



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

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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-



tee (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

DPR Releases Report on Pesticide Residues in California Well Water. A recent DPR report entitled *Sampling for Pesticide Residues in California Well Water* contains the results of testing in 2,839 wells in 50 of California's 58 counties, conducted from July 1, 1993 to June 30, 1994; released to the legislature in March, the report contains the results of tests performed by several state agencies pursuant to the Pesticide Contamination Prevention Act of 1985. [14:4 CRLR 155; 13:2&3 CRLR 171]

Of the 2,839 wells sampled, only 37 had detectable pesticide residues—twenty in private wells, thirteen in public drinking water wells, two in non-drinking water wells, and the use of two wells was unknown. DPR verified detections of six different compounds out of the 114 pesticide active ingredients and breakdown products that were targeted; detection of all six has occurred in previous years. In the most recent testing, five of the chemicals were herbicides—atrazine, bromacil, diuron, prometon, and simazine. The sixth chemical was a herbicide breakdown product called deisopropyl-atrazine. In three counties, the herbicide detection was new—atrazine was found in Yolo County, prometon in Stanislaus County, and simazine in Colusa County.

According to DPR, routine agricultural use of currently-registered pesticides appears to be a major cause of pesticide residues found in groundwater; the report opines that such use caused residues in groundwater for the first time in Colusa, San Joaquin, Solano, Yolo, and Merced counties. Pesticides were also detected in Fresno, Glenn, Los Angeles, Riverside, and Tulare counties; these detections will lead to investigations by DPR, which will determine if the pesticide is from legal agricultural use. If so, DPR will establish

a pesticide management zone (PMZ) around the location, which means that special restrictions on the use of the detected chemicals will be imposed.

When DPR investigates positive wells, it takes more samples to verify and determine the extent of any contamination. If levels of contamination found exceed those considered safe, the state Department of Health Services may take immediate corrective action. DPR may also take action, regardless of the level of contamination, to eliminate the problem. The investigation then focuses on whether the pesticide has reached groundwater because of routine agricultural use. If not, it is referred to the state Water Resources Control Board for further investigation; if so, DPR handles the situation by creating a PMZ as described above.

Federal Grant Issued to DPR to Reduce Pesticide Contamination of Groundwater. In April, DPR received a \$160,000 grant from the U.S. Environmental Protection Agency (EPA) to work with citrus and grape growers in Tulare and Fresno counties to prevent groundwater contamination from pesticides. This three-year project will bring together growers and industry, local agricultural officials, DPR, and the University of California to develop an outreach program that will work with farmers to develop and demonstrate pest management practices that reduce groundwater contamination; according to DPR, education and outreach programs will be the key to this project. Approximately two-thirds of California's citrus production is in Fresno and Tulare counties; in 1992, grape and citrus production in these counties exceeded \$1.3 billion on more than 390,000 acres.

Enforcement of Pesticide Laws. In February, DPR announced that it and the state's county agricultural commissioners have joined together to implement guidelines to enhance uniform enforcement of the state's pesticide laws. According to DPR, commissioners work in all of California's 58 counties and, based on their awareness of local farming practices, are best suited to make decisions regarding pesticide use and to enforce laws governing misuse. DPR will continue to provide direction and guidance to the commissioners in planning and carrying out local enforcement.

In 1992, DPR and the county commissioners established a committee to develop enforcement guidelines that would protect the public and encourage fair competition; after almost two years of creating guidelines and testing, the committee created an enforcement manual which all counties implemented in January 1995.

Working under contract to DPR, commissioners perform certain pesticide en-

forcement activities, such as investigations of pesticide-related illnesses and checking training and storage records of pest control companies. Under a pilot project, the contracts now require the commissioners to assign higher priority to enforcement activities such as worker protection inspections, illness investigations, applications of certain high-toxicity pesticides, and agricultural applications adjacent to parks or schools. Lower priority is given to activities such as routine inspections of growers or businesses with no recent violations.

In March, Governor Wilson appointed Daniel J. Merkley to serve as DPR's liaison to the county agricultural commissioners. Merkley, who majored in farm management at California Polytechnic State University, will work closely with the commissioners to enhance coordination between DPR and the local governments and serve as the focal point of communication between the Department and the commissioners on issues such as budgeting, training, environmental issues, and pesticide policy.

Stores Fined for Pesticide Violations. In March, DPR announced that the Sacramento County Agricultural Commissioner's Office fined two Sacramento area Home Depot stores for having open and leaking pesticide containers on shelves in their retail areas on several occasions during a three-month period last summer. In June 1994, Sacramento County Agricultural Commissioner Frank Carl issued a cease and desist order to the stores, instructing them to stop careless handling procedures by employees that resulted in pesticide containers being torn or sliced open. Despite the order, more violations of the same nature occurred in July. Due to the nature of the violation and its continuation over a three-month period, Commissioner Carl imposed a series of fines totaling \$10,000 on Home Depot. Home Depot paid the fines in March and has changed its policies; recent inspections of the stores by the Commissioner's office indicated no further violations.

Commissioner Carl also fined TruGreen ChemLawn Company of Rancho Cordova \$3,600 for 23 violations of state pesticide regulations; these violations also occurred over several months and at several locations, and included failure of pesticide applicators to wear required safety equipment; placing pesticides in mislabeled pesticide application equipment and containers; and leaving a truck containing pesticides open and unattended parked on the street.

Concurrent Registration of Pesticides. In 1994, EPA and DPR agreed to harmon-



ize their pesticide registration programs; in March, the agencies marked the one-year anniversary of that agreement by registering a new biopesticide within days of one another. Because the agencies found much duplication and overlap in their approval processes, their goals were to maximize the use of increasingly scarce government resources to provide better protection of public health and the environment, get reduced-risk pesticides on the market more quickly, achieve harmonization nationally, and streamline the registration process.

To encourage the registration of reduced-risk products, DPR changed its policy last year and began allowing companies to submit applications for reduced-risk chemicals such as biopesticides to California at the same time they submit an application for federal registration; in the past, DPR would accept applications only after federal registration.

Also in March, DPR and EPA signed a formal commitment to the program, announcing target dates for the completion of various phases of harmonization between the two registration programs. For example, by June 1995, the two programs will share reviews of acute toxicology data; by December 1995, they will share a common method of assessment. Also in December, the two agencies will begin to jointly develop standardized review procedures for all types of studies, starting with a focus on chronic toxicology studies. By July 1996, the two programs will harmonize review and interpretation of studies submitted in support of registration. As a result, DPR could use reviews of data submitted to EPA in support of registration for new active ingredients.

DPR Releases Semiannual Reevaluation Report. In February, DPR released its semiannual report summarizing the reevaluation of the registration status of pesticide products during the period of July 1, 1994 through December 31, 1994. California regulations require DPR to investigate all reports of actual or potential significant adverse effects to people or the environment resulting from the use of pesticides.

The report contains two sections: formal reevaluation and preliminary investigations. Preliminary investigations, or evaluations, are conducted on products for which possible hazards have been identified by DPR or other state or county agencies. As a result of evaluation, the investigations may lead to formal investigations. According to the DPR report, no preliminary investigations are ongoing at this time. Formal reevaluations are ordered when an investigation indicates that a sig-

nificant adverse impact has occurred or is likely to occur. The following pesticides are currently in the formal reevaluation process: carbaryl; chlorpyrifos, diazinon, ethyl parathion, methidathion used on almonds; chlorthal-dimethyl (Dachtal); endosulfan; glutaraldehyde; liquid nitrogen; metam sodium; methyl parathion for use on rice; pine oil; propetamphos; propoxur; chlorpyrifos; pyrethrins; methylene chloride; S.S.S-Tributylphosphorotrithioate; thiophanate-methyl; tributyltin; and ziram.

Clean Air Act Activities. In March, DPR initiated a data call-in for pesticides formulated as solids to determine volatile organic compound (VOC) emission potential, which contributes to ozone production. DPR and the Air Resources Board have developed methods for measuring VOC potentials in pesticides, enabling manufacturers to conduct tests which will help DPR develop the state implementation plan to reduce VOC emissions. [15:1 CRLR 134-35]

In February, DPR released a preliminary draft, for review and comment only, of its report entitled *Pesticides for Evaluation as Candidate Toxic Air Contaminants*. [15:1 CRLR 136; 14:4 CRLR 156-57] Among other things, the draft report outlines the method for ranking pesticides as toxic air contaminant (TAC) candidates, and explains the criteria involved in ranking these and potentially all other pesticides as candidates. DPR is required to give priority to the evaluation and regulation of pesticides based on factors related to the risk of harm to public health, the amount or potential amount of emissions, manner of usage of the pesticide in California, persistence of the pesticide in the atmosphere, and ambient concentrations in the community when evaluating pesticides as TACs. At this writing, DPR has not yet released the final version of the report.

DPR Conducts Workshop for Mexican Health Providers. In March, DPR held a workshop in Mexicali, Mexico, on how to recognize and treat pesticide-related illnesses, as well as how to set up a system to track and investigate pesticide illnesses. This workshop was for physicians and nurses; in the future, DPR will help train Mexican officials in investigative techniques, container recycling, and reduction of illegal residues. Mexico is expected to establish licensing and certification programs for pesticide applicators, who currently operate without them.

Dealer Sales Reporting Requirement. On April 28, DPR published notice of its intent to repeal section 6562(c), Titles 3 and 26 of the CCR, to bring its regulations into conformity with changes

in the law brought about by the enactment of AB 468 (Jones) (Chapter 145, Statutes of 1993). [13:4 CRLR 161] According to DPR, AB 468 reduced a dealer's requirement for the filing of quarterly sales reports to include only the sale of pesticides to persons who are not required to file a pesticide use report. Section 6562(c) currently requires licensed pesticide dealers to submit quarterly sales records to the DPR Director, reporting the sale or delivery of pesticides that contain chemicals listed on the Groundwater Protection List. According to DPR, section 6562(c) currently conflicts with the law as amended by AB 468, and must be repealed. At this writing, no public hearing is scheduled; DPR will accept public comments on this proposed action through June 16.

Metam Sodium and MITC as Restricted Materials. On March 21, DPR adopted emergency changes to section 6402, Titles 3 and 26 of the CCR, which remove copper sulfate (basic, monohydrate, and pentahydrate) from the list of exempt materials for which additional restrictions, other than registration and labeling requirements, are not necessary under FAC section 14006.7. The emergency action is in effect for 120 days from adoption.

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

• **Minimal Exposure Pesticide List.** On January 27, DPR extended the public comment period on its proposed changes to sections 6000, 6790, 6791, and 6792, Titles 3 and 26 of the CCR, which would add atrazine and chlorothalonil to the minimal exposure pesticide list. [15:1 CRLR 137] The original public comment concluded on February 17; DPR extended the public comment period until March 15 to ensure that all those on DPR's regulatory change mailing list have a full 45-day comment period. However, in response to some of the comments received, DPR has since withdrawn this rulemaking proposal.

• **Clean-Up Rulemaking Package.** At this writing, the Office of Administrative Law (OAL) is reviewing DPR's proposed amendments to sections 6400 and 6684 and proposed repeal of sections 2452.1, 2452.2, 2455, 2458.1, 2458.6, 2458.9, 2470, 2490.2, 3138.1, 3142, 3143, 3144, 6247, 6456, 6468, 6472, 6480, and 6778, Titles 3 and 26 of the CCR. Among other things, the proposed changes would remove outdated sections that pertain to chemicals which are no longer registered in California, and reorganize DPR's restricted materials list in alphabetical order while in-



corporating permit exemptions directly into the list. [15:1 CRLR 136]

• **Protocols for Testing Pesticides on Humans.** At this writing, OAL is reviewing DPR's proposed amendments to sections 6000, 6177, 6183, and 6710, Titles 3 and 26 of the CCR, which would establish protocols for DPR's review of protocols for studies which include the intentional administering of pesticide chemicals to human participants to determine effects or monitoring of human participants for pesticide exposure during work tasks. [15:1 CRLR 137]

• **Sanitizers and Disinfectants.** On March 9, OAL approved DPR's amendments to sections 6686 and 6720, Titles 3 and 26 of the CCR, to exempt chemicals used as sanitizers and disinfectants (including medical sterilants) from certain transportation, storage, and disposal regulations. [15:1 CRLR 136]

• **Restricted Materials.** On February 23, DPR readopted emergency amendments to section 6400, Titles 3 and 26 of the CCR, which add metam sodium and methyl isothiocyanate (MITC) to its current list of restricted materials. [15:1 CRLR 137] Placing metam sodium and MITC on the restricted materials list requires users to obtain a permit from the county agricultural commissioner; this process allows the commissioner to place additional conditions on the permit precisely crafted to protect nearby sensitive areas where problems have occurred in the past, as well as similar areas where future problems could occur. The emergency amendments remains in effect for 120 days from readoption.

• **TAC Amendment.** On March 7, OAL approved DPR's amendments to section 6860, Title 3 of the CCR, regarding toxic air contaminants (TACs). [15:1 CRLR 137; 14:4 CRLR 156-57] Among other things, DPR's action lists as TACs pesticides which are identified as hazardous air pollutants pursuant to 42 U.S.C. section 7412.

LEGISLATION

■ **AB 124 (Rainey).** Existing law requires each registrant of an economic poison to pay to the DPR Director an assessment on all sales by the registrant of its registered and labeled economic poisons for use in this state. As introduced January 12, this bill would require DPR to study and report to the legislature on the revenue received pursuant to that provision, setting forth separately revenue received from the sale of registered agricultural economic poisons, and revenue received from the sale of registered nonagricultural economic poisons. The bill would permit DPR use any funds available to it for the preparation of the study and report. [A. Appr]

AB 1561 (Harvey). Existing law requires a thorough evaluation by DPR before a substance is registered as an economic poison for the first time in this state. As amended April 17, this bill also would require the evaluation to be timely. [A. Appr]

SB 800 (Monteith). Existing law prohibits the use of agricultural chemicals designated by the DPR Director as restricted materials for any agricultural use except in accordance with a written permit of the county agricultural commissioner pursuant to regulations adopted by the Director. As amended May 16, this bill would limit the authority of the Director to adopt regulations providing for the issuance of these permits.

Existing law also prohibits the possession or use of restricted materials except by qualified applicators who are certified pursuant to regulations adopted by the DPR Director. This bill would generally provide that restricted materials may be possessed or used by, or under the supervision, of a private applicator licensed pursuant to the bill, or by a certified commercial applicator, as defined by regulation. The bill would provide for the issuance of certificates after examination to private applicators by county agricultural commissioners or by the Director in counties where there are no commissioners. The bill would authorize the Director to establish reasonable examination fees to cover the costs of administering the examination. [S. Floor]

SB 802 (Monteith). Existing law prohibits the sale or distribution into or within this state of any economic poison products that have been registered by the DPR Director and that are labeled for agricultural use unless the person is licensed by the Director as a pesticide broker. Existing law requires each licensed pesticide broker to pay to the Director an assessment, as specified, for all sales by the broker into or within this state of registered economic poisons labeled for agricultural use, where the broker is the person who first sold the economic poison into or within this state. As amended April 17, this bill would instead require every person who is required to be licensed as a pesticide broker to pay this assessment. The bill would also make technical changes in those provisions.

The bill also would provide that every person who is required to be licensed as a pesticide broker and who is deficient in the payment of an assessment that is due and payable shall pay the assessment, as prescribed by the Director. In addition, the bill would authorize the Director to add a penalty of 10% of the amount that is due and payable to defray the cost of collecting the deficient payment. [A. Agri]

AB 697 (Cannella). Existing law requires every manufacturer of, importer of, or dealer in any economic poison, except as specified, to obtain a certificate of registration from DPR before the economic poison is offered for sale. As amended April 25, this bill would provide that alfalfa and all vegetable crops, when grown for seed production, except as specified, shall be considered a nonfood and nonfeed site of pesticide use for the purpose of pesticide registration. The bill would also provide that any violation of the conditions specified in the bill is a violation of the provisions governing the registration of pesticides generally. [A. Floor]

AB 179 (Battin). Existing law requires a thorough evaluation by DPR before a substance is registered as an economic poison for the first time in this state. As amended January 23, this bill would permit the DPR Director to issue an emergency exemption from registration for an economic poison under the conditions set forth in the bill. [A. Appr]

AB 389 (Cannella). Existing law sets forth various powers and duties of the California Department of Food and Agriculture (CDFA). As amended May 8, this bill, in addition, would require CDFA to conduct a study regarding the environmental benefits of farming and report its findings to the legislature no later than January 1, 1997, if existing funds, as determined by CDFA, are available for those purposes. [S. A&WR]

AB 568 (V. Brown). Existing law generally requires a person or entity engaged in the practice of structural pest control to be licensed by the Structural Pest Control Board (SPCB); certain persons or entities are exempt from the licensing requirement, including public utilities, persons engaged in agricultural pest control work, governmental agencies, and educational institutions engaged in research or study of pest control, as specified. As amended April 25, this bill would additionally exempt from SPCB's licensing requirement persons engaged in the live capture and removal from structures of vertebrate pests, as defined, or bees or wasps, without the use of pesticides, if the person has a permit or license from DPR, the Department of Fish and Game, or a county agricultural commissioner. [S. B&P]

AB 816 (Murray). Under existing law, a person is not eligible to be examined for or issued a license as a county agricultural commissioner, deputy commissioner, or county agricultural inspector unless the person has a bachelor's degree, with a specialization in agricultural or biological sciences; existing law exempts from those requirements a person who holds a certificate of qualification issued prior to Janu-



ary 1, 1985. As amended April 24, this bill would also make a person eligible for that examination or license who has a bachelor's degree with a specialization in chemical or physical science. The bill would also change the exemption from that requirement to exclude persons holding a valid license of qualification in weights and measures under specified conditions.

Existing provisions of the Government Tort Claims Act provide, among other things, that (A) a public entity is not liable for an injury caused by the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by law to determine whether or not the authorization should be issued, denied, suspended, or revoked; (B) a public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its property, for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety; and (C) neither a public entity nor a public employee is liable for an injury caused by instituting any judicial or administrative proceeding or action for, or incidental to, the assessment or collection of a tax or for an act or omission in the interpretation or application of any law relating to a tax. This bill would add provisions identical to the foregoing to the Food and Agricultural Code that would apply specifically to a county department of agriculture. [S. A&WR]

LITIGATION

In *Taylor AG Industries, et al., v. Pure-Gro*, 54 F.3d 555 (Apr. 24, 1995), the U.S. Court of Appeals for the Ninth Circuit affirmed the holding of the U.S. District Court for the District of Arizona, which granted summary judgment to defendants on state law tort and contract claims, holding that the preemption provision of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. section 136v(b), preempts all of the plaintiffs' claims.

Plaintiffs are partnerships engaged in cotton farming in Arizona and sued to recover for damage to their cotton crop; the damage allegedly resulted from the application of a mixture of two defoliant chemicals. The labels on the two defoliants and a corresponding product guide recommended a mixture of the two chemicals to improve defoliation in the conditions present in Arizona. However, there

was a discrepancy in the dosage rates indicated in two labels; the exact language on both labels was approved by EPA. Plaintiffs allegedly combined the two chemicals in accordance with the instructions provided on the labels and the product guide and applied the mixture to their fields. Rather than defoliating the leaves from the cotton plants, the chemicals allegedly prevented some bolls from opening and producing cotton for harvest. As a result, the plaintiffs claimed to have suffered, among other damage, a lower-than-anticipated yield of cotton.

In 1992, plaintiffs filed an action against the defendants for the damage caused to their cotton crop. In their third amended complaint, plaintiffs asserted five causes of action: strict liability against the defendants for failing to provide adequate warning; negligent failure on the part of specified defendants to test and design the chemicals for the condition in which plaintiffs used them; breach of express warranty against Pure-Gro; breach of implied warranty of merchantability against Pure-Gro; and breach of implied warranty of fitness for a particular purpose against Pure-Gro. In January 1993, the defendants moved for summary judgment on the ground that FIFRA preempts all of plaintiffs' claims. On August 24, 1993, the district court granted the motion for summary judgment with respect to all claims, holding that FIFRA expressly preempts the strict liability and negligent testing claims because they require a showing that the EPA-registered labels are inadequate and suggest that an alternate labeling system is warranted. Furthermore, the district court held that plaintiffs' breach of implied warranty claims are preempted because implied warranties arise by operation of state law to impose labeling requirements indirectly. Finally, the district court dismissed plaintiffs' claim against Pure-Gro for breach of express warranty because there was no evidence establishing that Pure-Gro officials made any statements about the use of the chemicals that were inconsistent with or went beyond either the chemicals' labels or the product guide.

In considering the questions before it, the Ninth Circuit relied heavily on the U.S. Supreme Court's decision in *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992), which dealt with the issue of preemption in the context of cigarette labeling; in *Cipollone*, the Supreme Court held that the preemption provision of the Public Health Cigarette Act of 1969 prevents states from imposing tort liability on the basis of inadequate labeling.

In upholding the district court's decision, the Ninth Circuit explained that FIFRA is a comprehensive federal statute

which regulates pesticide use, sales, and labeling, and grants enforcement authority to EPA; FIFRA expressly prohibits states from imposing "any requirements for labeling or packaging in addition to or different from those required" under it. Plaintiffs contended that this preemption provision applies to only positive state enactments and not to state tort claims; therefore, they argued that the district court erred by dismissing their failure to warn claim against the defendants on the basis of preemption.

According to the Ninth Circuit, the plaintiffs' argument "essentially boils down to a claim that the manufacturers' product labels, which have been approved by the EPA in accordance with FIFRA, inadequately warned [plaintiffs] of the hazards associated with the defoliants. In order to prevail on their failure to warn claim, [plaintiffs] would have to prove that the labels contained insufficient information and that different labels were warranted. Awarding damages on the [plaintiffs'] claim would therefore be tantamount to allowing the state of Arizona to regulate pesticide labeling indirectly, an action which is specifically prohibited by [FIFRA]."

In *Louisiana-Pacific Corporation v. Koppers Company*, 32 Cal. App. 4th 599 (Feb. 21, 1995), the First District Court of Appeal similarly concluded that plaintiff Louisiana-Pacific Corporation's (LP) tort action against defendant Koppers Company, Inc. (Koppers) is preempted by FIFRA. LP operated a lumber mill and wood treating facility in Potter Valley, Mendocino County. Beginning around 1973, LP purchased from Koppers a wood preservative called Noxtane, which contains pentachlorophenol. Noxtane was registered with, and its label regulated by, the U.S. Department of Agriculture (USDA) and, later, EPA. The 55-gallon barrels of Noxtane LP purchased from Koppers bore USDA- or EPA-approved warning labels. Between the mid-1970s and mid-1980s, LP learned that state and federal regulatory agencies were concerned about potential soil and groundwater contamination from the use of pentachlorophenol chemicals, including Noxtane. In 1987, the California Regional Water Quality Control Board issued an order requiring LP to abate further Noxtane discharges and submit a proposal for cleaning up contaminated soil, surface and groundwater. LP filed suit against Koppers seeking damages for the cost of investigating and remediating the Noxtane contamination; the complaint stated causes of action for strict product liability, indemnity, and partial indemnity. Each claim was premised on allegations that Koppers had failed adequately to warn LP about the safe appli-



cation, use, and disposal of Noxtane. Koppers moved for summary judgment, arguing that LP's claims were time-barred; LP could not establish factual elements essential to its claims; and LP's claims were preempted by FIFRA. The trial court granted summary judgment on the sole basis of FIFRA preemption, declining to reach Koppers' other arguments.

Among other things, the First District explained that FIFRA expressly addresses the extent to which states may regulate pesticides, stating that "[a] State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter." FIFRA also states that "[s]uch State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter." The First District explained that the question before it is whether the section demonstrates a congressional intent to preempt common law actions based on theories of failure to warn. After reviewing the U.S. Supreme Court's *Cipollone* decision (see above), the First District held that FIFRA preempts LP's failure to warn claims based on inadequate labels or packaging.

On February 8, U.S. District Court Judge William B. Shubb approved a settlement agreement which will phase out about 34 cancer-causing chemicals and—potentially—87 more pesticides currently listed as carcinogens by EPA. The settlement agreement arose out of *California v. EPA*, No. 89-0752, in which the state of California, the Natural Resources Defense Council, Public Citizen, the AFL-CIO and others charged that the so-called "Delaney Clause" of the federal Food, Drug and Cosmetic Act prohibits EPA from setting pesticide residue tolerances for processed foods if the pesticides in question have been found to cause cancer. [15:1 CRLR 137-38] Specifically, the settlement requires that 34 chemicals be phased out of processed foods within two years and no longer used directly on crops within five years. It also requires EPA to analyze its list of 87 carcinogens within five years; if any of the pesticides are found in processed foods, EPA will have two years to phase it out and five years to phase out direct contact to crops.

RECENT MEETINGS

At the January 20 PAC meeting, a presentation on environmental justice was made by Carl C. Kohnert, Jr., Deputy Director of the Air and Toxics Division at EPA's Region IX; according to EPA, environmental justice seeks to assure equal

environmental protection to all segments of the public, so that no segment of the population bears an undue burden of environmental pollution. Through the Superfund Program, which involves EPA in the cleanup of hazardous waste sites, EPA has become aware that a disproportionate share of hazardous waste sites are located in areas with low-income and minority populations. In February 1994, President Clinton signed an executive order to increase attention to certain provisions of existing laws, such as the Civil Rights Act, which may help ensure that all communities live in safe and healthful environments. The federal government will be giving \$3 million worth of grants to communities to help implement environmental awareness and training programs for residents. Also, DPR now must include an environmental justice component as part of any federal grants for which it applies.

FUTURE MEETINGS

DPR's PAC, PREC, and PMAC meet every two months to discuss issues of practice and policy with other public agencies; the committees meet at 1020 N Street in Sacramento.

WATER RESOURCES CONTROL BOARD

Executive Director: Walt Pettit

Chair: John Caffrey

(916) 657-1247

The state Water Resources Control Board (WRCB) is established in Water Code section 174 *et seq.* The Board administers the Porter-Cologne Water Quality Control Act, Water Code section 13000 *et seq.*, and Division 2 of the Water Code, with respect to the allocation of rights to surface waters. The Board, located within the California Environmental Protection Agency (Cal-EPA), consists of five full-time members appointed for four-year terms. The statutory appointment categories for the five positions ensure that the Board collectively has experience in fields which include water quality and rights, civil and sanitary engineering, agricultural irrigation, and law.

Board activity in California operates at regional and state levels. The state is divided into nine regions, each with a regional water quality control board (RWQCB or "regional board") composed of nine members appointed for four-year terms. Each regional board adopts Water Quality Control Plans (Basin Plans) for its area and performs any other function concerning

the water resources of its respective region. Most regional board action is subject to State Board review or approval.

The State Board has quasi-legislative powers to adopt, amend, and repeal administrative regulations for itself and the regional boards. WRCB's regulations are codified in Divisions 3 and 4, Title 23 of the California Code of Regulations (CCR). Water quality regulatory activity also includes issuance of waste discharge orders, surveillance and monitoring of discharges, and enforcement of effluent limitations. The Board and its staff of approximately 450 provide technical assistance ranging from agricultural pollution control and waste water reclamation to discharge impacts on the marine environment. Construction loans from state and federal sources are allocated for projects such as waste water treatment facilities.

WRCB also administers California's water rights laws through licensing appropriate rights and adjudicating disputed rights. The Board may exercise its investigative and enforcement powers to prevent illegal diversions, wasteful use of water, and violations of license terms.

In March, Governor Wilson appointed Marc J. Del Piero to a second four-year term on the Board; Del Piero was previously a Monterey County Supervisor. His term will expire on January 15, 1999.

MAJOR PROJECTS

Bay/Delta Plan Moves Toward Adoption. The water quality control plan that promises to play an important role in ending California's "water wars" and solving serious environmental and water shortage problems in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay/Delta) is one step closer to adoption. In December 1994, WRCB released a draft Water Quality Control Plan for Salinity (Bay/Delta Plan) which outlined water quality standards and incorporated the *Principles for Agreement* signed by state and federal officials and key urban, agricultural, and environmental interests. [15:1 CRLR 138-39] On January 23, the Board released a draft environmental report which documents its analysis of the effects of implementing the draft plan.

On February 23, WRCB held a public hearing to receive comments and recommendations on the draft plan and environmental report. More than 200 people attended the hearing, with the majority of speakers expressing support for the plan. Among dissenters were representatives of the Stockton Water District, who complained that many water districts were not "at the table" when the plan was drafted and that water rights allocation issues