



mitted to the Board every five years. As introduced March 5, 1993, this bill would instead require the revision of the plan and its elements, if the local agency determines, based on its progress in meeting the diversion requirements, that such a revision is necessary. [A. NatRes]

SB 799 (Presley), as amended April 12, 1993, would authorize each state agency, regional agency, and local agency concerned with the solid waste facility planning and siting process to involve the public, as specified, and would revise related legislative findings and declarations. [A. W&M]

AB 1829 (Sher), as amended August 17, 1993, would require CIWMB to establish a comprehensive research and development program designed to achieve specified goals regarding innovative resource management and waste reduction programs.

The California Integrated Waste Management Act of 1989 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 submit a proposed inspection program to the Board.

The Act provides that CIWMB may designate and certify a LEA within each county to carry out specified powers and duties. The Act requires the Board, if a LEA is not designated and certified, in addition to its other powers and duties, to be the enforcement agency within the county. The Act authorizes CIWMB, when acting as the enforcement agency, to charge reasonable fees to the local governing body to recover its costs, in addition to other specified fee authority. This bill would require CIWMB, if it is the enforcement agency and a LEA is then designated and certified by the Board, to continue to act as the enforcement agency for the remainder of the fiscal year unless otherwise specified by the Board. The bill would require CIWMB, when it is the enforcement agency, to charge reasonable fees, as determined by the Board, to recover its costs of operation. The bill would also require, if CIWMB is the enforcement agency, the Board and the local governing body, with the exception of the local governing body for Stanislaus County, to enter into a specified agreement. The bill would prescribe other 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 provide that if the enforce-

ment agency determines that a person is operating a solid waste facility without a permit or transporting solid waste to an unpermitted facility, the enforcement agency is required to issue a cease and desist order. The bill would prohibit any change in the design of a solid waste facility unless the operator meets specified conditions.

The bill would require that, by July 1, 1994, CIWMB prepare and submit to the legislature a plan for the review of solid waste facilities at least once every five years.

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 permit is inappropriate. The bill would revise provisions pertaining to the denial, suspension, or revocation of permits, and provide for a temporary permit suspension where changed conditions at the solid waste facility necessitate a permit modification. The bill would also revise and recast provisions pertaining to corrective action and cease and desist orders, provide for civil penalties and compliance orders, and specify enforcement procedures.

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

The following bills died in committee: **AB 1783 (Bowen)**, which would have revised the assessments against oil manufacturers under the California Oil Recycling Enhancement Act; and **SB 924 (Calderon)**, which would have specifically included source separated material within the definition of solid waste, and defined the term "source separated material" for purposes of the Act to mean material that is (1) separated at the point of generation from material that is destined for solid waste disposal, and (2) destined for repair, reuse, or recycling.

■ LITIGATION

In *Waste Management of the Desert, Inc., v. Palm Springs Recycling Center*, 7 Cal. 4th 478 (Mar. 31, 1994), the California Supreme Court held that the California Integrated Waste Management Act of 1989 does not authorize municipalities to grant an exclusive franchise for the collection of recyclables not discarded by their owner. According to the court, the

Act authorizes exclusive franchises only for "solid waste handling"; because an item that is sold is not discarded, the court found that it does not become "waste" subject to an exclusive franchise under the Act.

■ FUTURE MEETINGS

May 25 in Sacramento.

June 29 in Sacramento.

July 27-28 in East San Gabriel Valley.

August 31 in Sacramento.

September 21-22 in Stockton.

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 Contamination Prevention Act (section 13141 *et seq.*), and laws relating to pesticide residue monitoring (section 12501 *et seq.*), registration of economic poisons (section 12811 *et seq.*), assessments against pesticide registrants (section 12841 *et seq.*), pesticide labeling (section 12851 *et seq.*), worker safety (section 12980 *et seq.*), restricted materials (section 14001 *et seq.*), and qualified pesticide applicator certificates (section 14151 *et seq.*).

DPR includes the following branches:

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

2. The Medical Toxicology Branch reviews toxicology studies and prepares risk



REGULATORY AGENCY ACTION

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

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

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

5. The Pesticide Use and Enforcement Branch enforces state and federal laws and regulations pertaining to the proper and safe use of pesticides. It oversees the licensing and certification of dealers and pest control operators and applicators. It is responsible for conducting pesticide incident investigations, administering the state pesticide residue monitoring program, monitoring pesticide product quality, and coordinating pesticide use reporting.

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

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

MAJOR PROJECTS

DPR Releases Analysis of NAS Report. On May 17, DPR released a detailed

study of state and federal pesticide regulatory programs designed to protect infants and children from the effects of pesticide residues in food. DPR's study came in response to the National Academy of Sciences' (NAS) June 1993 report on the effect of pesticides on children; the report concluded that current government standards allow infants and children to be exposed to excessive levels of cancer-causing and neurotoxic pesticides. [13:4 CRLR 158] Following the release of that report, DPR formed an interagency committee to review the report; solicit public input on the report; determine how the report's findings and recommendations relate to federal and state pesticide registration and food safety systems; and determine how to utilize the information to improve California's pesticide regulatory program. [14:1 CRLR 132]

According to DPR's report, California's comprehensive regulatory program—along with the federal regulatory program—adequately protects infants and children from pesticide residue risks; however, the report found that there is room for improvement in both state and federal food safety programs. For example, the report agreed with NAS' conclusion that there are shortcomings in the data collected on the types and amount of food typically eaten by infants and children. The 153-page report includes a number of recommendations for food safety programs, including the following:

—The state should gather additional toxicity data, with a special emphasis on any special susceptibility infants and children may have to certain pesticides.

—The state should gather improved data on typical food consumption by different population subgroups; these data would supplement existing studies, which do not adequately represent some segments of the population, particularly the younger age groups.

—Residue monitoring of fresh produce and processed foods should be tailored towards foods typically consumed by infants and children, to help scientists better assess potential risks to these age groups.

—New risk assessment methodology should be developed to reduce the inherent uncertainties of current methods. Because of these uncertainties, some assumptions are built into the process, which can lead to overstatement or understatement of risks.

According to DPR, many of the NAS study's recommendations have already been incorporated into its programs. For example, DPR contends that it is already developing new approaches in conducting assessments of the dietary risks of pesti-

cide residues on food, and that to some extent it has begun assessing risk not only from the diet but also by considering other possible routes of exposures, including drinking water and home pesticide use.

DPR Releases Semiannual Reevaluation Report. On April 19, pursuant to section 6225, Title 3 of the CCR, DPR released its semiannual report summarizing its reevaluation of the registration status of pesticide products; the report covers reevaluation occurring from July 1 through December 31, 1993. [14:1 CRLR 131-32] 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; if an adverse impact has occurred or is likely to occur, the regulations require DPR to reevaluate the registration of the pesticide. Factors that may initiate reevaluation are specified in the regulations and include public or worker health hazard; environmental contamination; residue overtolerances; fish or wildlife hazard; lack of efficacy; hazardous packaging; inadequate labeling; and availability of an effective and feasible alternative material or procedure which is demonstrably less destructive to the environment. Reevaluation is often triggered by ongoing DPR registration reviews, state and county pesticide use surveillance and illness investigations, pesticide residue sample analysis, environmental monitoring activities, or information from other state or federal agencies.

When a pesticide enters the reevaluation process, existing data are reviewed; further additional data that may be required to determine the nature and extent of the potential hazard or the appropriate mitigation measure are identified and requested from the registrants. There are several possible outcomes of a reevaluation. For example, the data may demonstrate that the issue is resolved and that no significant adverse effect will occur; DPR may determine that there is no need to adopt a regulation restricting the use of the pesticide in some manner to mitigate the potential adverse effect; of the reevaluation may indicate that there is an adverse effect which cannot be mitigated, in which case the reevaluation may end with a recommendation that the registration of the pesticide be canceled.

DPR's April 19 report details its progress in the formal reevaluation of over twenty pesticides found in almost 650 products; formal evaluation is undertaken when investigations have indicated that a significant adverse impact has occurred or is likely to occur. Among the pesticides under reevaluation are liquid nitrogen



("Blizzard"), used as a termiticide; metam sodium, a fumigant which is primarily used to disinfect the soil and control nematodes, insects, and weeds; methyl parathion, when used on rice fields; pine oil; and tributyltin contained in paint.

The report also summarizes DPR's preliminary investigations, which are conducted on products for which possible hazards have been identified by DPR or other state or county agencies; results of a preliminary investigation may indicate the need for formal reevaluation. The report indicates that DPR is currently conducting preliminary investigations for products which are formulated as dips and shampoos for use on domestic animals; DPR has concerns about exposure to both pet groomers and pet owners who may become exposed to these products while applying them to cats and dogs. According to DPR, at issue is the protective clothing requirement currently on the labels of these products; DPR plans to bring this issue to the attention of the U.S. Environmental Protection Agency (EPA).

Reevaluation of Pesticide Products Pursuant to the Clean Air Act. On April 29, DPR published notice of its proposed decision to reevaluate agricultural and commercial structural use products which are formulated as liquids. To conduct its reevaluation, DPR asked the manufacturers of 1,434 liquid pesticide products (299 registrants) to provide data on the potential of their products to emit volatile organic compounds (VOCs) from pesticide product formulations into the atmosphere; these formulations may contribute to tropospheric ozone formation. VOCs can react in the atmosphere in the presence of sunlight with nitrogen oxides to form ozone, one of California's biggest problems in terms of air quality; ozone is harmful to human health, the environment, agricultural crops, and vegetation. Ozone-related damage to crops is estimated to cost over \$300 million annually. Companies have until October 15 to submit their data, or their products will be assumed to have high VOC emissions.

Under the federal Clean Air Act, states must submit state implementation plans (SIP) for implementing, maintaining, and enforcing national ambient air quality standards (NAAQS) for pollutants in each air quality control region of the state. If any region does not meet the NAAQS for a given pollutant, the area is designated as a nonattainment area and the federal government may impose its own measures for meeting air standards. In 1988, California proposed SIPs for three air quality control regions (Sacramento, Ventura, and South Coast) identified as ozone nonattainment

areas; EPA disapproved these SIPs, and is currently under court order to develop federal implementation plans (FIP) for the three nonattainment areas. The FIPs must be finalized by February 1995. If the state does not develop an acceptable plan for regulating and reducing pesticide use and VOC emissions by that time, the FIP will be enforced.

DPR is working with the Air Resources Board and EPA Region IX (San Francisco) to develop a SIP which will be acceptable to EPA to reduce emissions of ozone-producing pesticide products. The goal is to have the plan developed and approved by EPA before the federal plan goes into effect. Accurate assessment of VOC-producing potential is a necessary component in the development of practical emission control measures for the state.

While DPR intends to require such data on all agricultural and commercial structural products, the data will be collected in a two-part process. This reevaluation includes all agricultural and commercial structural products formulated as liquids; liquid formulations were chosen to be evaluated first because they are likely to carry the highest percentage of VOCs. Pesticides formulated as solids will be placed into reevaluation at a later date.

Results of Well Monitoring for Two Atrazine Degradates in California. On March 14, DPR's Environmental Hazards Assessment Program (EHAP) reported the results of its monitoring of thirty wells for two atrazine degradation products; the study was conducted to determine if the degradation products are present in California groundwater and to quantify the total concentration of the parent atrazine plus its degradates. Atrazine is a soil-applied broad spectrum herbicide used for selective weed control in the production of corn and other crops, and for nonselective weed control in industrial and non-cropped lands. Atrazine and two of its degradates have been found in groundwater in Canada and Wisconsin at concentrations equal to or above the parent compound. In California, EHAP had previously confirmed the presence of atrazine residues in 97 wells; however, no sampling had been done for the degradation products. Due to the potential health problems associated with atrazine degradates, the DPR's Medical Toxicology Branch requested that EHAP include the degradates in its well water sample analyses.

To determine whether the atrazine degradates were present in California groundwater, EHAP retested 30 of the 97 wells which had previous detections of atrazine. The results of the study indicate

that atrazine and its degradates are present in California groundwater; there was no correlation between the concentration of parent atrazine and its degradates; and the maximum combined level of parent atrazine and degradates did not exceed EPA's maximum contaminant level (MCL) of three parts per billion for atrazine in any well sampled. EHAP concluded that since the presence of degradates was verified in 88% of the atrazine-positive wells, with 38% having a concentration greater than the parent, atrazine degradates should be included in future groundwater monitoring, particularly if the MCL for atrazine is lowered.

Enforcement of the Birth Defect Prevention Act. In its continuing efforts to enforce the Birth Defect Prevention Act of 1985, DPR recently took the following actions:

• **Data Collection Under SB 550.** On February 18, DPR reported on the status of the 57 active ingredients which were noticed for suspension for early 1992; the manufacturers of these ingredients, which are contained in more than 3,000 products sold in California, are those which failed to provide toxicity studies needed to assess the health effects of their use as mandated by the Act. SB 550 (Petris) (Chapter 1228, Statutes of 1991) amended the Act and established the timeframe by which manufacturers of 200 pesticides on DPR's priority list had to submit chronic health effects studies or face suspension; these 57 chemicals are on that priority list. [14:1 CRLR 132; 13:4 CRLR 158; 13:2&3 CRLR 171-72]

According to its February report, DPR has received the required data on 19 active ingredients since December 31, 1991, and has discontinued the suspension process for these ingredients pending completion of its evaluation of the data submitted; the remaining outstanding data are due no later than March 30, 1996. The report also indicates that a full set of acceptable studies are now on file for eleven active ingredients; DPR's suspension of products containing bendiocarb, coumaphos, or parathion is final; all registered products containing amitrole or sodium arsenite have been withdrawn by the registrants; DPR granted petitions for extension of time for fifteen active ingredients and denied such petitions for fourteen active ingredients; DPR is reconsidering a petition for extension of time for the active ingredient vinclozolin; DPR is reviewing petitions for deferral of suspension for eight active ingredients; DPR denied a petition for deferral of suspension for DEET; and requests for exemption from data requirements based on limited use and insignifi-



cant exposure are pending review for five active ingredients. Finally, DPR reported that notices of intent to suspend the registration of products containing the active ingredients formaldehyde and diphenylamine may be issued shortly.

• Prioritization and Status of Active Ingredients for Risk Characterization. Among other things, the Birth Defect Prevention Act requires DPR to review the toxicology data for all currently-registered active ingredients, and to identify those which should undergo the "risk characterization process." Based upon its review of the health effects studies of all registered active ingredients, DPR on March 18 released its prioritized list of 143 active ingredients which have potential adverse health effects in studies of sufficient quality to permit risk characterization; these ingredients—60 of which were ranked as high-priority—will enter the risk characterization process. This process will identify the seriousness of the adverse effect, determine the expected levels of human exposure, assess the resulting risk to human health and, if necessary, explore possible mitigation measures.

The results of this risk characterization process will determine if any registration action is warranted; a registration action is not the automatic result for every active ingredient entering the risk characterization process. As data gaps are filled, additional adverse effects may be identified, necessitating another risk characterization. According to DPR, the risk characterization process is a comprehensive evaluation requiring, in some cases, a considerable amount of time; therefore, it is not possible for DPR to predict how long it will take to systematically complete the risk characterization process for each priority category. The active ingredients have been prioritized into the categories of high, moderate, and low priority; the prioritization of the active ingredients is a subjective process based upon, among other things, the nature of potential adverse effects, number of potential adverse effects, number of species affected, the no observable effect level, potential human exposure, use patterns, quantity used, and EPA evaluations and actions.

Interim Registration of Economic Poisons Rulemaking. Existing law requires—with specified exceptions—that every manufacturer of, importer of, or dealer in any economic poison obtain a certificate of registration from DPR before the economic poison is offered for sale in California. AB 771 (Areias) (Chapter 963, Statutes of 1993) established a process whereby applicants for registration of a pesticide product may apply for a certifi-

cate of interim registration where specified data requirements are not yet met. [13:4 CRLR 161] In order to obtain a certificate of interim registration, the applicant must submit all of the data that are required to support federal and California registration of the pesticide product, except data for which deferral is being requested. In addition, the applicant must demonstrate that the pesticide can be used safely and will significantly enhance a pest management system. AB 771 also requires DPR to impose a fee to cover DPR's cost of reviewing and processing applications for these certificates. On January 26, DPR adopted section 6168, Title 3 of the CCR, on an emergency basis; section 6168 establishes a \$5,000 fee to cover DPR's costs of reviewing and processing each application for a certificate of interim registration. The \$5,000 fee must be submitted in addition to the \$200 application fee required pursuant to FAC section 12812. On February 4, DPR published notice of its intent to permanently adopt section 6168; although no hearing was scheduled, DPR took public comments on the proposal until April 4. DPR has until May 26 to submit a certificate of compliance to OAL to adopt the regulation permanently.

Other DPR Rulemaking. The following is a status update on other DPR regulatory proposals discussed in detail in recent issues of the *Reporter*:

• Economic Poison Rulemaking. In August 1993, DPR published notice of its intent to amend section 6000 and adopt new section 6145, Titles 3 and 26 of the CCR, pertaining to economic poisons. Proposed amendments to section 6000 would provide that the term "economic poison," as used in FAC section 12995, includes any substance or product that the user intends to be used for the economic poison purposes specified in FAC sections 12753 and 12758; proposed section 6145 would define the term "intended to be used," as used in FAC sections 12753 and 12758. [14:1 CRLR 133; 13:4 CRLR 159] At this writing, DPR has not adopted the proposed changes and is currently reviewing comments and determining whether further changes to the text of the regulation are necessary.

• Conflict of Interest Code Amendments. DPR's current conflict of interest code designates employees who must disclose certain investments, income, interests in real property, and business positions, and employees who must disqualify themselves from making or participating in the making of governmental decisions affecting those interest. On April 11, the Fair Political Practices Commission ap-

proved DPR's proposed amendments to its conflict of interest code which add several new positions within DPR that make or participate in the decisionmaking process and were not previously listed in the conflict of interest code; in addition, DPR's amendments delete several positions which no longer exist. [14:1 CRLR 133; 13:4 CRLR 160; 13:2&3 CRLR 174] The amendments became effective on May 10.

DPR Registers Pesticide for Use Against Africanized Bees. In May, DPR granted a special registration to the California Department of Food and Agriculture (CDFA) for the use of the pesticide M-Pede in order to deal with the impending arrival of Africanized honey bees in southern California. According to DPR, this insecticidal soap is less toxic to humans than other chemicals currently registered for bee and wasp control in California; the product is effective because bees cannot fly when their wings are wet, and the soapy water penetrates their breathing tubes, suffocating them. The pesticide will be available for use by police officers, fire fighters, and other government employees who are responsible for responding to Africanized honey bee situations, as well as pest control professionals who have received industry certification in the control of bees. (See agency report on STRUCTURAL PEST CONTROL BOARD for related discussion.)

DPR Issues Warning About Illegal Pesticide. In April, DPR warned the public not to purchase a chalk product which is illegally being sold as an insect control for homes and restaurants. The product is formulated to look like normal chalk and is touted as effective against cockroaches and other kitchen pests when a line of chalk is drawn across the floor or baseboard. The product, illegally imported from China and other sources, is not a registered pesticide with either DPR or EPA. Because the product is not registered with EPA, there has been no examination to ensure it is packaged safely, that the label provides directions on proper use, or that the product actually works as promised. According to DPR, consumers purchasing pesticide products should ensure that there is an EPA registration number on the product.

LEGISLATION

AB 2888 (Bornstein), as amended May 12, would require the DPR Director to give priority, if the Director adopts specified criteria, to the processing of some pesticide registration applications over others. The bill would permit DPR to adopt a review process for registering economic poisons



that is in conformity with the process for registering pesticides administered by EPA; permit the DPR Director to issue a certificate of emergency registration for a pesticide product under the conditions set forth in the bill; and require DPR to submit a report of specified information to the Cal-EPA Secretary and the legislature by September 1, 1996.

The California Rural Legal Assistance Foundation (CRLA) strongly opposes AB 2888, contending that the bill would relieve pesticide companies of the duty to prove that their birth defect, cancer, and other health and environmental studies are valid, adequate, and complete under the standards of the Birth Defect Prevention Act of 1985 and the Pesticide Contamination Prevention Act of 1985; CRLA also claims that state scientists have rejected hundreds of inadequate pesticide industry studies which were accepted by EPA, and have found numerous irregularities in the labeling of pesticides approved by EPA. According to CRLA, "[s]peedy pesticide approval should not [be] achieved at the expense of safety or good science." [A. W&M]

AB 2532 (Areias), as amended March 1, would require the DPR Director to give priority in the processing of applications for registration to economic poisons that are alternative to economic poisons for which registration has been canceled or suspended or that have been withdrawn from the market and for which there are no other currently registered chemical or nonchemical alternative economic poisons. The bill would require the applicant to include a request for priority processing and justifying information with the application. [S. AWR]

SB 1502 (Alquist). Existing statutory law requires CDFA and the state Department of Health Services to jointly develop regulations relating to pesticides and worker safety; the Governor's Reorganization Plan No. 1 of 1991 transferred these responsibilities to the DPR and the Office of Environmental Health Hazard Assessment. As introduced February 15, this bill would exempt from these provisions any disinfectant, sanitizer, or sterilant registered in this state as an economic poison, but would place disinfectants, sanitizers, or sterilants registered in this state as economic poisons on a list of hazardous substances established by the Director of Industrial Relations. [S. Appr]

AB 2724 (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 amended May 18,

this bill would require the Director—upon the application of a registrant of a specified laundry bleach which is a combination detergent/disinfectant—until January 1, 1998, to determine whether the mill assessment shall be only on the economic poison (disinfectant) use of that combination product. [A. W&M]

AB 2800 (Harvey), as amended March 16, would permit an economic poison registrant, at any time, to request that the registration of any of its economic poisons be voluntarily canceled. The bill would permit any economic poison for which the registration is cancelled to be sold and possessed as if the product's registration was not renewed. [S. AWR]

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 133-34:

SB 475 (Petris), as amended June 8, 1993, would enact the Pesticide Use Reduction Act of 1993, requiring the Cal-EPA Secretary to develop and implement a program to achieve a significant reduction in the use of the active ingredients in pesticides in California by 2000, if funds are appropriated for that purpose in the annual Budget Act. [A. EnvS&ToxM]

SB 106 (McCorquodale). Under existing law, officials of specified recreation and park districts are exempt from having to obtain an agricultural pest control adviser license from the DPR Director in order to act, or offer to act, as an agricultural pest control adviser if they make a recommendation in writing as to a specific application of pesticide on a specific parcel. As amended June 21, 1993, this bill would continue that exemption until July 1, 1995. This bill would also permit the Director to adopt alternative minimum criteria based on education or technical expertise for applicants for an agricultural pest control adviser license who are officials of those recreation and park districts. [A. Inactive File]

AB 773 (Areias). Existing law prohibits any person from acting, or offering to act, as an agricultural pest adviser without first having secured an agricultural pest control adviser license from the DPR Director. As amended April 13, 1993, this bill would require the Director to develop a program for certifying the competency of pest control advisers in biologically intensive integrated pest management, as defined, on a voluntary basis. [S. AWR]

The following bills died in committee: **SB 532 (Hayden)**, which would have required the DPR Director to determine if any adoption, amendment, revision, or extension of the tolerances adequately protects human health, including the health of infants, children, elderly, and other population categories and, if not, to take more

stringent action; **SB 422 (Petris)**, which would have prohibited, on and after January 1, 1995, any employer from engaging in, or causing any employee to engage in, the dispersed use of extremely toxic poisons, as defined, except as authorized by the Director of Industrial Relations, or the director of another state agency designated by the Governor, where the DIR Director finds, pursuant to regulation, that prohibition will cause severe economic hardship due to the lack of feasible alternative substances or practices; **AB 1111 (Sher)**, which would have codified the changes made by the Governor's Reorganization Plan No. 1 of 1991, which created Cal-EPA, created DPR in Cal-EPA, and transferred to DPR the pesticide regulatory program of CDFA; and **AB 1480 (Johnson)**, which would have required all fees and penalties collected by DPR, the Department of Toxic Substances Control, and the state Water Resources Control Board to be deposited in a special account in the General Fund and would have declared that all activities of those agencies shall be funded by appropriations from the General Fund.

LITIGATION

On January 21, San Francisco Superior Court Judge Stuart Pollak denied plaintiffs' request for a preliminary injunction in *Natural Resources Defense Council, et al. v. Wilson, et al.*, No. SCV-957488. The case, which was filed on December 28, 1993 by NRDC, AFL-CIO, CRLA, and the Environmental Defense Fund, was an attempt to invalidate Cal-EPA's revision of the Proposition 65 listing of methyl bromide, one of the world's most widely used pesticides. Because EPA listed methyl bromide as a substance which must be labeled or identified as causing cancer or reproductive toxicity, the state listed methyl bromide under Proposition 65 on January 1, 1993, thereby triggering a one-year period after which manufacturers and users of methyl bromide must provide a clear and reasonable warning to individuals who will be exposed to the substance. In December 1993, however, Cal-EPA's Office of Environmental Health Hazard Assessment (OEHHA) limited the Proposition 65 listing of methyl bromide to structural uses, contending that EPA's listing of the substance was similarly limited and that the state need not go further than the federal government. Had Cal-EPA not revised the listing, agricultural growers who use methyl bromide—and agricultural use accounts for 95% of the 19 million pounds of methyl bromide used in California annually—would have been required to provide the warning. The Wilson administration took the action after heavy



lobbying by growers and the chemical industry. [14:1 CRLR 134]

Plaintiffs unsuccessfully argued that the requirements of Proposition 65—a state initiative passed by the voters in 1986—differ from and are not limited by federal standards, and that all uses of methyl bromide are properly listed under Proposition 65 based on its toxicity level. Environmentalists are fearful that Judge Pollak's ruling—if upheld—could lead to the delisting or restricted listing of numerous of toxics and the evisceration of Proposition 65's warning requirement. At this writing, a status conference in the case is scheduled for late May.

In a related matter, the Developmental and Reproductive Toxicant (DART) Identification Committee of OEHHA's Science Advisory Board met on May 5 to consider, among other things, whether to identify methyl bromide as a chemical known to the state to cause reproductive toxicity. As a result of that meeting, the Committee decided not to identify methyl bromide as a reproductive toxin. As a result, methyl bromide will be retained on the state's list of chemicals known to the state to cause cancer or reproductive toxicity for structural fumigation—but not agricultural—purposes. Accordingly, pending the final decision in the above litigation, Proposition 65 warnings are not required for commodity or field uses of methyl bromide.

In *Macias v. State of California, et al.*, 22 Cal. App. 4th 1788 (Mar. 4, 1994), the Second District Court of Appeal considered whether American Cyanamid Company, the makers of malathion, had a duty to warn downstream users or bystanders about the risks and hazards of its product, a pesticide spray used as part of CDFA's controversial aerial malathion Medfly Eradication Program in 1989. Plaintiffs—the parents of 14-year-old Juan Macias, who was blinded by the pesticide while trying to cover the family car as a helicopter spraying malathion passed over his house—appealed to the Second District from a Los Angeles County Superior Court decision granting summary judgment in favor of the manufacturer. [12:2&3 CRLR 196-97; 11:3 CRLR 150]

In this case, plaintiffs did not allege that the manufacturer failed to comply with EPA labelling standards. Rather, they alleged that the manufacturer learned that CDFA, to whom it had sold the malathion, was giving false, misleading, and inadequate warnings to the public. Plaintiffs alleged that CDFA violated federal standards by issuing notices that “no health hazard” is presented by aerial malathion spraying. According to plaintiffs, the manufacturer's knowledge of CDFA's in-

adequate warning notices triggered in the manufacturer an independent legal duty to the public to warn of the risks or, at a minimum, to refuse to sell the malathion to the state without assurances that proper warnings would be provided.

After reviewing the applicable legal standards, the Second District concluded that, generally, “[a] manufacturer of a product which the manufacturer knows or should know is dangerous by nature or is in a dangerous condition, is under a duty to give warning of those dangers to persons who it is foreseeable will come in contact with, and consequently be endangered by, that product. The element of privity has been long discarded; a manufacturer's warning to the immediate purchaser will not, as a general matter, discharge this duty.” In light of this legal standard, the court found several factual issues presented in the record, such as whether CDFA's warnings were adequate; whether the manufacturer had actual knowledge of CDFA's failure to warn citizens whose communities would be aerially sprayed with malathion or of its inadequate or incorrect warning to downstream users or bystanders; and whether the manufacturer's reliance upon CDFA was reasonable in light of the factual allegations of misrepresentations made by CDFA. The court found that these factual issues were raised by plaintiffs' pleading, and that they were not susceptible to resolution by summary adjudication or summary judgment. The court further found that plaintiff's causes of action are not barred by the federal preemption doctrine and, accordingly, reversed the trial court's judgment and remanded the case to the trial court for further proceedings.

In *Pesticide Watch v. California Department of Food and Agriculture*, No. 961050, filed in San Francisco Superior Court in late May, plaintiffs Pesticide Watch, Action Now, and Safe Alternatives for Fruitfly Eradication are challenging the approval of an environmental impact report (EIR) which enables the state to commence aerial spraying of malathion in southern California. Plaintiffs are asking that the court void the EIR's certification and require the state to a prepare new EIR; plaintiffs also seek the release of all environmental and health studies performed by the state on Medfly spraying projects. The named defendants in the action are CDFA, DPR, Cal-EPA, the Department of Health Services, Governor Wilson, and OEHHA. At this writing, no hearing date is scheduled.

RECENT MEETINGS

At its March 18 meeting, PAC discussed the issues of VOCs and pesticides;

if the state is unable to develop an acceptable plan for regulating and reducing pesticide use and VOC emissions, the federal implementation plan (FIP) will be adopted by February 1995 (see MAJOR PROJECTS). PAC noted that the FIP calls for a reevaluation similar to what is being done in California to determine the percent VOC content of each pesticide through analytical methods; the percent VOC content will be multiplied by the amount of pesticides used to calculate VOC emissions for the products. Total VOC emissions for all products will be developed, which will be used to define and target reductions. When this information is made available in 1996, the state will have one year to stop sales of the identified pesticide products within the nonattainment areas. Within two years, use of products with high VOC contents will be prohibited within these areas. The initial reduction of 20-40% will be discussed in upcoming workshops; PAC considers product reformulation an important means of reducing VOC emissions. If registrants are willing to seriously look at reformulation as an alternative, PAC will address the issue of harmonization efforts with EPA, in order to move new products through the federal and state registration processes as quickly as possible. When reformulating products, two main areas will need to be addressed—revising the acute toxicology tests, and issues related to worker exposure.

At its April 6 meeting, PMAC announced that DPR has put a database of pest management-related environmental technology projects on an electronic bulletin board, accessible through Internet, where it can be accessed easily by students, researchers, growers, and others interested in pest management research. DPR wants more research to be done on alternatives to highly regulated pesticides [14:1 CRLR 134-35]; the database is designed to encourage the development of new environmental technologies.

Also at PMAC's April 6 meeting, DPR Director James Wells announced the initiation of a new project to identify public and private sources of funding to support pest management research, education, and technology activities in California; Charles Benbrook, a private consultant, will assist DPR on this project. Under his eight-month consulting contract, Benbrook will identify sources of funding, the types of projects most likely to be funded, and potential partnerships that could be formed to heighten the chances of securing funding. PMAC identified a lack of funding for innovative research and extension activities to develop biologically intensive pest



management systems as one of the constraints to implementing integrated pest management.

■ FUTURE MEETINGS

DPR's PAC, PREC, and PMAC meet regularly 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
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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.

■ MAJOR PROJECTS

EPA Sets December 1994 Deadline for WRCB Adoption of Bay/Delta Standards. In December 1993, a federal task force consisting of representatives from the U.S. Environmental Protection Agency (EPA), U.S. Bureau of Reclamation (USBR), U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) released a package of proposed water quality standards to protect declining wildlife in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; coordinated by EPA, the four federal agencies worked together to draft standards for the Bay/Delta region after the state failed to do so and pursuant to the settlement of a lawsuit filed by the Sierra Club Legal Defense Fund and several other environmental groups. Promulgation of Bay/Delta standards by the federal government is necessary because WRCB failed to adopt adequate standards after a marathon five-year proceeding and then abandoned the effort in April 1993 as directed by Governor Wilson. [14:1 CRLR 135; 13:4 CRLR 163]

EPA proposed three different sets of water quality criteria: salinity criteria of two parts per thousand in Suisun Bay, the productive nursery of the estuary; survival indices to protect migrating young chinook salmon; and salinity criteria to protect striped bass spawning on the lower San Joaquin River. According to EPA, each set of criteria is intended to protect a particular designated use or set of uses in the Bay/Delta Estuary. Additionally, FWS proposed to list the California splittail as threatened under the federal Endangered Species Act; identify critical habitat for the Delta smelt, which has been listed as threatened [13:2&3 CRLR 177, 189]; and, during 1994, allocate 800,000 acre-feet of Central Valley Project water for fish and wildlife use under the Central Valley Project Improvement Act. Also, NMFS announced final action to reclassify the Sacramento River winter-run chinook salmon from "threatened" to "endangered."

According to EPA, its proposed salinity standards are designed to reflect the natural hydrological variability of the Delta; the length of time that the standards

must be met at each location depends on whether it is a wet or dry year. The proposal requires that in wet years, the standard be met further downstream in Suisun Bay and for longer periods; in contrast, the standard for drier years would be maintained further upstream and for shorter periods.

As expected, the federal proposal will increase the amount of freshwater which must be retained in the Delta during certain times of the year, thus decreasing the amount available for export to farms and cities. The federal task force estimated that its proposal would reduce the amount of Delta water available for farms and cities by an average of 9% per year (220,000 acre-feet) in average years, and by up to 21% (1.5 million acre-feet) in drought years.

Although many environmental groups praised the federal proposal, Governor Wilson criticized it, claiming that it is too costly in terms of both water and jobs for the state; within hours after the federal agencies announced their proposal, Wilson called the standards "unbalanced and ill-considered." Wilson complained that the proposed standards are too rigid and will have the effect of driving business and jobs away from the state because of uncertainty about a steady water supply. Wilson directed WRCB—the same agency he ordered to abandon its five-year effort to establish interim Bay/Delta standards in April 1993 [13:2&3 CRLR 177]—to meet with the federal agencies in order to draft a new regulatory proposal. Responding to the Governor's quick criticism of the proposed standards, EPA emphasized that the proposals are only a draft and that input by state and local interests is encouraged. Environmentalists are concerned that Wilson's opposition to the proposed federal standards will cause delays in their implementation, leading to even further deterioration of the water quality in the Bay/Delta. [14:1 CRLR 135-36]

At public hearings on the proposed standards hosted by EPA in late February and early March, several interested parties commented on the proposal. In general, representatives from local government, businesses, water agencies, and the agriculture industry expressed concern and opposition to the plan, while environmental groups were generally supportive of the proposal.

On March 10, WRCB released its comments on the federal proposal. In its response, WRCB explained that, in September 1991, EPA disapproved its Water Quality Control Plan for Salinity because EPA found that the water quality objectives in the plan failed to adequately protect the estuarine habitat and other design-