tiers.** On October 4, CIWMB held a public hearing on proposed new sections 18100–18105.11, Title 14 of the CCR; the new sections would establish a framework of five "regulatory tiers" of solid waste facilities, which will vary in the degree of regulatory review and oversight by the Board. Facilities or operators that pose a lesser potential threat to public health, public safety, and the environment would qualify for tiers with less oversight. The first tier is the pre-authorized tier: Operators would not be required to obtain a license, permit, or even notify the Board of their operations. The second tier is the enforcement agency notification tier: Operators would be required to notify enforcement agencies of their operations. The remaining three tiers—registration permit, standardized permit, and full permit—would be more closely monitored by the Board and the Board would issue permits applicable to the corresponding tier. [14:4 CRLR 150]

Despite the fact that several witnesses at the public hearing questioned the statutory authority of the Board to create the new regulatory structure, CIWMB approved the proposed rules subject to only minor modifications and released the modified language for an additional 15-day public comment period. At its November 16 meeting, CIWMB adopted the new sections, which await review and approval by OAL.

• **Permit Reform Act Regulations.** Instead of adopting proposed new sections 18998–18999, Title 14 of the CCR, to comply with the state's Permit Reform Act of 1981 [14:4 CRLR 149], CIWMB incorporated much of the proposed language into its regulatory tier rulemaking package (see above). The regulatory tier proposal described above now sets forth the time periods required for the processing of permits issued by CIWMB and the LEAs; establishes an appeals process by which an applicant who has been denied a permit or whose permit is delayed may appeal; and sets forth the timeframes within which CIWMB and the LEAs must process a permit application.

• **Recycled Content Trash Bag Program Amendments.** At its December meeting, CIWMB adopted proposed amendments to sections 17975–17985, Title 14 of the CCR, which reflect legislative changes to the Recycled Content Trash Bag Program, provide a review of the recycled post-consumer material quality standards, and reflect experience gained from the Board's first annual certification for the Recycled Content Trash Bag Program. [14:4 CRLR 149; 14:2&3 CRLR 163; 14:1 CRLR 129] Under the Board's amendments, bag manufacturers would no longer be asked to supply CIWMB with customer lists as part of their annual certification to the Board. The changes would also clarify and make specific definitions of terms, the certification process, and audit procedures; according to CIWMB, the amendments "ease understanding of the program for the regulated community, and thus increase compliance with its requirements." The Board also contends that the amendments will impose no additional recordkeeping costs. At this writing, the changes await review and approval by OAL.

• **Disposal Reporting System Regulations.** At its October 27 meeting, CIWMB adopted proposed new sections 18800–18813, Title 14 of the CCR, which establish a reporting system to determine the jurisdiction of origin of solid waste and quantify the aggregate amounts from each jurisdiction; the quantification is necessary to determine the percentages attained



in achieving the diversion goals mandated by PRC section 41780. [14:4 CRLR 149; 14:2&3 CRLR 163] Under the new regulations, a one-week survey will be conducted four times per year. During the survey period, waste haulers must report the jurisdiction of origin of waste hauled to landfills, transfer stations, and transformation facilities, which in turn are required to tally and relay the tonnage figures to local governments and CIWMB. Waste hauled out of state must be reported to the county of origin on a quarterly basis. Local governments are required to file an annual report with CIWMB stating the total tonnage of waste disposed and whether its diversion goals were met.

On December 29, OAL approved the regulations, with the exception of sections 18813(b) and (c), which OAL disapproved and severed from the rulemaking package with CIWMB's authorization. According to OAL, it disapproved section 18813(b) because the record of the rulemaking proceeding did not contain substantial evidence of necessity for providing that alternative daily cover may count for no more than 7% of a jurisdiction's 1995 disposal reduction requirement of 25%; OAL disapproved section 18813(c) because it did not clearly indicate the extent to which alternative daily cover counts toward a jurisdiction's disposal reduction requirement for the year 2000.

• **Minimum Standards for Composting Facilities.** On October 4, CIWMB held a public hearing on its intent to adopt new sections 17850, 17852, 17854, 17858, 17860, 17862, 17862.1-17862.11, 17865, 17866, 17867.1-17867.5, 17868.1-17868.4, 17869.1-17869.3, and 17870; amend sections 17851, 17853, 17855, 17856, 17857, 17859, and 17861; and repeal sections 17867, 17869, 17871, 17873, 17875, 17876, 17877, 17879, 17881, 17883, 17885, 17886, 17887, 17889, 17891, 17893, and 17895, Title 14 of the CCR, to change the minimum standards for green materials facilities and for the design and operation of other types of composting facilities. [14:4 CRLR 150] According to the Board, the proposed regulatory action is aimed at ensuring that composting facilities are designed and operated in a manner which protects the public health, public safety, and the environment. The proposed rulemaking would also establish a tiered structure for regulatory facilities classified as enforcement agency notification, registration permit, and standard permit facilities (see above). The Board considered adoption of the proposed regulatory changes at its December meeting and voted 5-0 (with new member Janet Gotch recusing herself from the vote due to a potential conflict of interest) to

refer the proposal back to the Permitting and Enforcement Committee for further revisions. At this writing, the Board is expected to consider adoption of these new regulations at its January 25 meeting.

• **Public Disclosure Policy and Procedure.** On November 28, OAL approved CIWMB's adoption of new sections 17041-17046, Title 14 of the CCR, which articulate CIWMB's policy regarding the disclosure of public records. The Board receives numerous requests for documents in its possession; however, individuals requesting information often do not know how to address their inquiries to the Board. The new sections seek to clarify the procedure for requesting documents and provide a uniform procedure for CIWMB to follow in processing such requests. [14:4 CRLR 150]

• **Rigid Plastic Packaging Container Program.** On November 4, OAL approved CIWMB's adoption of new sections 17942-17952, Title 14 of the CCR, which implement SB 235 (Hart) (Chapter 769, Statutes of 1991), the Rigid Plastic Packaging Container Act. [14:4 CRLR 150; 14:2&3 CRLR 161]

• **Funding Formula Revision.** On October 12, OAL approved CIWMB's amendments to sections 18281 and 18282, Title 14 of the CCR; the amendments change the minimum annual deposit requirements for operators of solid waste disposal facilities who demonstrate the required financial assurance for closure and/or postclosure maintenance costs with either a trust fund or enterprise fund. [14:4 CRLR 150; 14:2&3 CRLR 163; 14:1 CRLR 129]

• **Used Oil Recycling Program.** On November 16, CIWMB adopted proposed amendments to sections 18601-18655.6, Title 14 of the CCR, which describe the requirements of the Board's used oil recycling program. [14:4 CRLR 150; 14:2&3 CRLR 162; 13:4 CRLR 149] The proposed changes clarify the procedures for certifying and operating used oil collection centers and reduce the amount of information required from used oil recycling program applicants. At this writing, the amendments await review and approval by OAL.

• **LEA Designation and Certification Revisions.** On October 26, OAL approved CIWMB's proposed amendments to Chapter 5, Division 7, Title 14 of the CCR, which establishes guidelines for the designation, certification, and evaluation of LEAs responsible for enforcing state minimum standards governing the design and operation of solid waste facilities and disposal sites. [14:4 CRLR 151; 14:2&3 CRLR 161]

• **CIWMB Readopts Emergency Earthquake Regulations.** On September 20, in continuing response to the January 1994 Northridge earthquake, CIWMB again re-

adopted—on an emergency basis—sections 17008-17014, Title 14 of the CCR, which allow landfills to exceed their tonnage limits in accepting earthquake debris; by allowing solid waste facility operators to waive any standard imposed by any term or condition of a solid waste facilities permit in accepting earthquake-related solid waste, CIWMB hopes to expedite the recovery process by allowing owners to quickly clear their property. [14:4 CRLR 151; 14:2&3 CRLR 161] CIWMB's September readoption keeps the emergency regulations in effect until January 19, 1995.

LEGISLATION

AB 59 (Sher). The California Integrated Waste Management Act of 1989 authorizes CIWMB to establish a comprehensive research and development program, including but not limited to the establishment of cooperative research and development facilities at universities and colleges in the state, designed to achieve specified goals regarding innovative resource management and waste reduction programs. As introduced December 16, this bill would authorize the Board to establish those cooperative research and development facilities in cooperation with the Department of Conservation (see MAJOR PROJECTS).

The Act requires CIWMB and certified LEAs to perform specified functions with regard to the regulation of solid waste management, including with regard to the issuance and enforcement of solid waste facilities permits. This bill would require each proposed LEA, as part of the certification process, to establish and maintain an inspection program, as specified.

The Act provides that CIWMB may designate and certify a LEA within each county to carry out specified powers and duties; the Act requires the Board, if a LEA is not designated and certified, in addition to its other powers and duties, to be the enforcement agency within the county. The Act authorizes the Board, when acting as the enforcement agency, to charge reasonable fees to the local governing body to recover its costs, in addition to other specified fee authority. This bill would require CIWMB, if it is the enforcement agency and a LEA is then designated and certified by the Board, to continue to act as the enforcement agency for the remainder of the fiscal year unless otherwise specified by the Board. The bill would require CIWMB, when it is the enforcement agency, to charge reasonable and necessary fees, as determined by the Board, to recover its costs of operation. The bill would prohibit the Board and the LEA from, at any time, imposing duplicative



fees or charges on the owner or operator of a solid waste facility. The bill would require any fees or charges imposed by the LEA pursuant to specified provisions of the Act to bear a direct relationship to the reasonable and necessary cost, as determined by the enforcement agency, of providing those activities or programs, as specified. The bill would also require, if CIWMB is the enforcement agency, the Board and the local governing body, with the exception of the local governing body for Stanislaus County, to enter into a specified agreement.

The Act requires any person who proposes to become an operator of a solid waste facility to file with the LEA having jurisdiction over the facility, or CIWMB if no LEA is designated and certified, an application for a solid waste facilities permit at least 120 days in advance of the date on which it desires to commence operation. The Act prohibits the operator of a solid waste facility from making a significant change in the design or operation of any solid waste facility, except in conformance with the terms and conditions of an approved solid waste facilities permit or revised solid waste facilities permit issued by the LEA, or the Board acting as the enforcement agency, to the operator. This bill would instead require that application to be filed 150 days in advance of the date on which it is desired to commence operations unless the enforcement agency allows the operator to commence operations prior to that date. The bill would prohibit the operator of a solid waste facility from making any significant change in the design or operation of the solid waste facility, not authorized by the existing permit, unless the terms and conditions of the solid waste facilities permit are revised to reflect the change, or the change is allowed by the enforcement agency, due to specified circumstances, without requiring a revised permit. The bill would also specify the procedure for changing the person identified as the owner or operator of a solid waste facility on the solid waste facilities permit, and would prescribe related matters.

The Act provides for the denial, suspension, or revocation of permits, and generally provides for the administrative enforcement of solid waste management. This bill would require, if the enforcement agency determines that a person is operating a solid waste facility without a permit or disposing of solid waste in an unauthorized manner, the enforcement agency to issue a cease and desist order. The bill would prohibit any change in the design or operation of a solid waste facility unless the operator meets specified conditions.

The bill would require that, by January 1, 1996, the Board prepare a list of solid waste facilities permits that have not been reviewed in the five-year period prior to the formation of the list, and which meet certain specified conditions.

The Act requires solid waste facilities that accept both hazardous wastes and other solid wastes to obtain both a hazardous waste facilities permit from the Department of Toxic Substances Control and a solid waste facilities permit from CIWMB. This bill would repeal those provisions requiring facilities that accept both hazardous wastes and other solid waste from the requirement to obtain both a hazardous waste facilities permit and a solid waste facilities permit. This bill would specifically exempt a hazardous waste facility that receives nonhazardous, nonmunicipal solid waste from the requirement to obtain a solid waste facilities permit, if specified conditions are met.

The bill would repeal and recast provisions of the Act allowing an applicant to request a hearing if the enforcement agency denies a permit or if the applicant determines that the terms or conditions imposed by the permit are inappropriate, as determined by the applicant. The bill would revise provisions pertaining to the denial, suspension, or revocation of permits. The bill would provide for a permit suspension where changed conditions at the solid waste facility necessitate a permit revision or modification, as specified. The bill would also revise and recast provisions pertaining to corrective action and cease and desist orders, provide for civil penalties and compliance orders, and specify enforcement procedures.

The Act defines the term "solid waste" as excluding hazardous waste. This bill would require CIWMB to regulate the disposal of waste containing asbestos at any waste management unit which is classified under specified regulations, unless the waste management unit is subject to a hazardous waste facilities permit issued by the Department of Toxic Substances Control. [*A. NatRes*]

AB 35 (Mazzoni), as introduced December 5, would prohibit a solid waste facility for which a conditional use permit was issued prior to January 1, 1976, which is located in whole or in part within the coastal zone, as defined, and which is located within two miles of any federal park or recreation area, any unit of the state park system, or any ecological reserve, from being operated, or expanded to operate, in a manner that is not authorized pursuant to the terms and conditions specified in the conditional use permit, or pursuant to the terms and conditions specified

in the solid waste facilities permit issued by the LEA, unless the LEA issues a new or revised conditional use permit or solid waste facilities permit, as the case may be, which includes terms and conditions that allow that operation or expansion and that ensure that any adverse impacts, including but not limited to vehicle traffic, noise, litter, and odors, are fully mitigated.

The California Environmental Quality Act requires a lead agency to prepare an environmental impact report on any project that it proposes to carry out or approve that may have a significant effect on the environment unless the project has been exempted from the Act. This bill would provide that a solid waste facility, for which a conditional use permit was issued prior to January 1, 1976, which is located in whole or in part within the coastal zone, and which is located within two miles of any federal park or recreation area, any unit of the state park system, or any ecological reserve, is prohibited from being operated, or expanded to operate, in a manner that is not authorized pursuant to the terms and conditions specified in the conditional use permit, or pursuant to the terms and conditions specified in the solid waste facilities permit issued by the local enforcement agency, unless the lead agency has prepared and certified an environmental impact report.

The California Integrated Waste Management Act of 1989 prohibits the operator of a solid waste facility from making a significant change in the design or operation of any solid waste facility, except in conformance with the terms and conditions in an approved solid waste facilities permit or revised solid waste facilities permit issued by the LEA, or by CIWMB acting as the enforcement agency, to the operator. This bill would specify that the operator of a solid waste facility, for which a conditional use permit was issued prior to January 1, 1976, which is located in whole or in part within the coastal zone, and which is located within two miles of any federal park or recreation area, any unit of the state park system, or any ecological reserve, is included in that prohibition. [*A. NatRes*]

■ LITIGATION

On November 18 in *Association of National Advertisers, Inc., et al. v. Lungren*, 44 F.3d 726, the U.S. Ninth Circuit Court of Appeals affirmed the holding of the U.S. District Court for the Northern District of California that Business and Professions Code section 17508.5, which regulates environmental claims made by manufacturers and distributors of consumer goods, is a constitutionally permissible limitation on speech. Section 17508.5 restricts man-



ufacturers and distributors from representing that their consumer goods are "ozone friendly," "biodegradable," "photodegradable," "recyclable," or "recycled" unless the products meet the statutory definitions of those terms.

In 1990, the legislature passed the Environmental Advertising Claims Act, which added section 17508.5 [10:4 CRLR 148]; the passage of the Act was prompted by the increasing use of environmental product advertising with no clear common meaning to the terms advertisers used and the resulting confusion among consumers. In February 1992, the Association of National Advertisers filed an action against Attorney General Dan Lungren, and sought a declaration that the statute impermissibly restricts commercial and noncommercial speech and is unconstitutionally vague. The trial court found that the statute restricts commercial speech only, is adequately tailored to directly advance substantial state interests in protecting consumers and the environment, and is therefore allowable under the first amendment. However, the trial court found that the statute's definition of the term "recyclable" was unconstitutionally vague and therefore unenforceable. In affirming the district court's holding, the Ninth Circuit found that the statute sets forth objective and consistently applied standards that allow consumers to rely on ecological claims made about products.

■ FUTURE MEETINGS

January 25 in Sacramento.
February 22-23 in Palm Springs.
March 29 in Sacramento.
April 26-27 in San Diego.
May 24-25 in Bakersfield.
June 28 in Sacramento.
July 26-27 in Ventura County.
August 23 in Sacramento.
September 27-28 in Susanville.
October 25-26 in Napa.
November 15 in Sacramento.
December 13 in Sacramento.

DEPARTMENT OF PESTICIDE REGULATION

Director: James Wells
(916) 445-4000

The California Department of Food and Agriculture's Division of Pest Management officially became the Department of Pesticide Regulation (DPR) within the California Environmental Protection Agency (Cal-EPA) on July 17,

1991. DPR's enabling statute appears at Food and Agricultural Code (FAC) section 11401 *et seq.*; its regulations are codified in Titles 3 and 26 of the California Code of Regulations (CCR).

With the creation of Cal-EPA, all jurisdiction over pesticide regulation and registration was removed from CDFA and transferred to DPR. Pest eradication activities (including aerial malathion spraying, quarantines, and other methods of eliminating and/or preventing pest infestations) remain with CDFA. The important statutes which DPR is now responsible for implementing and administering include the Birth Defect Prevention Act (FAC section 13121 *et seq.*), the Pesticide Contamination Prevention Act (section 13141 *et seq.*), and laws relating to pesticide residue monitoring (section 12501 *et seq.*), registration of economic poisons (section 12811 *et seq.*), assessments against pesticide registrants (section 12841 *et seq.*), pesticide labeling (section 12851 *et seq.*), worker safety (section 12980 *et seq.*), restricted materials (section 14001 *et seq.*), and qualified pesticide applicator certificates (section 14151 *et seq.*).

DPR includes the following branches:

1. The Pesticide Registration Branch is responsible for product registration and coordination of the required evaluation process among other DPR branches and state agencies.

2. The Medical Toxicology Branch reviews toxicology studies and prepares risk assessments. Data are reviewed for chronic and acute health effects for new active ingredients, label amendments on currently registered products which include major new uses, and for reevaluation of currently registered active ingredients. The results of these reviews, as well as exposure information from other DPR branches, are used in the conduct of health risk characterizations.

3. The Worker Health and Safety Branch evaluates potential workplace hazards resulting from pesticides. It is responsible for evaluating exposure studies on active and inert ingredients in pesticide products and on application methodologies. It also evaluates and recommends measures designed to provide a safer environment for workers who handle or are exposed to pesticides.

4. The Environmental Monitoring and Pest Management Branch monitors the environmental fate of pesticides, and identifies, analyzes, and recommends chemical, cultural, and biological alternatives for managing pests.

5. The Pesticide Use and Enforcement Branch enforces state and federal laws and regulations pertaining to the proper and

safe use of pesticides. It oversees the licensing and certification of dealers and pest control operators and applicators. It is responsible for conducting pesticide incident investigations, administering the state pesticide residue monitoring program, monitoring pesticide product quality, and coordinating pesticide use reporting.

6. The Information Services Branch provides support services to DPR's programs, including overall coordination, evaluation, and implementation of data processing needs and activities.

Also included in DPR are the Pesticide Registration and Evaluation Committee (PREC), the Pesticide Advisory Committee (PAC), and the Pest Management Advisory Committee (PMAC). PREC meets monthly, bringing together representatives from all public agencies with an interest in pesticide regulation to consult on pesticide product registration, renewal, and reevaluation issues. PAC meets bimonthly, bringing together representatives from public agencies with an interest in pesticide regulation to discuss all policy issues regarding pesticides. PMAC, established in conjunction with CDFA, also meets bimonthly, and seeks to develop alternative crop protection strategies enabling growers to abandon traditional, chemical-dependent systems and reduce the potential environmental burden associated with pesticide use.

■ MAJOR PROJECTS

Clean Air Act Activities. The federal Clean Air Act requires each state to develop a state implementation plan (SIP) for attaining and maintaining air quality standards for air pollutants such as ozone. The state Air Resources Board (ARB) has identified pesticide application as a source of volatile organic compounds (VOC) in many California air basins; VOCs are precursors to tropospheric ozone formation which is harmful to both human health and vegetation. Because the state of California failed to develop an acceptable SIP for six major air basins, a federal court ordered the U.S. Environmental Protection Agency (EPA) to prepare and impose on California a federal implementation plan (FIP). [14:4 CRLR 155-56] As a result, on November 15, ARB approved and submitted to the U.S. Environmental Protection Agency (EPA) a plan which ARB contends is designed to meet federal ozone standards as required by the Act; if approved by the EPA, ARB's plan will preclude imposition of the FIP (*see* agency report on ARB for related discussion).

For its part in this process, DPR drafted a plan for reducing agricultural and com-