



criteria, commencing on January 1, 1995, except as specified. This bill would require CIWMB to grant a one-year waiver from those criteria requirements for rigid plastic packaging containers that are introduced and sold in this state after January 1, 1995. [A. NatRes]

**SB 1090 (Killea)**, as amended April 12, would exclude compost that meets state and federal product quality standards from the definition of "solid waste." The bill, on and after January 1, 1996, would authorize CIWMB to adopt regulations that restrict or prohibit the disposal of yard waste at disposal facilities. [S. Floor]

**SB 1132 (Leslie)**. The California Integrated Waste Management Act of 1989 requires each SRR element to include an implementation schedule that shows how the local agency will meet AB 939's waste diversion requirements. The Act requires each plan and the elements thereof to be reviewed, revised, and, if necessary, submitted to the Board every five years. As introduced March 5, 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, 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. [S. Floor]

**AB 457 (Areias)**. The California Integrated Waste Management Act of 1989 required CIWMB, on or before August 1, 1991, to prepare and adopt certification regulations for LEAs, and requires these regulations to include, among other things, requirements regarding staff resources. As amended May 6, this bill would delete that deadline and require the Board to adopt specified regulations regarding staff resources for designated enforcement agencies, as defined. [A. W&M]

**AB 1829 (Sher)**, as amended May 4, would—among other things—require CIWMB to establish a comprehensive research and development program designed to achieve specified goals regarding innovative resource management and waste reduction programs; require CIWMB to prepare and submit to the legislature a plan for the review of solid waste facilities at least once every five years; and require CIWMB to regulate the disposal of waste containing asbestos at any waste management unit which is classified under specified regulations, unless

the waste management unit is subject to a hazardous waste facilities permit issued by the Department of Toxic Substances Control. [A. W&M]

**AB 11 (Eastin)**. Existing law requires government agencies and the legislature to give purchasing preference to recycled products. As amended April 13, this bill would require a procuring agency and the legislature, if a product made with recycled material costs more than the same product made with virgin material, to purchase fewer of those more costly products or to apply cost savings, if any, gained from buying other products made with recycled materials towards the purchase of those more costly products.

Existing law requires the Department of General Services to give a preference to suppliers of recycled paper products of up to 5% of the lowest bid or price quoted by suppliers offering nonrecycled paper products, and requires the legislature to give a purchasing preference if the recycled product meets all applicable standards and can be substituted for a comparable nonrecycled product. Existing law requires that, by January 1, 1992, at least 35%, and by January 1, 1994, at least 40%, of the total dollar amount of paper products purchased or procured by the Department and the legislature be purchased as recycled paper product. This bill would instead require that, by January 1, 1994, at least 40%, and by January 1, 1996, at least 50%, of the total dollar amount of paper products purchased or procured by the Department be purchased as recycled paper product; by January 1, 1994, at least 15%, and by January 1, 1996, at least 25%, of the total purchased or procured fine writing and printing paper be a recycled paper product; by January 1, 1995, at least 40%, and by January 1, 1997, at least 50%, of the total dollar amount of paper products purchased or procured by the legislature be purchased as recycled paper product; and by January 1, 1995, at least 15%, and by January 1, 1997, at least 25%, of the total fine writing and printing paper purchased or procured by the legislature be a recycled paper product. The legislature, the Department, and procuring agencies would also be required to give special consideration to purchasing certain products.

The Act requires procuring agencies to require contractors to certify the recycled content of materials, goods, or supplies, as specified. This bill would authorize the Department, in consultation with CIWMB, to establish price preferences, recycled-content disclosure, recycled product-only bids, and cooperative purchasing arrangements to assist in meeting

recycled product preference and purchasing requirements. [S. GO]

## ■ FUTURE MEETINGS

August 25–26 in Los Angeles.  
September 22 in Sacramento.  
October 27–28 in Merced.  
November 17 in Sacramento.  
December 15 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 CDFG and transferred to DPR. Pest eradication activities (including aerial malathion spraying, quarantines, and other methods of eliminating and/or preventing pest infestations) remain with CDFG. 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 WPWPCet *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 in-



clude 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.

On April 1, DPR Director James Wells announced the appointment of Elin Miller as Chief Deputy Director. Miller was previously employed as the western government relations manager for DowElanco, responsible for corporate, legislative, and

regulatory affairs policy for eight western states. As Chief Deputy Director, Miller's duties will include assisting the Director in overseeing all functions within the Executive Office and providing general assistance on the management and coordination of DPR's various branches.

## MAJOR PROJECTS

**James Wells Confirmed.** On January 13, the Senate confirmed James Wells as Director of DPR; Wells, who received his bachelor's degree in zoology from the University of California at Davis, previously served as chief of the pesticide use enforcement branch for the California Department of Food and Agriculture (CDFA). Under Wells' direction, CDFA doubled pesticide residue testing and established a program monitoring pesticide enforcement efforts.

**DPR Releases Pesticide Use Summary.** On May 4, DPR announced the release of its 1991 *Summary of Pesticide Use Report Data*, summarizing all agricultural pesticide use required to be reported under legislation implemented in 1990. Because California has a broad definition of the term "agricultural use pesticide," not only must pesticide use in agriculture be reported, but also applications by professional pest control operators to such sites as parks, golf courses, and structures, as well as roadside weed control treatments. The primary exceptions to the use reporting requirements are home and garden use, as well as most industrial and institutional uses.

The report indicates that in 1991, 161.1 million pounds of pesticide active ingredients were reported used in California; this figure is 20 million pounds less than was reported used in 1990. [12:4 CRLR 183] According to the report, one of the possible causes of the decrease is the state's prolonged drought, which forced growers to plant less acreage in 1991.

According to pesticide sales tax records, the amount of pesticide active ingredients sold in California in 1991 was 554 million pounds, compared to 605.5 million pounds sold in 1990. Included in these sales figures are not only those chemicals whose use must be reported, but also home and garden pesticides, as well as pesticidal chemicals not usually thought of as pesticides, including disinfectants and other anti-microbials such as chlorine used for municipal water disinfection.

**DPR Releases Annual Pesticide Illness Report.** On March 2, DPR announced the release of a report summarizing pesticide-related illnesses for 1990; according to the report, 1,987 cases of

illness were reported in 1990 with a potential or confirmed link to pesticide use. The report indicates that, although pesticide use is most often associated with agriculture, more than two-thirds of the cases involved non-agricultural uses of pesticides; the non-agricultural cases typically involved exposure to disinfectants used by employees of restaurants, janitorial companies, municipal water treatment plants, swimming pools, and hospitals. According to DPR Director James Wells, reported cases among agricultural field workers remained lower than levels seen in earlier years; from 1982-88, an average of 349 cases per year were associated with exposures to field residues, compared to 165 cases in 1990.

The report also indicates that investigations of eleven deaths in 1990 revealed that four were definitely related to pesticide exposure; the deaths included a man who died after ignoring warning signs and seeking shelter under the tarpaulin of a fumigated residence, a person who suffered chlorine lung damage, and an agricultural applicator who died of parathion ingestion.

Physicians are required to report to the state all cases which they believe may be related to pesticide use; DPR indicated that the 1990 report was not issued until 1993 because of delays caused in part by the extensive investigation and analysis required of all reported cases. Every pesticide-related illness or injury reported to the state is investigated by the agricultural commissioner in the county where the illness occurred. The investigative files for the illnesses are then analyzed by DPR specialists to determine whether the illness was related to pesticide exposure. DPR uses the report to determine if changes should be made in worker protections, label directions, or work practices, in order to avoid unnecessary exposure to pesticides.

**DPR's Endangered Species Program Issues First Protection Plan.** On March 31, DPR announced the completion of the first local plan issued by the Department's endangered species program; the plan is aimed at protecting the Aleutian Canada Goose, a species listed as threatened under the federal Endangered Species Act. The plan defines certain areas frequented by the goose in Merced County and establishes limitations on the use of pesticides to limit the goose's exposure. The goose spends the summer in Alaska's Aleutian Islands and the winter in California's Central Valley—the largest concentration being in Merced County.

According to DPR Assistant Director Ron Oshima, DPR set up its own endan-



gered species program to replace the one proposed by the U.S. Environmental Protection Agency (EPA), after concluding that the federal program would have imposed unnecessarily broad prohibitions on pesticide use, impeding economic growth while providing little if any additional environmental protection. Under its own program, DPR set up local advisory committees of growers, biologists, pest management experts, state and federal wildlife agency representatives, and state pesticide officials; the committees are to develop mitigation measures which are appropriate and feasible. DPR then applies the measures as broadly as necessary to ensure adequate protection of the target species.

DPR's local plan for the goose designates a protected area of about 150,000 acres in western Merced County; EPA had originally proposed to designate over 400,000 acres in the county. DPR's committee revised the protection area after reviewing specific historical records of locations actually visited by the geese. While the EPA draft included prohibitions on many pesticides widely used in the area, the local plan includes specific mitigation measures to limit pesticide exposure to the geese.

The local plan was developed under a grant from EPA; after review and approval by EPA and the U.S. Fish and Wildlife Service, it will be included in the national Endangered Species Pesticide Protection Program.

**DPR Signs MOU with San Diego County Agricultural Commissioner.** Protecting endangered species from pesticides is also the focus of a memorandum of understanding (MOU) signed recently by DPR and the San Diego County Agricultural Commissioner's Office. Because of its geography and multitude of microhabitats, San Diego County is home to an unusually large number of species which are classified as threatened or endangered, or are candidates for this status; there are over 400 recorded sites where such plants, animals, and other species live.

In recent years, DPR's Pesticide Registration Branch has undertaken studies of endangered species and pesticide exposure scenarios to ensure that proposed pesticide use limitations in the vicinity of their habitats are sufficient for the protection of endangered species. In turn, the agricultural commissioners are responsible for considering places within each county that are habitats of rare, threatened, or endangered species and, when they issue permits for the use of certain restricted chemicals, ensuring that the spe-

cies in these areas are not harmed by pesticide use.

Under the terms of the MOU, DPR will loan equipment to San Diego County for a one-year pilot project to produce computer-generated maps of endangered species habitat areas; this action will correct current paper maps, many of which are known to contain inaccurate or outdated information. The large number of endangered species locations and overlapping habitats in San Diego County, combined with the inherent uncertainties of biological data, have limited the ability of the county's pesticide regulatory program to develop an endangered species protection program.

Locations of endangered species are now routinely available only as listings of occurrences, which require considerable interpretation to locate on a map. An occurrence list is very useful for long-term projects where typically enough time is available for map interpretation; however, pesticide permits must often be issued on a 24-hour notice following unexpected outbreaks of plant diseases or insect pests. Fast retrieval of endangered species habitat through computer-based mapping allows quick turnaround time for pesticide permits, ensuring that neither timely response to permit requests nor adequate consideration of endangered species protection is sacrificed.

Information about occurrence of rare, threatened, and endangered species is often limited and incomplete. However, the state Department of Fish and Game (DFG) maintains a Natural Diversity Database of occurrences of these species; this database will serve as the primary source of habitat information for this project. Using sophisticated computer-based geographic information systems, the DFG data will be combined with site-specific DPR pesticide use report data to allow the commissioner's office to create geographic files of pesticide use sites to help resolve potential pesticide use conflicts with endangered species. The software allows rapid access to data pertaining to any location where a pesticide use conflict may occur, sorting and selectively displaying only the species likely to be affected by a particular pesticide, and retrieving documentation for each occurrence of an endangered species to weigh the accuracy of available habitat data.

The commissioner's office can also examine previous patterns of pesticide use near habitats to build mailing lists of affected landowners. In several areas of California, DPR has set up committees of landowners, wildlife specialists, representatives of environmental groups, univer-

sity researchers, and government officials to develop endangered species protection programs.

**DPR Releases Cumulative Summary of Groundwater Testing.** In March, DPR released its seventh annual report on the results of groundwater testing for pesticides; it is the first report since 1986 to include cumulative totals of testing reported to the Department since 1983, in addition to detections reported in the previous year.

The report presents a detailed review of information in DPR's well inventory database, which was initially developed by DPR (then a division of CDFA) in 1983. However, the scope of the database was expanded with the 1985 passage of the Pesticide Contamination Prevention Act, which requires all entities, whether government or private, to report the results of any pesticide testing done on well water to the state's pesticide regulatory program. [12:4 CRLR 181-82]

The report summarizes testing conducted by 35 government agencies and three private firms from 1971 through 1992; according to the summary, 260,693 reported analyses of samples were taken from 17,713 different wells. Of these, 12,459 tests indicated pesticide contamination; 4,615 were confirmed by subsequent analyses.

After the Department confirms a detection, it focuses its investigation on whether the pesticide reached groundwater because of routine agricultural use, such as application to crops. Use of pesticides found in groundwater as a result of agricultural use is either prohibited or restricted in areas where the contamination occurred.

**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.** At the April 16 meeting of the Pesticide Registration and Evaluation Committee (PREC), Eileen Arechiga of DPR's Pesticide Registration Branch reviewed the status of the 57 active ingredients which were noticed for suspension in February 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. [13:1 CRLR 104]

Arechiga reported that DPR received the required data on thirteen of the active ingredients and acceptable data on five other active ingredients; DPR's suspension of products containing two active ingredients was finalized; the registrations of three active ingredients were withdrawn by the registrants; and DPR granted petitions for extensions of time on thirteen active ingredients and denied petitions for extensions of time on twelve active ingredients. Also, DPR is reviewing exposure data on five active ingredients for which exemption requests were made; petitions for extension of time on five active ingredients; and petitions for deferral of suspension on twelve active ingredients. Arechiga explained that these actions do not total 57 because multiple actions may be pertaining to one active ingredient.

• **Data Collection Under AB 1742.** On April 21, DPR suspended the registration of 47 pesticides whose manufacturers ignored notices to submit toxicology data on their products; these chemicals are the active ingredients in about 225 pesticide products. Although some of the pesticides are used in agriculture, industry, or the home, most of the products containing these active ingredients are disinfectants and sanitizers, and very few of the products have widely known brand names. [13:1 CRLR 104]

In early 1992, DPR sent letters to the manufacturers of 390 active ingredients informing them that they must begin the process of ensuring that up-to-date toxicology data are submitted as required by the 1985 Birth Defect Prevention Act. These pesticides are those that were not subject to the original data call-in initiated in accordance with SB 550 (Petris) (see above). The data collection timetable for this second group of chemicals was established in 1991 with the passage of AB 1742 (Hayden) (Chapter 1227, Statutes of 1991). Registrants of 93 of the 390 active ingredients did not respond to the original letters sent early in 1992; this prompted DPR to send notices in November and December to those registrants, informing them that their products would be suspended unless they complied with the data call-in. Registrants of 27 of the 93 chemicals responded to those notices, and another 19 declined to renew their registrations, withdrawing their products from the market. Accordingly, DPR suspended the registrations of the remaining 47 chemicals.

When a pesticide registration is suspended, all sales by registrants must stop immediately; sales by retail dealers, how-

ever, may continue for up to two years, and products in the hands of consumers may continue to be used. Suspension notices affect a pesticide active ingredient and all products containing the ingredient.

**Regulation of Methyl Bromide.** In its continuing effort to develop a comprehensive regulatory system for the use of methyl bromide, a widely used fumigant that has been associated with depletion of the ozone layer, DPR recently took the following actions:

• **Task Force Formed to Study Alternatives.** In late December, Cal-EPA and CDFA announced the formation of a task force to explore the development of alternative technologies and procedures that would eliminate methyl bromide emissions from structural and agricultural uses in California. The task force, co-chaired by CDFA Director Henry Voss and DPR Director James Wells, will focus on ways to eliminate risk of significant damage to California agriculture that would occur should methyl bromide be phased out before feasible alternative pest control methods become available. The task force plans to review the U.S. Department of Agriculture's (USDA) Methyl Bromide Research Plan to ensure that national research efforts in this area are relevant to California's needs. The task force will also evaluate alternatives to methyl bromide fumigations not covered under the USDA plan, and interact with EPA's Office of Air Quality on research opportunities for development of alternatives. The task force's membership will include representatives of leading agricultural commodity groups, as well as representatives of the structural pest control industry and environmental groups.

• **Fumigation Method Reducing Emissions Approved.** On January 12, DPR announced its approval of a new structural fumigation method that will reduce the amount of methyl bromide released into the air. Under the new method, carbon dioxide is combined with methyl bromide, thereby decreasing the amount of methyl bromide needed to achieve the same amount of effectiveness.

As stated by DPR Director James Wells, because less methyl bromide is used, the post-fumigation aeration period is significantly reduced and, in turn, so is the cost to consumers. Wells said the registration process for the new method was expedited because it represents innovative, pollution-reducing technology; California is the first state where the new system is available.

Two southern California fumigation firms—Farmer Termite Company and A-1 Fumigation Company, both of Bell-

flower—had been working on a way to reduce the amount of methyl bromide used in structural fumigation for several years. However, the firms expedited their research efforts after a DPR regulatory action lengthened the period that a structure must be aired out after methyl bromide fumigation (see below). [12:4 CRLR 180; 12:2&3 CRLR 211] Studies submitted by the companies demonstrated that adding carbon dioxide to methyl bromide pumped into a structure significantly increased its effectiveness, because the carbon dioxide causes termites and other insects to breathe more deeply and rapidly. Because of its increased effectiveness, two-thirds less methyl bromide can be used. Before being granted special registration, the applicants had to submit studies to show the procedure is effective in killing pests; they also had to complete tests, monitored by DPR, demonstrating that a 24-hour aeration period sufficiently clears methyl bromide and carbon dioxide from a structure.

Soil Chemicals Corporation of Hollister, a manufacturer of methyl bromide, will market the new fumigation process under the brand name "Makr"; fumigation companies will be required to give their workers additional training in the new application method before using it.

• **Research on Exposure Mitigation Techniques.** At PREC's January 15 meeting, Dennis Gibbons of DPR's Worker Health and Safety Branch gave a presentation regarding the Branch's research on mitigation measures to reduce worker exposure to methyl bromide. Gibbons explained how the Branch and industry have been modifying applications and equipment to accomplish exposure reduction. Fourteen studies have been evaluated, with eight of the studies using new equipment and technology.

Some of the new methods being researched include an air-fan dilution system, nobel plough, high barrier film (tarp) set, depths for injection, and purging of delivery line with air or nitrogen when the injector is pulled for turning. Gibbons explained that leaving a tarp on for five days added protection for the tarp removal crew, and that work time would be restricted for some of the crew due to excess exposure. He also indicated that the Branch would recommend a medical monitoring program.

In regards to offsite movement, Gibbons explained that exposure would be controlled by limiting both the amounts used and acreages treated, and by establishing buffer zones. Limits would also be applied to time of treatment and number of fields treated in an area.



• **Permit Conditions Issued for Soil Fumigation.** At the March 19 meeting of DPR's Pesticide Advisory Committee (PAC), Bob Chavez of the Pesticide Registration Branch announced permit conditions for the use of methyl bromide in the area of soil fumigation; the permit conditions cover bedded and nonbedded injection fumigations. The permit conditions were distributed to each county, but county commissioners were informed that DPR would consider variances under appropriate circumstances. Chavez indicated that some variances had already been received and were in the process of being reviewed based on data available to DPR.

• **DPR Director Named to UN Committee.** DPR Director James Wells was named to the Methyl Bromide Technical Options Committee of the United Nations' Environment Programme Technology and Economic Assessment Panel of the Montreal Protocol; the Committee will evaluate the technical and economic feasibility of reducing and phasing out the worldwide production of methyl bromide. On March 24-27, Wells attended the first meeting of the committee in the Hague, Netherlands. The program included briefings by experts who developed methyl bromide phase-out programs in the Netherlands and study tours of strawberry and nursery operations that do not use methyl bromide.

The parties to the Montreal Protocol, a group of nations that signed a treaty to protect the ozone layer, recently declared methyl bromide an ozone depleter. The group agreed in March that by 1995, production and use of methyl bromide would be frozen at 1991 levels; quarantine and pre-shipment uses were exempted from this action. Further reductions will be based on upcoming scientific and technology assessments. If parties to the Protocol vote to phase out methyl bromide production, the UN Committee will have the responsibility of evaluating applications for essential use applications.

• **Emergency Regulations for Structural Fumigation Readopted.** On March 3, DPR readopted on an emergency basis new section 6455 and amendments to section 6454, Titles 3 and 26 of the CCR, regarding the use of methyl bromide and sulfuryl fluoride in the fumigation of structures; the revisions increase aeration requirements and require notice of potential hazards to building occupants when methyl bromide or sulfuryl fluoride are used in structural fumigation. OAL approved the readoption on March 29.

This is the third time these emergency regulations have been adopted by DPR.

[13:1 CRLR 105] DPR did not begin the formal rulemaking process before March 29 because it anticipated that EPA would adopt labeling regulations that would incorporate California requirements into federal labeling law. At this writing, the federal labeling standards are almost complete, and they do not incorporate most of California's requirements. DPR is presently preparing a formal rulemaking file which will establish on a permanent basis those requirements not included in the federal standards.

• **Cooperative Agreement Signed to Improve Safety of Pesticide Workplace.** On January 22, DPR Director James Wells announced the signing of a new agreement by DPR, the Department of Industrial Relations (DIR), and the state's agricultural commissioners, outlining principles of cooperation among these agencies. According to Wells, the updated agreement will provide a better matrix for cooperation among agencies regulating worker health and safety; under state law, all three agencies share responsibility for workplace safety. DIR is the agency responsible for assuring safe working conditions for all California workers; DPR is the state's lead agency for pesticide regulation, and has oversight over worker pesticide use in agricultural, business, and industry; and, under contract to DPR, the state's agricultural commissioners enforce state pesticide laws and regulations within their respective counties.

DPR began actively pursuing reports of pesticide-related illnesses and injuries outside the agricultural workplace in mid-1987, after legislation authorized this expansion of the Department's regulatory role. Even though pesticide use is most often associated with agriculture, the majority of reported cases of pesticide illness investigated by DPR and the commissioners each year involves non-agricultural uses of pesticides. Typically, these cases involve exposure to disinfectants used by employees of restaurants, janitorial companies, municipal water treatment plants, swimming pools, and hospitals (see above). The new agreement is expected to help clarify mutual responsibilities in regulating the workplace, and help alleviate confusion among employers. The agreement also calls for cross-training and joint investigations among the agencies to improve enforcement capabilities.

• **Study Points to New Directions for Pesticide Regulation in California.** In May 1992, DPR contracted with Dr. Charles Benbrook, a Washington, D.C.-based policy analyst, to study the pesticide registration process and review the strengths and weaknesses of the registra-

tion function. The review was aimed at identifying opportunities to accelerate the registration process for environmentally benign products which are to be used for safer pest control, and determining areas where inefficiency and duplication of effort between state and federal regulatory programs could be eliminated. Dr. Benbrook presented his study, entitled "Challenge and Change: A Progressive Approach to Pesticide Regulation in California," to DPR at the April 15 meeting of the Pest Management Advisory Committee (PMAC).

The study makes over thirty major recommendations, many of which emphasize a reorientation of DPR's regulatory activities toward a risk-driven prioritization theme: getting lower-risk products registered more expeditiously, spending less time on lower-risk products, and spending more regulatory effort on higher-risk products and activities. These recommendations center around four themes: building on strengths, setting priorities, simplifying the state and federal partnership, and moving toward safer systems of pest control.

According to the study, DPR deserves national recognition for its contributions of new methods to characterize, quantify, and reduce pesticide risks; however, many policy and procedural changes are needed to accelerate progress toward safer pest control systems. Some of the recommendations in the report articulate new policies designed to build on DPR's existing strengths, such as reducing by at least one-half over the next two years the average timespan required between EPA approval and use in California of new active ingredients and new products; overcoming gridlock and delays by periodically purging the system of backlogs; fostering easy communication and timely understanding of changes in policy; and enhancing DPR's authority to take regulatory action swiftly.

The study's recommendations range from relatively uncomplicated procedural or policy changes whose implementation would be straightforward and rapid, to long-term, complex model initiatives designed to drastically alter the way DPR regulates pesticide use in the context of pest management systems. For example, Dr. Benbrook recommends creation of a provisional registration option for reduced-risk pesticides. According to Director Wells, the implication of such a change would require DPR, should it decide to implement such a program, to establish safeguards to ensure that the products given provisional registration truly reduce overall risk.



Within a year to eighteen months, DPR plans to hold workshops to allow public input on the report's recommendations; the Department is expected to make maximum use of PMAC and its Methyl Bromide Research Task Force as forums for evaluating Dr. Benbrook's recommendations and developing implementation mechanisms. Once workshops and public workshops are complete, DPR expects to develop legislative and regulatory revisions as needed.

**DPR to Amend Conflict of Interest Code.** On March 26, DPR published notice of its intent to amend its conflict of interest code, which designates employee positions 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. The proposed amendments would add several new positions within the Department that make or participate in the decisionmaking process and are not currently listed in the conflict of interest code, and delete several positions which no longer exist. DPR did not schedule a hearing on these proposed regulatory changes, but accepted public comments until June 1.

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

• **Rulemaking Under the Pesticide Contamination Prevention Act.** In October 1992, DPR published notice of its intent to amend several regulations adopted pursuant to the Pesticide Contamination Prevention Act, FAC section 12141 *et seq.*, the purpose of which is to prevent pesticide pollution of groundwater aquifers throughout the state. The proposed action would amend sections 6000.6, 6416, 6486.1-6486.5, 6800, 6802, and renumber section 6458, Titles 3 and 26 of the CCR. If adopted the changes would—among other things—add the chemicals chlorothalonil, 2,4-D alkanolamine salt, and endothall to a list of chemicals that have been identified as having a potential to pollute groundwater; identify as pesticide management zones (PMZs) new geographic areas which have demonstrated groundwater vulnerability as the result of pesticide use; and apply groundwater protection restrictions for pesticides containing atrazine, bromacil, prometon, or simazine to all PMZs, instead of just PMZs established for that specific chemical. [13:1 CRLR 104]

At this writing, DPR is still assessing new information and responding to public comments which were received prior to

the comment closing date of December 4. The Department is expected to present the rulemaking file to the Office of Administrative Law (OAL) sometime in early summer, enabling the changes to become effective before fall.

• **Worker Safety Regulation for Solid Fumigant Rodenticides.** In early May, DPR submitted the rulemaking file to Cal-EPA on its proposed amendments to sections 6720 and 6738(b) and (c), Titles 3 and 26 of the CCR. The proposed changes would exempt employers using solid fumigants for field rodent control from the need to provide eye protection equipment, work clothing and change facilities, and employee contact for employees working alone; the changes would also permit the use of leather gloves that have been aerated for twelve hours or more. [13:1 CRLR 105] Once the rulemaking file is approved by Cal-EPA, DPR will forward it to OAL for approval. The Department expects the process to be completed before the end of summer.

• **Antifouling Paints Containing Tributyltin.** On January 5, OAL approved DPR's amendments to sections 6488 and 6574, Titles 3 and 26 of the CCR. The amendments allow the use of paints containing tributyltin (TBT) to outboard motors and lower drive units from any type of container. [13:1 CRLR 106]

• **Specific Numerical Values for Aerobic Soil Metabolism.** On February 1, OAL approved DPR's amendment to section 6804, Titles 3 and 26 of the CCR. These amendments revise the existing specific numerical values (SNVs) for aerobic soil metabolism and establish a SNV for anaerobic soil metabolism. [13:1 CRLR 106]

• **Toxic Air Contaminants Regulation.** In September 1992, DPR published notice of its intent to adopt section 6860, Titles 3 and 26 of the CCR, to create a Toxic Air Contaminants List and place ethyl parathion (a pesticide) on that list. [13:1 CRLR 106] DPR scheduled a public hearing on October 23, but received no comments prior to or on the day of the hearing. At this writing, DPR expects to submit its rulemaking file to OAL at the end of May.

## LEGISLATION

**AB 543 (Jones).** Existing law provides that whenever a county agricultural commissioner suspends, for ten days or less, a pest control operator registration, a pest control aircraft pilot registration, a pest control adviser registration, or a permit to use restricted materials, the party suspended may appeal to the DPR Director within ten days of mailing or personal service of the commissioner's order. As amended March 24, this bill would delete

the language restricting the foregoing provisions to suspensions of ten days or less. This bill would also provide for review of a decision of the Director by administrative mandamus. [S. AWR]

**AB 770 (Areias).** Existing law requires each registrant of an economic poison to pay an assessment to the DPR Director for all sales of registered and labeled economic poisons for use in this state. Existing law permits sales invoices for economic poisons to show an amount that represents the assessment. As amended April 15, this bill would require the person to whom a registered and labeled economic poison is sold in this state to pay the assessment for the sale if the registrant fails to pay the assessment. The bill would require the invoice to show the amount of the assessment and whether it will be paid by the registrant, the pesticide broker, or the pesticide dealer. The bill would require the pesticide dealer or pesticide broker to pay an assessment of 21 mills per dollar of sales for sales of registered economic poisons if the dealer's sales invoice for the acquisition does not show an amount paid for the assessment.

AB 770 would also require pesticide dealers or brokers to report their sales quarterly to the DPR Director, and maintain certain records relating to their sales; permit the registration of an economic poison to be canceled or not renewed if the assessments for the product have not been timely paid; provide, until January 1, 1996, that assessments on poisons that are labeled for end use and sold for use in this state shall be paid by the registrant, except as specified; make it unlawful for any person, other than those specified, to sell or distribute economic poison products in this state unless the person is licensed as a pesticide broker; prohibit any person from purchasing for use in this state a pesticide that is labeled for agricultural use except from a licensed pesticide dealer or licensed pesticide broker; and permit the Director to levy a civil penalty against a person who violates the provisions relating to the payment of assessments. [A. W&M]

**AB 774 (Areias).** Existing law provides that a site within this state that has been treated with, or a plant, crop, or commodity, whether grown in this state or elsewhere, that has been treated with, or grown on a site treated with, an economic poison that is not registered for use on that plant, crop, commodity, or site is a public nuisance and may be seized by order of the DPR Director. As amended April 14, this bill would also make a site within this state that has been treated with, or a plant, crop, or commodity, whether grown in this state or elsewhere, that has been treated with, or grown on a site treated with, an eco-



conomic poison that was stolen or otherwise acquired by illegal means, a public nuisance and subject to seizure by the Director, if the owner of the plant, crop, commodity, or site knew or should have known that the economic poison was stolen or acquired through illegal means. [A. W&M]

**AB 1053 (Tucker)**, as amended May 5, would require the DPR Director to contract with the Los Angeles County Agricultural Commissioner to perform increased structural fumigation inspection and enforcement, as a two-year pilot project. The bill would authorize the Director to levy a civil penalty against any person violating these provisions. These provisions would be repealed effective January 1, 1996. [A. W&M]

**AB 2104 (Harvey)**. Existing law permits a county agricultural commissioner to levy a civil penalty against a person violating the provisions of the Food and Agricultural Code, or the regulations adopted pursuant thereto, relating to pest control operations and agricultural chemicals, in lieu of civil prosecution by the DPR Director, and sets forth a procedure for levying the penalty and for appeals to the Director therefrom. As introduced March 5, this bill would change the procedure for levying the penalty and for appeals to the Director in the following ways: (1) the person charged with the violation must be given notice of the proposed penalty in the written notice of the proposed action, which this bill would require to be sent to the person by certified mail; (2) the person must be given the opportunity to be heard if request is made for a hearing within 20 days after receiving the notice of the proposed action; (3) the Director is required to decide the appeal on the record of the hearing, as prescribed, and is required to affirm the decision if there is substantial evidence to support the agricultural commissioner's decision; and (4) on appeal, among other things, the Director could increase the amount of the civil penalty if the penalty is not greater than the penalty proposed in the commissioner's notice of proposed action. [S. AWR]

**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 introduced January 14, this bill would delete that exemption.

Under existing law, federal, state, and

county officials who are not employed in a department of agriculture were also exempt, until July 1, 1991, from provisions requiring them to obtain an agricultural pest control adviser license in order to act, or offer to act, as an agricultural pest control adviser if they made a recommendation in writing as to a specific application of pesticide on a specific parcel. This bill would extend that exemption until January 1, 1995. [A. Agri]

**SB 422 (Petris)**. The Occupational Carcinogens Control Act of 1976 establishes standards and safeguards for the use of carcinogens in California. As introduced February 24, this bill would prohibit, on and after January 1, 1995, any employer from engaging in, or causing any employee to engage in, the dispersed use, as defined, 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 director finds, pursuant to regulation, that prohibition will cause severe economic hardship due to the lack of feasible alternative substances or practices. It would repeal as of January 1, 2000, the provisions allowing the director to authorize the use of an extremely toxic poison on the basis of economic hardship unless a later enactment, enacted before January 1, 2000, deletes or extends that date. [S. Appr]

**SB 1185 (Bergeson)**, as amended May 12, would require the Cal-EPA Secretary to adopt, by July 1, 1994, regulations establishing a consolidated permit process which may be used for projects that require two or more permits from two or more offices, boards, and departments within Cal-EPA or specified implementing local or regional agencies. The bill would also require the Secretary, by February 1, 1994, to submit to the legislature recommendations for legislation codifying a consolidated permit appeal process. The bill would require the Secretary to adopt, by July 1, 1994, regulations establishing an expedited appeals process through which an applicant may appeal a determination of application incompleteness or any failure to take timely action by an office, a board, or a department within Cal-EPA or specified implementing local or regional agencies. [S. Appr]

**AB 468 (Jones)**. Existing law requires the DPR Director to establish a list of economic poisons, entitled the Groundwater Protection List, which have the potential to pollute groundwater. Existing law requires any person who uses an economic poison on the list to report on the use of the poison to the county agricultural commissioner on a form prescribed by the

Director, and requires dealers of economic poisons to make quarterly reports of sales to the Director. As amended May 13, this bill would limit the latter requirement to reporting sales of economic poisons to persons who are not required to file a pesticide use report. [A. Floor]

**AB 613 (Rainey)**. Existing law requires DPR, in cooperation with the state Department of Health Services (DHS), to conduct an assessment of dietary risks associated with the consumption of produce an processed foods treated with pesticides. Existing law also requires DPR and DHS to jointly review the existing federal and state pesticide registration and food safety system and determine if the existing programs adequately protect infants and children from dietary exposure to pesticide residues. As introduced February 22, this bill would renumber these provisions in the Food and Agricultural Code without substantive change. [S. Rules]

**AB 771 (Areias)**. Under the Birth Defect Prevention Act of 1985, DPR may suspend the registration of pesticide products containing an active ingredient with a significant data gap, and no new active pesticide ingredient may be registered when any of the mandatory health effects studies are missing. As amended May 19, this bill would, notwithstanding those provisions, permit a registrant or user of an economic poison registered with EPA to apply to DPR for an "interim data gap exemption." The bill would also authorize DPR to impose a fee on any person who applies for an exemption. The revenue from the fees would be available to the department, upon appropriation, to offset the Department's costs of processing and reviewing those applications. [A. W&M]

**AB 772 (Areias)**. Existing law requires various persons who engage in the business of agricultural pest control operations to be licensed or hold a certificate issued by DPR. As amended April 15, this bill would provide that any person whose license or certificate is revoked, or whose application for such a license or certificate is denied, is ineligible to apply or reapply for the same kind of license or certificate for a period of three years from the effective date of the decision to deny or revoke the license or certificate. This bill would also make it unlawful for any person to act in a supervisory capacity or position for a pest control business, except as specified, unless the person has a qualified applicator license.

Under existing law, a qualified applicator license may be refused, revoked, or suspended by the DPR Director for various specified reasons. This bill would additionally permit the Director to refuse,



revoke, or suspend a license for failure to ensure that the responsibilities of the pest control business are carried out, and for failure to supervise operations, activities, and employees of the pest control business in a manner that ensures compliance with the provisions of the Food and Agricultural Code pertaining to pesticides. This bill would also permit the Director to suspend or place conditions on the license of a qualified applicator pending a hearing if the Director finds that continuance of the license endangers the public welfare or safety.

Under existing law, the Director or the county agricultural commissioner may issue a cease and desist order to the persons responsible, upon a finding that the use, handling, delivery, or sale of an economic poison violates the law, and that the activity, if allowed to continue, presents an immediate hazard or will cause irreparable damage. This bill would permit the Director or commissioner to bring an action to enjoin the violation or threatened violation of such an order.

Existing law provides that the certificate of a qualified applicator of pesticides may be refused, revoked, or suspended by the DPR Director, after hearing, for certain reasons. This bill would provide that the certificate of a qualified applicator may also be refused, revoked, or suspended by the Director for failure to supervise pesticide applications in a manner that ensures compliance with statutory law and regulation. [A. W&M]

**SB 475 (Petris)**, as amended April 20, 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. [S. Appr]

**AB 1111 (Sher)**, as amended April 27, would codify 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. [A. W&M]

**AB 1480 (Johnson)**. Under existing law, DPR, the Department of Toxic Substances Control, and the State Water Resources Control Board are established within Cal-EPA. As introduced March 4, this bill would require all fees and penalties collected by those agencies to be deposited in a special account in the General Fund and would declare that all activities of those agencies shall be funded by appropriations from the General Fund. [A. EnvS&ToxM]

## ■ LITIGATION

On February 22, the U.S. Supreme Court denied a petition for writ of certiorari in **National Agricultural Chemicals Association (NACA) v. Kathleen Les, et al.**, No. 92-800, in which NACA was seeking review of *Les v. Reilly*, No. 91-70234 (July 8, 1992), a U.S. Ninth Circuit Court of Appeals decision interpreting the so-called "Delaney clause" of the federal Food, Drug and Cosmetic Act; that clause provides that "no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests that are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal." [12:4 CRLR 185] In its petition to the Supreme Court, NACA argued that exceptions to the law should be allowed for pesticides that pose only a negligible risk, such as benomyl, phosmet, trifluralin, and mancozeb; EPA Administrator Carol Browner acknowledged in January that consumption of these pesticides as residues in processed food products does not pose any health risk.

Since 1988, EPA has interpreted the Delaney clause—based on the recommendation of National Academy of Sciences—as subject to an exception for carcinogenic pesticides that pose only a negligible risk. Under that standard, the agency in 1991 refused to revoke its approval of the four pesticides in question, even though they had been found to cause cancer in laboratory animals. However, the Ninth Circuit ruled last July that EPA must enforce the law without exception, finding that the language is clear and mandatory. Following the Supreme Court's action, EPA is now required to implement the Ninth Circuit's decision, which it estimates may affect as many as 35 pesticides.

## ■ RECENT MEETINGS

At its January 15 meeting, the Pesticide Advisory Committee (PAC) discussed the memorandum of understanding that DPR Director James Wells and the Director of the Department of Health Services (DHS) signed on January 10. The major principles of agreement concern public health vector control and applicator certification; monitoring of produce destined for processing and fresh market produce with residues which present a health concern; monitoring of drinking water and regulation of water filters which make antimicrobial claims other than mechanical filtration; a uniform method of clinical laboratory testing for cholinesterase inhibition and quality control; the use of disinfectants for the prevention and spread of

infectious diseases in institutions; plans for joint cooperation in a variety of health-related investigations; consultation in the development of regulations pertaining to pesticides; and communication of health information. Also, DPR will now have a representative on DHS' Vector Control Advisory Committee. Both departments are currently developing a detailed implementation plan.

At PREC's March 19 meeting, Kathleen Harvey of DPR's Pesticide Enforcement Branch reviewed the changes in the use conditions of molinate (Ordram) for the 1993 use season; the changes were included in a March 2 letter sent to all county agricultural commissioners. Some of the changes in the permit conditions include provisions for flaggers to use enclosed cabs with defined work clothing; a requirement that a 1993 formulation with the mineral montmorillonite as the inert ingredient only be used in granular application of molinate; the elimination of 50-pound bags; and a provision that only a limited number of 1,250-pound bags may be loaded by a person on a work day.

At its March 19 meeting, PAC held a general discussion about hazard communication. In August 1992, EPA adopted comprehensive worker protection standards, which included an amendment dealing with hazard communication. [12:4 CRLR 182] The amendment provides that agricultural employers shall make available hazard information concerning a pesticide to any worker who enters a pesticide-treated area on an agricultural establishment where within the last thirty days a pesticide has been applied or a restricted interval has been in effect, or to any worker who has been exposed during normal conditions of use or in a foreseeable emergency. PAC noted that two options are available to employers in order to comply with this section: provide a material safety data sheet for the product or for each active and inert ingredient listed on the label of the product; or provide a fact sheet that has been prepared or approved by a state or federal agency for the pesticide. If the chemical ingredients (two or more) are similar, than one fact sheet is adequate.

## ■ FUTURE MEETINGS

DPR's PAC, PREC, and PMAC meet regularly to discuss issues of practice and policy with other public agencies. The committees meet in the annex of the Food and Agriculture Building in Sacramento. For meeting information, call (916) 654-1117.