



AB 1460 (Morrissey). Existing law requires ARB to develop a test procedure and to adopt regulations prohibiting the use of heavy-duty motor vehicles which have excessive smoke emissions, and provides for the enforcement of those provisions, including requiring the vehicle owner to immediately correct deficiencies, and to pay a specified civil penalty. As amended April 24, this bill would delete the provisions requiring ARB to adopt those regulations. The bill would prohibit the use of any heavy-duty motor vehicle with excessive smoke emissions or other emissions-related defects, except as to vehicle engines of the 1994 and subsequent model years, and would make related changes. [A. Trans]

AB 1675 (Goldsmith). Existing law designates ARB as the agency responsible for preparation of the SIP required by the federal Clean Air Act, and requires that the plan only include those provisions that are necessary to meet the requirements of the federal Act. As amended March 30, this bill would prohibit ARB from adopting or enforcing any standard for emissions of any pollutant from heavy-duty diesel motor vehicles that is more stringent than the federal standard for the same pollutant, unless ARB finds that the additional emission reduction is necessary to achieve the requirements of the SIP or a FIP; determines the amount of the necessary additional reduction; has adopted and implemented a heavy-duty diesel motor vehicle scrappage program to remove older, high-polluting vehicles from the highways at a faster rate than would occur without the scrappage program; and finds that the emission reduction that can be achieved pursuant to the scrappage program will not be sufficient to achieve the reduction required by the state or federal implementation plan. [A. NatRes]

■ 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 1994 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

May 25 in Sacramento.
June 29-30 in Sacramento.
July 27-28 in Sacramento.
September 28-29 in Sacramento.
October 26-27 in Sacramento.
November 16-17 in Sacramento.
December 14-15 in Sacramento.

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Executive Director:

Ralph E. Chandler

Chair: Vacant

(916) 255-2200

The California Integrated Waste Management 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 and confirmed by the Senate); 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 and confirmed



by the Senate); two public members appointed by the Governor (and who need not be confirmed by the Senate); 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 Local Assistance and Planning Committee deals with the CoIWMs 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 January, Governor Wilson named then-CIWMB Chair Jesse Huff to serve as Director of the Department of Toxic Substances Control (DTSC) as part of the Administration's reorganization of Cal-EPA. Huff had served as CIWMB Chair since his appointment by Wilson in 1990, and had also served as Director of the Department of Finance under former Governor George Deukmejian. Although Wilson stated that Huff was moved to DTSC because he is a "can-do manager," others view the move as a further politicization of Cal-EPA. At this writing, the Governor has yet to fill the vacancy created by Huff's transfer.

Also in January, the Senate Rules Committee reappointed Wesley Chesbro to a second four-year term with CIWMB; Chesbro is Vice-Chair of CIWMB, heads the Board's Local Assistance and Planning Committee, and is a member of the Board's Legislation and Public Affairs, Administration, and Market Development committees. Before joining CIWMB, Chesbro was Vice-Chair of the League of California Cities' Environmental Quality Committee.

In February, CIWMB member Edward Heidig, who had served one year on the Board without Senate confirmation and was elected CIWMB Chair after the departure of Jesse Huff, resigned from the Board; the announcement came amid charges during the Senate confirmation process by Senate President pro Tem Bill Lockyer that Heidig failed to disclose ex parte contacts with private groups who do business with the Board. Heidig complained that the Senate's investigation of him was partisan in nature, and contended that he asked Governor Wilson to withdraw his nomination to CIWMB after hearing that he would be rejected by the Senate Rules Committee despite his "solid rebuttal of all the issues raised."

In March, Governor Wilson appointed Robert Frazee, former 74th District Assemblymember and Mayor of Carlsbad, to CIWMB. Frazee's appointment runs until March 1999, and requires Senate confirmation.

■ MAJOR PROJECTS

New Legislation Seeks CIWMB Consolidation, Abolition. Since Governor Wilson's January 1994 "State of the State" address, in which he proposed to abolish CIWMB in order to streamline overlapping and duplicative state agencies, and his renewed promise to do so in the January 1995 "State of the State" address, several pieces of legislation have been introduced to carry out the Governor's proposal. These bills stem in part from a March 1994 report by the Little Hoover Commission, which found that the placement of overlapping recycling mandates in three separate agencies—CIWMB, the Department of Conservation's (DOC) Division of Recycling (DOR), and the Department of Toxic Substances Control (DTSC)—has resulted in duplication of work, public confusion, and lost opportunities for maximum effectiveness in implementing state solid waste management policies. [14:2&3 CRLR 16] So far, these bills have been unsuccessful—SB 2026 (Bergeson), sponsored in 1994 by the Wilson administration to merge CIWMB and DOR into a Cal-EPA department headed by an executive branch appointee, was killed in the Senate Governmental Organization Committee; and AB 3392 (Sher), a 1994 bill which would have required CIWMB and DOC to enter into a memorandum of understanding to eliminate overlapping activities, was vetoed by Wilson because the agencies had already begun that process (see below). [15:1 CRLR 129-30; 14:4 CRLR 148]

Several new bills have emerged in 1995 to address the problem identified by the

Governor and the Little Hoover Commission (see LEGISLATION). For example, AB 926 (Rainey) would abolish CIWMB and transfer its powers and duties to a division within the Resources Agency—in effect sending the regulatory program back where it came from prior to the passage of AB 939 and the creation of Cal-EPA, but this time in the form of a division headed by an executive branch appointee rather than a multi-member policymaking board. AB 926 is a two-year bill, and will not be acted on until 1996.

Another effort to consolidate and eliminate the duplicative activities of CIWMB is contained in SB 174 (Killea), which would transfer the Division of Recycling and its functions from DOC to CIWMB, and combine all overlapping functions and programs into the Board. SB 174 would also reduce CIWMB's membership to five members by eliminating one position presently appointed by the Governor.

A further attempt to eliminate some of the duplicative activities of CIWMB, DOC, and DTSC is found in AB 59 (Sher). [15:1 CRLR 129, 132-33] AB 939 authorized CIWMB to establish a comprehensive research and development program by creating cooperative research and development facilities at universities and colleges in California; as amended April 26, AB 59 would encourage CIWMB and DOC to form the comprehensive research and development program in cooperation. Further, AB 59 would require CIWMB and DTSC to end overlap in the permitting process between the two agencies. While 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, AB 59 would provide that a solid waste facilities permit is not required for a hazardous waste disposal facility which accepts solid waste if the facility meets various criteria which are equal to or more stringent than those criteria needed to obtain a solid waste facilities permit.

A final endeavor to end overlap may be taking form in SB 1163 (Leslie), which—as introduced in February—called for consolidation of CIWMB with the Water Resources Control Board (WRCB). As amended April 17, however, SB 1163 would only make changes to the terms "disposal site," "disposal facility," and "solid waste," to establish consistent definitions of these terms for purposes of an ongoing effort to reduce overlap between CIWMB and WRCB. [13:2&3 CRLR 163] Senator Leslie's office points out that SB 1163 is still active and subject to further amendment to return the bill to its primary purpose.



CIWMB/DOC Memorandum of Understanding for Interagency Coordination Remains Stalled. In a related matter, the CIWMB-approved memorandum of understanding (MOU) with DOC's Division of Recycling, aimed at coordinating operations between the two agencies and reducing duplication, remains unsigned by DOC. DOC is continuing to modify the MOU and has promised to return it to CIWMB for the Board's agreement to revisions and/or amendments by DOC. The agencies' continued failure to finalize the agreement casts doubt on Governor Wilson's assurances that CIWMB and DOC have identified areas of overlap and duplication and initiated administrative steps to ensure that coordination takes place. [15:1 CRLR 130; 14:4 CRLR 148-49]

CIWMB's efforts to enter into the MOU are apparently motivated by criticism of the agency from the Governor, the legislature, the Little Hoover Commission, and Cal-EPA Secretary James Stock, among others, who contend that much overlap and duplication exists between CIWMB and DOR. Thus, the MOU signed by CIWMB in August 1994 asserts that CIWMB and DOR engage in the same or similar activities with regard to a number of programs, thus causing inefficiencies; the MOU functions as a broad overview of how the agencies could better coordinate in order to eliminate overlap and duplication of effort.

At its February meeting, CIWMB did announce that DOC had agreed to three memoranda of agreement (MOA) for areas of specific coordination. The first MOA (MOA-A) designates CIWMB as the lead agency on beverage container-related issues and entrusts CIWMB with the implementation of the "Buy Recycled" programs developed by DOC. The overlap on the beverage container-related issues stems from PRC section 14501(f), which delegates the duty of establishing recycling centers to DOC, and Public Contract Code section 12162(b) and (c), which establishes CIWMB's responsibility for recycled product procurement reporting and use of price preferences for recycled materials. MOA-A does not completely eliminate duplicity, as DOC will still act as a consultant on all beverage container-related issues. The second MOA (MOA-B) establishes a coordination program between CIWMB and DOC for curriculum development, youth outreach programs, and other education activities to emphasize beverage container recycling and litter abatement issues. The overlapping authority results from PRC section 14530.5, which requires DOC to create a public awareness program regarding beverage container recycling, and PRC

sections 42603-42605, which create a non-specific Integrated Waste Management Education Program in CIWMB. The final MOA (MOA-C) creates coordination strategies for waste stream diversion data collection, organization, and eventual reporting. Overlap in data collection comes from DOC's responsibilities under the California Beverage Container Recycling and Litter Reduction Act, and CIWMB's duties under the California Integrated Waste Management Act to oversee and measure waste reduction.

At this writing, CIWMB staff anticipates receiving the formal MOU from DOC in the near future, after which it will review the changes made by DOC.

Implementation of "Regulatory Tier" Framework. At its March 29 meeting, CIWMB voted unanimously to approve a general methodology for the placement of solid waste facilities and operations into its recently-approved "regulatory tier" regulations (*see below*). The regulatory tier framework allows for varying degrees of oversight by CIWMB; facilities or operators that pose a lesser potential threat to public health, safety, and the environment would qualify for tiers with little or no Board oversight. [15:1 CRLR 131; 14:4 CRLR 150]

The general methodology approved by CIWMB operates as a guide for placing types of facilities or operations into one of five tiers. The methodology consists of a five-step process: defining the class or type of facility or operation, using location, nature and quantity of material handled, and handling method as critical factors; identifying environmental indicators that the facility or operation might impact; identifying mitigation measures necessary to address potential environmental impacts; determining the level of CIWMB regulatory oversight needed to achieve mitigation; and developing state minimum standards defining the class or type of facility or operation and mitigation measures necessary for safe operation. Contaminated soil facilities or operations are the first category scheduled for placement within the regulatory tier structure; at this writing, CIWMB expects to initiate a rulemaking process to complete this first placement this summer.

Policy on Alternative Daily Cover Challenged in Court. At its January 25 meeting, CIWMB adopted a policy stating that, for purposes of source reduction and AB 939's waste stream diversion requirements, alternative daily cover (ADC) used at landfills is considered diversion by the Board; however, limits will apply to ADC use. In December 1994, the Office of Administrative Law (OAL) disapproved a portion of the Board's proposed disposal

reporting system regulations that would have limited ADC use to 7% of the 25% waste diversion goal for 1995. [15:1 CRLR 131-32] At CIWMB's January meeting, the Board's legal counsel reported that in OAL's opinion, CIWMB is authorized to define ADC as diversion or disposal, but not both; CIWMB may not define some ADC as diversion and some as disposal, nor may it change the definition of ADC over time; and CIWMB may regulate the use of ADC at a landfill by reference to public health and safety.

CIWMB Chair Jesse Huff commented that a landfill operator's use of ADC instead of soil for cover is already subject to thirteen criteria and must be authorized by the operator's permit. The Board then adopted the following policy on ADC use: "ADC is determined to be diversion and is limited to twelve inches for green materials and monitored by landfill-based performance standards upon completion and approval of a successful demonstration project." The Board also reaffirmed its stance that "composting is a goal," and directed staff to research any conforming revisions to the disposal reporting system regulations that may be necessary.

In a petition for writ of mandate filed on January 30, the Natural Resources Defense Council challenged—among other things—CIWMB's adopted policy as "underground rulemaking" and in violation of the California Administrative Procedure Act (APA), the California Environmental Quality Act, and the California Integrated Waste Management Act (*see LITIGATION*).

Household Hazardous Waste Form Revision. On March 17, CIWMB published notice of its intent to amend sections 18751.2(a)(1) and 18751.4(b)(1), Title 14 of the CCR, to revise Form CIWMB-303 concerning HHW. The form is designed to assist LEAs in accurately determining the types and quantities of HHW generated in their jurisdictions. The current form lists types and categories of hazardous wastes expected to be generated by households; the proposed changes would revise the form to include U.S. Environmental Protection Agency (EPA) identification numbers and require that a copy of the form be sent to DTSC. At this writing, no hearing is scheduled, and the Board expects to amend its proposed rulemaking package before it takes any further action on this proposal.

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

• **Waste Tire Hauler Registration and Recycling Program.** On January 18 and



May 18, OAL approved the Board's emergency regulations implementing the Waste Tire Hauler Registration Program, as mandated by SB 744 (McCorquodale) (Chapter 511, Statutes of 1994). [15:1 CRLR 130-31] Among other things, the Waste Tire Hauler 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 provides that 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 without a valid registration may result in civil and/or administrative penalties for the hauler, contractor, and/or receiving facility. The emergency regulations also set forth definitions, as well as general provisions and information on renewal, suspension, and revocation of registrations.

At this writing, the emergency rules approved on May 18 are valid for 120 days; the Board has not commenced the rulemaking process to adopt the regulations on a permanent basis, although it states that it intends to undertake the rulemaking process as required by the APA.

• **RMDZ Designation Regulations.** At its April meeting, CIWMB adopted its proposed amendments to sections 17914 and 17914.5, Title 14 of the CCR, which specify procedures for the redesignation of recycling market development zones (RMDZs). [15:1 CRLR 131] Sections 17914 and 17914.5 currently describe the redesignation process; however, the Board believes these sections fail to include sufficient detail on specific information which must be included in the redesignation application, especially for zone expansion applications. Accordingly, the Board's changes would clarify the procedures for zone redesignation, define categories of redesignation, and specify application requirements for each category. At this writing, the proposed amendments await review and approval by OAL.

• **Recycled Content Trash Bag Program Amendments.** On March 24, OAL approved CIWMB's 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. [15:1 CRLR 131; 14:4 CRLR 149; 14:2&3 CRLR 163] Under the Board's amendments, bag man-

ufacturers are no longer asked to supply CIWMB with customer lists as part of their annual certification to the Board. The changes 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 will increase compliance with its requirements.

• **Emergency Earthquake Regulations.** On January 19 and May 18, in further response to the January 1994 Northridge earthquake, CIWMB readopted—again 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. [15:1 CRLR 132; 14:4 CRLR 15; 14:2&3 CRLR 161] CIWMB intends to readopt the emergency regulations continuously until the earthquake cleanup is completed.

• **Regulatory Tiers.** On March 1, OAL approved CIWMB's adoption of new sections 18100-18105.11, Title 14 of the CCR; the new sections 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 which pose a lesser potential threat to public health, public safety, and the environment will qualify for tiers with less oversight. The first tier is the pre-authorized tier: Operators are not required to obtain a license, permit, or even notify the Board of their operations. The second tier is the enforcement agency notification tier: Operators must notify LEAs of their operations. The remaining three tiers—registration permit, standardized permit, and full permit—will be more closely monitored by the Board, and the Board will issue permits applicable to the corresponding tier. [15:1 CRLR 131; 14:4 CRLR 150]

• **Composting Facilities.** At its February 14 meeting, CIWMB adopted proposed 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; amended sections 17851, 17853, 17855, 17856, 17857, 17859, and 17861; and repealed 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 facili-

ties, and establish minimum standards for design and operation of other types of composting facilities. [15:1 CRLR 132; 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). At this writing, the proposed action awaits review and approval by OAL.

• **Used Oil Recycling Program.** On May 4, CIWMB submitted the rulemaking file to OAL for review and approval of its proposed amendments to sections 18601-18655.6, Title 14 of the CCR, which describe the requirements of the Board's used oil recycling program. [15:1 CRLR 132; 14:4 CRLR 150; 14:2&3 CRLR 162] The proposed changes would 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 proposed changes are still undergoing OAL review.

LEGISLATION

AB 926 (Rainey), as introduced February 22, would abolish CIWMB, create the Division of Integrated Waste Management in the existing Resources Agency administered by the Secretary of the Resources Agency, and transfer the powers and duties of the abolished Board to the Division and the Secretary. [A. NatRes]

SB 174 (Killea), as amended April 18, would make a statement of legislative intent concerning the reduction of solid waste, and transfer DOC's Division of Recycling and its functions to CIWMB. This bill would require CIWMB, by January 1, 1997, to combine existing programs for public education and advertising, public information services, grants and contracts, and other activities under the Act; require CIWMB to review the process for collecting materials for recycling and to review existing statutes and regulations imposing specified requirements on manufacturers and to submit recommendations based on these reviews to the Governor and the legislature by January 1, 1997; and make conforming changes in the California Beverage Container Recycling and Litter Reduction Act, in provisions pertaining to plastic waste, in the Fiberglass Recycled Content Act of 1991, and in the California Integrated Waste Management Act of 1989.



The California Integrated Waste Management Act of 1989 establishes CIWMB as a six-member body, including two members appointed by the Governor to represent the public and without Senate confirmation. The Act also requires the Chair to be elected by a majority of the Board members. This bill would reduce the membership of the Board to five members by eliminating one of the positions appointed by the Governor to represent the public, require the Governor to appoint the Board's Chair, and prescribe related matters. [*S. Inactive File*]

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 amended April 26, this bill would authorize CIWMB to establish those cooperative research and development facilities in cooperation with DOC, and make clarifying changes in those provisions.

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 a specified inspection program.

The Act provides that CIWMB may designate and certify a LEA within each county to carry out specified powers and duties, and requires the Board—if a LEA is not designated and certified—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 authorize the Board, when it is the enforcement agency, to impose fees to recover its costs of operation on the local governing body, a solid waste facility operator, or a solid waste enterprise that operates within the jurisdiction, and require the Board to collect those fees in a manner determined by the Board and developed in consultation with the local governing body. The bill would require those fees to

bear a direct relationship to the reasonable and necessary costs, as determined by the Board, of providing for the efficient operation of the activities or programs for which the fee is imposed. 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. 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 or Santa Cruz 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 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, CIWMB 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 DTSC 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. The 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, and provide for a permit suspension where changed conditions at the solid waste facility necessitate a permit revision or modification. The bill would also revise and recast provisions pertaining to corrective action and cease and desist orders, provide for civil penalties, and specify enforcement procedures. [*A. Appr*]

SB 1163 (Leslie). The California Integrated Waste Management Act of 1989 defines, for purposes of the Act, the terms "disposal site," "solid waste," and "solid waste disposal." As amended April 17, this bill would make various technical and clarifying changes with regard to those definitions, and make other changes to correct a statutory reference. [*A. NatRes*]

AB 1148 (Cortese). The California Integrated Waste Management Act of 1989 authorizes each county, city, district, or other local governmental agency to provide solid waste handling services, including but not limited to source reduction, recycling, composting activities, and the collection, transfer, and disposal of solid waste; those solid waste handling services may be provided by the local agency itself, another local agency, or a solid waste enterprise, as defined. As introduced February 23, this bill would require a solid waste enterprise that is a solid waste hauler, as



defined, to register with the local agency of the jurisdiction in which the solid waste hauler is operating. The bill would require CIWMB to fix the amount of the registration fee that may be charged by the local agency, and would specify the purposes for which the fee may be used.

The bill would require the registered solid waste hauler to maintain a record of each solid waste hauling trip, including the types of solid waste handled and the disposal destination of the solid waste; provide for the revocation of registration and the imposition of a civil penalty if a registered solid waste hauler has disposed of solid waste in a location that is not a permitted disposal facility; and require CIWMB to adopt regulations, and authorize the Board to provide model ordinances, to implement the bill. [A. *NatRes*]

SB 176 (Alquist). The California Integrated Waste Management Act of 1989 requires CIWMB to develop and implement a household hazardous substance information program, which may include information on the proper use and storage of products that contain hazardous substances and on safer substitutes for products that contain hazardous substances. As amended May 9, this bill would specify that the information on safer substitutes be competent and reliable information, and would require the Board to advise state agencies regarding the potential of proposed substitutes to be accidentally ingested or to pose other hazards to human health and safety. The bill would prohibit any state agency from providing information on HHW substances or safer substitutes for products that contain hazardous substances, unless the information is competent and reliable.

The bill would also require CIWMB to prepare, in consultation with DTSC and other appropriate state agencies and interested parties, guidelines for advising local agencies regarding the provision of competent and reliable information on HHW substances and safer substitutes for products that contain hazardous substances. The bill would allow any local agency or interested party to submit information to Cal-EPA for a determination as to whether the information is competent and reliable information, and would require Cal-EPA to make that determination within 60 days of receipt of the information. [S. *T&PSM*]

SB 845 (Leonard). Existing hazardous waste control laws require a public agency, or its contractor, that intends to operate a HHW collection facility, to submit specified information to DTSC, which is authorized to allow any HHW collection facility to accept hazardous waste from conditionally exempt small quantity generators.

DTSC is authorized to adopt and revise regulations for HHW collection facilities, and specified requirements are imposed upon the transportation of hazardous waste to a HHW waste collection facility and the operation of curbside and door-to-door HHW collection programs and HHW residential pickup services. A hazardous waste facilities permit is required to be obtained for the operation of a HHW collection facility, except as specified.

As amended April 18, this bill would require DTSC, by March 31, 1996, to develop a separate and distinct regulatory structure for the permitting of permanent HHW facilities and would require the regulations to meet specified standards. The bill would prohibit those regulations from applying to HHW collection facilities that treat or dispose of HHW or hazardous waste collected from conditionally exempt small quantity generators. The bill would make legislative findings and declarations regarding HHW. [A. *EnvS&ToxM*]

SB 1215 (Solis). The California Integrated Waste Management Act of 1989 creates the Solid Waste Disposal Site Cleanup Trust Fund in the state treasury. The money in the Trust Fund is continuously appropriated to CIWMB to fund a program for the cleanup of solid waste disposal or codisposal sites. As introduced February 24, this bill would require that an unspecified percentage of the gross revenues received by cogeneration facilities operating at solid waste landfills be deposited in the Cogeneration Facilities Account, which the bill would create in the Trust Fund. The money in the account would be used for unspecified purposes. [S. *GO*]

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 local enforcement agency (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 LEA, 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*]

AB 1647 (Ducheny), as amended May 16, would make a finding and declaration that the Board should be statutorily authorized to adopt specified regulations pertaining to composting, and state the intent of the legislature that nothing in the Act is intended to confer any authority on, or to validate the authority of, the Board to adopt regulations for solid waste facilities that impose different levels or "tiers" of regulation for different types of solid waste facilities (see MAJOR PROJECTS). [A. *Floor*]

AB 1851 (Sher). The California Integrated Waste Management Act of 1989 requires on and after January 1, 1995, that every manufacturer that manufactures plastic trash bags of 0.75 mil or greater thickness for sale in this state to ensure that at least 30% of the material used in those plastic trash bags is recycled plastic postconsumer material. As introduced Feb-



ruary 24, this bill would change the compliance date from January 1, 1995, to January 1, 1997. The bill would declare that it is to take effect immediately as an urgency statute. [S. GO]

SB 739 (Polanco). Existing law requires every state agency subject to the Administrative Procedure Act (APA) to prepare and submit to the Office of Administrative Law a notice of proposed action, and to make available to the public, upon request, specified items, including (among other things) a description of the efforts of a department, board, or commission within Cal-EPA, the Resources Agency, or the Office of the State Fire Marshal to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. The APA further permits the departments, boards, or commissions within those agencies to adopt regulations that are different from federal regulations contained in the Code of Federal Regulations addressing the same issues, upon a finding of specified justifications. As amended April 20, this bill would authorize CIWMB and the Water Resources Control Board to adopt a regulation that is different from a federal regulation addressing the same issue, upon a finding of specified justifications. [S. NR&W]

AB 961 (Gallegos), as amended April 17, would prohibit a LEA (or the Board if no LEA is certified) from issuing, modifying, or revising a solid waste facilities permit for a disposal facility if any point on the boundary line of the property on which the disposal facility is, or would be, sited is located within 2,000 feet of the boundary line of property zoned for single or multiple family residences, hospitals for humans, day care centers, structures that are permanently occupied for nonindustrial purposes, or elementary or secondary schools. [A. NatRes]

AB 1902 (McPherson), as amended April 18, would require each state agency, as defined, on or before October 1, 1996, to develop, in consultation with CIWMB, an integrated waste management program. The bill would require each state agency, on or before April 1, 1996, to complete a waste audit to determine the amount of solid waste generated by the state agency and the amount of solid waste that can be source-reduced, recycled, composted, or reused under the program. The bill would require each state agency to divert at least 25% of the solid waste generated by the state agency from landfill or transformation facilities by January 1, 1997, and 50% by January 1, 2000, based on a specified calculation. The bill would prescribe other matters related to implementation of the

program, and define the term "state agency" for purposes of this act. [A. Appr]

AB 381 (Baca). The California Integrated Waste Management Act of 1989 requires each city, county, and, if formed, each regional agency to develop a SRR element and a HHW element. The Act generally authorizes CIWMB, if the Board finds that a city, county, or regional agency has failed to implement its SRR or HHW element, to impose administrative civil penalties upon the city or county, or upon the city or county as a member of a regional agency, in an amount up to \$10,000 per day until the city, county, or regional agency implements the element. The Act requires the Board, in determining whether or not to impose those penalties, to consider (among other things) the extent to which a city, county, or regional agency has made good faith efforts to implement its SRR element or HHW element, and defines, for those purposes, "good faith efforts" as all reasonable and feasible efforts by a city, county, or regional agency to implement those programs or activities identified in its SRR or HHW element, or alternative programs or activities that achieve the same or similar results. As amended April 20, this bill would revise that definition of "good faith efforts" to also include the evaluation by a city, county, or regional agency of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the city, county, or regional agency to meet the solid waste diversion requirements of the Act. [A. Floor]

AB 626 (Sher). The California Integrated Waste Management Act of 1989 requires CIWMB to file an annual report, on or before March 31 of each year, of specified content regarding the administration of the Act with the legislature. As amended April 17, this bill would revise and recast those reporting provisions and would require that report to be submitted on or before March 1, 1996, and on or before March 1 of every other year thereafter, and delete obsolete provisions in those provisions.

The Act requires each city, county, and, if subject to diversion requirements, regional agency to implement a SRR element that shows how the city, county, or regional agency will divert 25% of all solid waste from landfill or transformation facilities by January 1, 1995, and 50% by January 1, 2000, through source reduction, recycling, and composting activities. The Act requires each city, county, and regional agency to submit a report to the

Board summarizing its progress in achieving those diversion goals, and requires the report to be submitted with the SRR element, on or by October 1, 1994, except as specified. This bill would instead require that report to be submitted on or before March 1 of each year, and delete obsolete provisions in that regard.

The State Assistance for Recycling (STAR) Markets Act of 1989 requires, until January 1, 2000, a state agency or contractor supplying materials, goods, or services to the state or the legislature, if a recycled product, as defined, costs more than the same product made with virgin material, to purchase fewer of those more costly products, if feasible, or to apply cost savings, if any, gained from buying other recycled products toward the purchase of those products. This bill would extend those provisions indefinitely.

The Act requires that, by January 1, 1994, at least 40% of the total dollar amount of paper products purchased or procured by the Department of General Services be a recycled paper product, as defined, and requires at least 15% of the total fine writing and printing paper purchased or procured by the Department be a recycled paper product. This bill would delete those obsolete provisions. [A. Appr]

AB 1421 (Richter) and AB 1649 (Cannella). The California Integrated Waste Management Act of 1989 requires each city or county to develop a SRR element that includes an implementation schedule that shows how the city or county will divert 25% of all solid waste from landfill or transformation facilities by January 1, 1995, and 50% by January 1, 2000, through source reduction, recycling, and composting activities. The Act provides that nothing in those provisions prohibits a city or county from implementing source reduction, recycling, and composting activities that are designed to exceed those goals. AB 1421, as introduced February 24, and AB 1649, as amended May 3, would additionally specify that nothing in those provisions prohibits a city or county from engaging in other environmentally sound activities that are designed to exceed those goals. [A. NatRes, A. Floor]

■ LITIGATION

On January 30, the Natural Resources Defense Council (NRDC) filed a petition for writ of mandate and complaint for declaratory relief against CIWMB in *Natural Resources Defense Council v. California Integrated Waste Management Board*, No. 95CS00229 (Sacramento County Superior Court). The petition alleges that the Board has failed to perform various mandatory duties under the Cali-



ifornia Integrated Waste Management Act (the Act), and that the Board's January 25 policy relating to alternative daily cover (ADC) violates numerous state statutes including the Act, the Administrative Procedure Act (APA), and the California Environmental Quality Act (CEQA) (see MAJOR PROJECTS).

NRDC alleges that CIWMB has systematically and repeatedly failed to enforce the Act and perform its duties under the Act. NRDC's specific allegations include the following: the Board has failed to maintain an inventory of solid waste facilities which violate state minimum standards, as required by PRC section 44104; CIWMB's failure to maintain the inventory has prevented implementation of PRC section 44106, which requires LEAs to develop compliance schedules for solid waste facilities on the inventory that have not complied within ninety days; CIWMB has failed, as required by PRC section 44105(b), to assist LEAs to protect public health and safety from illegal, abandoned, inactive, or closed solid waste disposal sites; CIWMB has failed to enforce PRC sections 43503 and 43504 relating to solid waste facility closure and post-closure maintenance plans and financial assurances; CIWMB has failed to review landfill permits at least once every five years, as required by PRC section 44015; and CIWMB has failed to suspend or enforce the compliance of facilities operating outside their permits or in a way harmful to the public health and the environment, as required by PRC section 44002.

Calling the Board's ADC policy both illegal and illogical, NRDC also claims that CIWMB's adoption of a policy which counts the landfilling of materials such as yard waste as diversion would effectively eviscerate the diversion requirements of the Act. NRDC alleges that the Board committed a CEQA violation by adopting the ADC policy without the preparation of an environmental impact report. Moreover, NRDC alleges that when the Board adopted its ADC policy, it failed to observe the procedural rulemaking requirements of the APA.

At this writing, NRDC has not been served with an answer to its petition. In March, NRDC filed a second suit alleging further CEQA violations by CIWMB; the two suits are expected to be consolidated and heard sometime in November.

RECENT MEETINGS

At CIWMB's February 22 meeting, CIWMB Vice-Chair Wesley Chesbro and Board member Sam Egigian renewed their claim 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. [15:1 CRLR 130; 14:4 CRLR 154] CIWMB repeated its prediction after surveying the waste stream reduction plans of more than 235 of the total 529 city and county plans 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. The Board's renewed promise comes despite Cal-EPA's concern regarding CIWMB's approval of waste diversion plans for four Los Angeles-area cities which exceed the diversion mandates of 25% by 1995 and 50% by 2000.

FUTURE MEETINGS

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 Contam-

ination 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 Commit-