



vide "long-term protection of air, water, and land from pollution due to the disposal of solid waste. . . ." The California Integrated Waste Management Act of 1989 sets forth specific requirements for the approval of such plans, which must be prepared by solid waste landfill owners and operators regardless of whether they have any present intentions of closing their sites.

CIWMB's request to the Attorney General was prompted by the apparent conflict between the specific requirements of the 1989 Act and Government Code section 66796.22(b)(2)(A)(ii), which provides that "[n]o person shall operate a solid waste landfill more than one year after submitting to the enforcement agency, the regional water board, and [CIWMB] a plan for the closure of the landfill and a plan for the postclosure maintenance of the landfill unless both plans have been approved, or modified and approved, by the enforcement agency, [CIWMB], and the regional board pursuant to their authority under the Water Code." The opinion determines that this provision does not establish a one-year deadline for the closure of a solid waste landfill after its closure and postclosure maintenance plans are disapproved by CIWMB. The opinion also states that section 66796.22 may be reasonably interpreted as a prohibition against receiving solid waste for disposal rather than as a mandate for closure of the site without approved closure and postclosure plans. Finally, the opinion notes that if an owner does not submit approvable plans, the Board may contract for the preparation of such plans and thereafter implement them.

RECENT MEETINGS:

In a closed meeting on June 4, the Board selected Pat Chartrand as administrative assistant to CIWMB; her duties include drafting agendas, coordinating agendas and background information packets for Board and committee meetings, and distributing agenda materials.

At its September 25 meeting, the Board approved a policy for compliance with the ex parte communication disclosure requirements of PRC section 40412. The adopted policy is intended to enable Board members to recognize which communications must be disclosed. Among other things, the policy states that communications which are designed to influence a Board member's vote about a matter which is subject to a roll-call vote by CIWMB must be disclosed.

At its September 25 meeting, the Board agreed to enter into an interagency

agreement with the Department of Finance (DOF), in accordance with Governor Wilson's decision to reduce DOF's share of the cost of contracting for lobbyist representation in Washington, D.C. by having individual agencies contribute larger shares. The contract requires the Board to provide an amount not to exceed \$14,000.

Also at its September 25 meeting, the Board approved the Administration Committee's contract for support services for upcoming discussions regarding the advance disposal fee (ADF) proposal currently before the legislature (AB 2213) (*see supra* LEGISLATION). The contract was awarded to Resource Integration Systems, Ltd. (RIS) to provide technically experienced representation at the meetings and to enable the Board to effectively analyze and react to ideas and proposals generated in the discussions, which will include other interested parties such as the California Manufacturers Association. Although the Board approved the contract, it expressed concern over RIS' \$200 per hour charge and recommended that the staff be prepared to use in-house personnel at similar future meetings.

FUTURE MEETINGS:

January 28 in Redding.
February 26 in Monterey.
March 25 in Sacramento.
April 23 in Oakland.

DEPARTMENT OF PESTICIDE REGULATION

*Interim Director: James Wells
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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 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) remains with CDFA. The important statutes which DPR is now responsible for implementing and administering include the Birth Defect Prevention Act (Food and Agricultural Code section 13121 *et seq.*),

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

DPR includes the following branches:

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

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

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

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

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

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

Also included in DPR is the Agricultural Pest Control Advisory Committee, established in Food and Agricultural



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Code section 12042 *et seq.*, which makes recommendations on how the state can improve its existing analytical methods for testing produce and processed foods for the presence of pesticide residues.

At this writing, the DPR Director has not yet been appointed by Governor Wilson. DPR's Interim Director is James Wells.

MAJOR PROJECTS:

Report to the Legislature on California's Pesticide Regulatory Program. In late May, DPR—then the Division of Pest Management within the California Department of Food and Agriculture (CDFA)—released a report to the legislature evaluating the state's pesticide regulatory programs funded with the new 18-mills-per-dollar-of-sales assessment (which amounts to a 1.8-cent state tax assessed on each dollar's worth of pesticide) mandated by AB 2419 (Chapter 1679, Statutes of 1990).

Under AB 2419, the purpose of the report is "to determine which program components can be modified or eliminated in order to avoid duplication of any other state or federal requirements." Thus, the report sets forth the history of California's 80-year-old pesticide regulation program, describes the organization of DPR and the role each branch plays in the pesticide registration/regulation process, and identifies the budget and source of funding for each DPR branch and program. The report also discusses the differences between the state and federal pesticide regulatory programs.

One of the most important functions performed by DPR is the registration of pesticides. According to the report, "[e]very Branch of [DPR] participates in the pesticide registration process to assure that no unmitigated adverse impacts will occur as a result of the proposed registration. . . . A proposed decision to register or deny an application is reached once all reviews have been completed. If any reviewing Branch recommends against registration due to inadequate data, unacceptable studies or unmitigated adverse effects, the product is not registered until or unless concerns are resolved."

However, this statement conflicts with the findings of the Senate Office of Research (SOR) in two recent reports: *Regulation vs. Practice: A Review of the California Department of Food and Agriculture's Pesticide Registration Process* (February 1990) and *Pesticides and Regulation: The Myth of Safety* (April 1991). (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 59-60, and Vol. 11, No. 3 (Summer

1991) pp. 55 and 146, respectively, for summaries of these reports.) In its 1990 report, SOR harshly criticized CDFA's pesticide registration practices, and noted the Pesticide Registration Branch's frequent disregard of the findings and recommendations of the Medical Toxicology Branch. In particular, SOR documents that between March and December 1987, 20 products were approved for sale in spite of the "Do Not Register" recommendations of the scientists within the Medical Toxicology Branch. "This number represents 14% of the products evaluated by CDFA's Medical Toxicology Branch during this period." Additionally, SOR noted that an August 1987 memorandum from the Chief of the Pesticide Registration Branch "allows the registration of products that lack the required studies and/or have studies inadequate to allow an evaluation of toxicity."

According to DPR's May 1991 report, "all appropriate studies are reviewed for a given product registration, rather than allowing applicants to cite an existing data base assuming that relevant studies are acceptable and on file, as EPA does." However, in its 1990 study, SOR found that the Medical Toxicology Branch adopted a "bridging" policy in April 1987 under which "a new product is to be registered if there are adequate studies available for a similar product that is already registered in California. . . . If only inadequate studies are available to support bridging of a new product from data on file at CDFA, the policy states that the product is first to be registered with inadequate data and then 'notify the owner of the data of the identified deficiencies except where a hazard is identified that is not mitigated by the label.'" Under this policy, "the only reason for denial of such an application is 'where an unmitigated hazard is identified.'" SOR noted that this policy contravenes sections 6170 and 6172, Title 3 of the CCR, which require the submission of entire studies with every application for a product registration.

Hopefully, the removal of pesticide regulation from CDFA and its transfer to a new agency with a new mission will trigger a reevaluation of the entire process with an eye toward scientific integrity, minimizing unnecessary risk, and disclosure of adequate information to enable informed consumer choices.

Dunsmuir Spill Focuses Attention on Newly-Created DPR. On July 14, only days before the official creation of Cal-EPA and DPR, a Southern Pacific railroad train derailed near Dunsmuir, spilling 19,500 gallons of toxic metam

sodium into the Sacramento River. Nearly all aquatic life and most vegetation along a 45-mile stretch of the river, running to the mouth of Shasta Lake, was destroyed. Scientists estimate that it will take twenty years for aquatic life in the river to return to pre-spill levels, and up to fifty years for the forest along the river to regenerate.

Even as the railroad car was leaking pesticide into the river, CDFA was making a rare decision to suspend the use of a pesticide that had not met the health testing deadlines established by the legislature in the 1984 Birth Defect Prevention Act (the Act). Under the Act, 200 active chemical ingredients were to be tested by March 1, 1987—a deadline which was later extended to March 1, 1991. By March 1991, 42 of the 200 chemicals were no longer used in California, and the manufacturers of all but 14 had either promised to or begun testing. Shortly after the Dunsmuir disaster, DPR—in an encouraging departure from CDFA's lenient practices—took steps to ban these 14 chemicals, which are found in 535 home and farm pesticide products.

Metam sodium, the chemical which spilled into the Sacramento River, was not one of the 14 chemicals listed, because its manufacturer had agreed to meet a new deadline of March 1, 1992 to submit required data. Although these 14 chemicals could remain on the market for months, the proposed action was seen by many as a bold step toward long-awaited enforcement of existing law.

Rulemaking Under the Pesticide Prevention Contamination Act. Shortly after its creation, DPR commenced two major rulemaking proceedings under the Pesticide Contamination Prevention Act of 1985 (PCPA), which was enacted to prevent pesticide pollution of the groundwater aquifers of the state. The PCPA provides mechanisms for identifying and tracking potential and actual groundwater contaminants. It also establishes procedures for reviewing chemicals found in groundwater or in soil as a result of legal agricultural use, and for modifying or cancelling use of such chemicals. The PCPA requires DPR to take specified actions which combine to form three major processes: (1) establishment of a data base of wells sampled for pesticides; (2) data collection and analysis, identification, and monitoring of potential contaminants; and (3) review of findings of pesticide contamination and imposition of necessary mitigation measures.

On July 24, DPR held a public hearing on its proposal to amend section



6802, Titles 3 and 26 of the CCR. Under the PCPA, DPR has established a list of groundwater protection restrictions and use requirements to modify the use of certain chemicals in pesticide management zones (PMZs). (See CRLR Vol. 9, No. 2 (Spring 1989) p. 94 for background information.) The proposed amendments to section 6802 would add 94 additional PMZs in eight counties to its list of geographic areas demonstrated to be sensitive to groundwater contamination by pesticides containing atrazine, simazine, bromacil, and diuron. At this writing, DPR is still reviewing the comments received at the public hearing.

On August 16, DPR published notice of its intent to amend and adopt regulations in Titles 3 and 26 of the CCR pertaining to the Groundwater Protection List, and the dealer sales, sales reporting, and research authorization provisions of the PCPA.

First, DPR proposes to amend section 6800(b) to add 38 chemicals to those already identified in the Groundwater Protection List as having the potential to pollute groundwater due to their mobility and longevity in soil.

DPR also proposes to consolidate section 6572, which currently requires dealer sales reports of chemicals listed on the Groundwater Protection List to be made quarterly to the DPR Director, with section 6562, which regulates the preparation and maintenance of records by licensed pesticide dealers for all sales of deliveries of pesticides except those labeled for home use, into revised section 6562, which will be entitled "Dealers Record and Sales Reporting." The new section will also be amended to require dealers to submit sales reports within 30 days following the end of each quarter of each calendar year in order to facilitate enforcement of the regulation.

DPR also proposes to repeal section 6417 and amend section 6416 to permit the use of the chemicals listed on the Groundwater Protection List for research purposes, subject to authorization by the DPR Director.

DPR accepted comments on these proposed regulatory changes until September 30.

Pesticide Sales Reporting and Mill Assessment Reports. In August, DPR published notice of its intent to amend section 6388, Titles 3 and 26 of the CCR, which currently requires pesticide registrants to report annually the total pounds of each active ingredient sold for use in California. The amendment would require registrants to report quarterly in a specified format to the DPR Director the total dollar sales and

quantity of each registered pesticide product sold for use in California; and establish what forms are acceptable to the Department and what information must be included. DPR accepted public comments on this proposed regulatory action until September 30.

Status Update on Other Proposed Regulatory Changes. The following is an update on the status of other regulatory changes proposed and/or adopted by CDFA/DPR and discussed in recent issues of the *Reporter*:

-Dietary Risk Assessment Regulations. On August 22, DPR published a modified version of its proposal to adopt new section 6193.5 and amend section 6194, Title 3 of the CCR, which would establish which acute effects data are needed to conduct dietary risk assessments, specify that such data must be submitted prior to registration of pesticides containing new active ingredients for use on food, and establish procedures to obtain acute effects pursuant to Food and Agricultural Code section 13060 for currently-registered pesticides. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 146-47 for background information.)

Revised section 6193.5(a) would define the term "acute exposure"; section 6193.5(b) would require specific oral toxicity data as necessary to conduct dietary risk assessments; and section 6193.5(c) would require that the data listed in subsection (b) shall be provided for any pesticide containing an active ingredient not currently registered. Section 6193.5(d) would specify that current registrants have nine months from the date of notice by DPR to submit the data listed in subsection (b). Section 6193.5(e) would exempt those active ingredients for which the Department has made a written finding that acute dietary exposure is not of toxicological concern from the above requirements. The proposed amendment of section 6194 would establish the procedure by which registrants will comply with registration requirements for submission of acute effects data.

At this writing, DPR is reviewing the comments received on the modified version of this regulatory proposal.

-Standards for Use of Chloropicrin and Methyl Bromide in Field Fumigation. Following June public hearings in Sacramento and Salinas on its proposal to amend sections 6450 and 6784 and adopt section 6451 in Titles 3 and 26 of the CCR, DPR released on September 26 a slightly modified version of this regulatory proposal, which would establish stringent use requirements when methyl bromide and chloropicrin are

used for field fumigations. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 147 for background information.) DPR accepted public comments on the modified version of this proposed regulatory action until October 18.

-Hazard Communication Procedures Between Employers and Employees. On August 5, DPR released a modified version of its proposal to amend sections 6618 and 6724, and adopt sections 6723 and 6761, Titles 3 and 26 of the CCR, pertaining to hazard communication procedures between employers and employees who may be exposed to pesticides during the course of their work. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 148 and Vol. 11, No. 2 (Spring 1991) p. 135 for background information.) Regarding notice of a pesticide application, proposed section 6618(b) provides that notice given by a property owner/operator to a farm labor contractor satisfies the notice requirement; a new revision requires the farm labor contractor to give the notice to his/her employees. DPR also modified its proposed amendments to sections 6723(a), 6761(a), and 6761(e), to require employers to provide to a requesting employee, upon request, pesticide information "in a language understandable to that employee."

At this writing, DPR is still reviewing the comments received during the 15-day comment period, which ended on August 30.

-Economic Poison Registration Procedures. On July 31, DPR released a modified version of its proposal to renumber existing sections 6151, 6152, and 6153 to sections 6150, 6151, and 6152, respectively; amend new section 6152 and section 6154; and adopt new sections 6153, 6153.5, and 6155, Titles 3 and 26 of the CCR, to establish procedures to be followed by registrants when there is a change in the ownership of an economic poison, a change in the name of the registrant of an economic poison, or a change in the formulation of an economic poison. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 148 and Vol. 11, No. 1 (Winter 1991) p. 111 for background information.) DPR accepted comments on the modified version until August 20; at this writing, DPR is still reviewing the comments received.

-The Addition of Bentazon to the Groundwater Protection List. At this writing, DPR is still reviewing the public comments received on its proposal to amend sections 6800(a), 6400(n)(10), 6416, and 6570(a), adopt section 6486.6, and repeal section 6484, Titles 3 and 26 of the CCR. These changes would add bentazon (also known as Basagran) to



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the Groundwater Protection List established under the Pesticide Contamination Prevention Act of 1985, and modify its use statewide. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 111 for background information.)

LEGISLATION:

SB 550 (Petris), as amended September 13, requires the DPR Director, on January 15, 1992, to issue a notice of intent to suspend the registration of pesticide products containing an active ingredient with a significant data gap. This bill was signed by the Governor on October 14 (Chapter 1228, Statutes of 1991).

AB 1742 (Hayden), as amended September 12, requires the DPR Director, not later than March 1, 1992, to notify registrants of the data requirements for mandatory health effects studies for specified pesticide active ingredients. This bill also authorizes DPR, with the concurrence of Cal-EPA's Office of Environmental Health Hazard Assessment, to extend the time period to complete the mandatory health effects studies, under specified circumstances. This bill was signed by the Governor on October 14 (Chapter 1227, Statutes of 1991).

SB 497 (Petris). Under the Birth Defect Prevention Act of 1984, the DPR Director has the same authority to require information from registrants of active pesticide ingredients as the Administrator of the EPA. As introduced February 26, this bill provides that the Director also has the same authority as the Administrator to suspend registration in accordance with prescribed procedures. This urgency bill was signed by the Governor on July 29 (Chapter 277, Statutes of 1991).

AB 1685 (Chandler), as amended September 11, among other things, imposes a minimum civil penalty of \$1,000 and increases the maximum penalty from \$500 to \$10,000 for violation of specified provisions in Division 6 (Pest Control Operations) and Division 7 (Agricultural Chemicals, Livestock Remedies, and Commercial Feeds) of the Food and Agricultural Code. Any money recovered under this bill will be deposited into the Department of Pesticide Regulation Fund for use by DPR in administering Divisions 6 and 7 of the Code. This bill was signed by the Governor on October 13 (Chapter 944, Statutes of 1991).

SB 926 (Petris), as amended September 11, would enact the School Pesticide Use Reduction Act of 1991, requiring, among other things, the DPR Director to cancel the registration of any school-use pesticide, as defined, that

contains any active or inert ingredient known to cause cancer or known to cause reproductive harm during its registration renewal period in 1993, or any renewal period thereafter, unless the label specifically proscribes the use of the pesticide at a school facility and a child day care facility. This bill was rejected by the Assembly Ways and Means Committee on August 29, but was granted reconsideration.

AB 1377 (Areias), as introduced March 7, and **AB 1325 (Jones)**, as amended September 13, are two-year bills which would both authorize the DPR Director to cancel the registration of, or refuse to register, any economic poison if the Director determines that the registrant has failed to submit data required to be submitted as part of the reevaluation of the registrant's product. AB 1377 is pending in the Senate Agriculture and Water Resources Committee; AB 1325 was passed by both the Assembly and Senate but is pending as unfinished business following the Assembly's refusal to concur in Senate amendments.

AB 1715 (Hayden). Existing law requires each registrant of an economic poison to pay an assessment to the DPR Director for all sales of that registrant's economic poisons for use in this state and establishes the amount of that assessment at 18 mills per dollar of sales until June 30, 1992, at which time it would be reduced to 9 mills per dollar of sales. As amended May 22, this bill would establish the amount of that assessment, commencing July 1, 1992, at 14 mills per dollar of sales; require DPR, commencing July 1, 1992, to allocate an amount equal to 5 mills of those funds, annually, to the Environmental Policy Council; and require the Secretary of Environmental Protection to request that DPR cancel the registration of an economic poison that contains an active ingredient known to the state to cause cancer or reproductive harm or that has acute toxicity, if the Secretary finds that an effective and commercially available economic poison has been developed as an alternative. This two-year bill is pending in the Assembly Agriculture Committee.

AB 1206 (Areias). Existing law authorizes the DPR Director to seize and hold any lots of produce, or any unharvested produce that is within one week of being in harvestable condition, which carries or is suspected of carrying pesticide residue or other added deleterious ingredients in violation of designated provisions regulating pesticide residue. As introduced March 6, this bill would include any agricultural com-

modity grown for food within that provision. This two-year bill is pending in the Assembly Agriculture Committee.

AB 1214 (Jones), as introduced March 6, would require the DPR Director to conduct a study to evaluate recommendations relating to the various uses of economic poisons, taking into consideration variations in the use of pesticides based on variations in pest populations, weather, geographic areas, and agricultural products. This two-year bill is pending in the Assembly Agriculture Committee.

AB 1854 (Connelly), as introduced March 8, would require the DPR Director to adopt permissible tolerances for pesticide chemicals in or on produce, and require those tolerances to be the tolerances determined by Department of Health Sciences (DHS). This bill would prohibit the Director from registering or renewing a registration for a food use economic poison, unless the applicant for registration has set a tolerance for the food use economic poison and demonstrated to the satisfaction of DHS that the tolerance meets certain requirements. This two-year bill is pending in the Assembly Committee on Environmental Safety and Toxic Materials.

SB 46 (Torres), as amended May 7, would revise the definition of toxic air contaminant to delete an exclusion for pesticides and to include specified substances. This bill is pending in the Senate Appropriations Committee.

AB 816 (Jones), as introduced February 27, would declare that designated provisions of the Food and Agricultural Code relating to the storage of economic poisons are of statewide concern and occupy the whole field of regulation, thereby preventing local governments from regulating any matter relating to the storage of economic poisons. This two-year bill is pending in the Assembly Agriculture Committee.

LITIGATION:

In *Wisconsin Public Intervenor, et al. v. Mortier, et al.*, No. 89-1905 (June 21, 1991), the U.S. Supreme Court ruled that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) does not preempt state and local regulation of pesticides. In this case, local agricultural interests challenged a strict pesticide ordinance adopted by the town of Casey, Wisconsin, alleging that the ordinance is preempted by state law and FIFRA. The trial court and the Wisconsin Supreme Court ruled that FIFRA prohibits any regulation of pesticides by local units of government. (See CRLR Vol. 11, No. 2 (Spring 1991) p.



137 for background information on this case.)

The U.S. Supreme Court unanimously reversed, holding that "FIFRA does not preempt the town's ordinance either explicitly, implicitly, or by virtue of an actual conflict." The Supreme Court looked to the text and history of FIFRA, and found that the more plausible reading of FIFRA's authorization to the states "leaves the allocation of regulatory authority to the absolute discretion of the states themselves, including the options of . . . leaving local regulation of pesticides in the hands of local authorities under existing state laws."

Despite the immediate effect this ruling may have in other states, Charles Getz of the state Attorney General's Office asserts that it will have little or no impact in California, because a 1984 state statute precludes local regulation of pesticides. However, environmentalists and some local governments hope the high court's decision—in combination with growing public dissatisfaction with the state's pesticide regulatory program and, particularly, CDFA's penchant for aerial malathion spraying—will spark legislative and/or judicial review of the 1984 law.

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.* The Board 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 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. All regional board action is subject to State Board review or approval.

The State Board and the regional boards have quasi-legislative powers to adopt, amend, and repeal administrative regulations concerning water quality is-

ues. 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 grants from state and federal sources are allocated for projects such as waste water treatment facilities.

The Board 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. Furthermore, the Board is authorized to represent state or local agencies in any matters involving the federal government which are within the scope of its power and duties.

The Board continues to operate with only four members, following the December 1990 resignation of Darlene Ruiz, an attorney. At this writing, Governor Wilson has not named a replacement to fill the vacant position.

MAJOR PROJECTS:

Governor's Cal-EPA Plan Approved. Governor Wilson's proposal to create the California Environmental Protection Agency (Cal-EPA) took effect on July 17. WRCB, the Air Resources Board, and the California Integrated Waste Management and Recycling Board, among others, are now incorporated within Cal-EPA. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 177 for background information.)

Bay/Delta Water Quality Proceeding Continues. The Board concluded the water quality phase of the lengthy San Francisco Bay/Sacramento-San Joaquin Delta Estuary proceedings with its adoption of the Water Quality Control Plan for Salinity in May. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 177-78; Vol. 11, No. 2 (Spring 1991) p. 163; and Vol. 11, No. 1 (Winter 1991) pp. 131-32 for extensive background information.) However, in addition to being the subject of a lawsuit (*see infra* LITIGATION), WRCB's salinity plan was substantially rejected by the U.S. Environmental Protection Agency (EPA) on September 3. According to EPA, the plan's numerical objectives for temperature and salt levels are insufficient to protect the ecological health of the estu-

ary. The EPA's announcement has been interpreted by some environmentalists and water agency officials as a way to force California to establish standards that would require more fresh water to flow through the Delta to hold back saltwater from San Francisco Bay (decreasing the amount of water available for exportation south to cities and farms). EPA gave the state 90 days to establish stricter standards than those contained in WRCB's plan. If the state does not meet this deadline, the Clean Water Act authorizes EPA to develop standards for the Delta.

In addition to revising its salinity plan, the Board is currently involved in the Scoping and Water Rights Phase of the Bay/Delta proceedings. During this phase, the Board held a number of one-on-one meetings with proceeding participants to develop alternatives to achieve various levels of protection for Bay/Delta beneficial uses that should be evaluated in an environmental impact report (EIR). These meetings, which ended in July, resulted in the development of flow-oriented alternative levels of protection for Bay/Delta beneficial uses, factors to be considered in analyzing impacts of the alternatives, and the tools to be used in developing the analytical information. As a follow-up to those meetings, the Board held a September 30 workshop to consider these factors in the development of an EIR; the EIR is expected to be drafted and released for public review during the spring of 1992.

California's Drought Continues. As of September 1, State Water Project reservoirs were holding slightly more water than they did in September of 1990. The California Department of Water Resources (DWR) attributes this year's slight improvement to the extreme conservation measures implemented across the state, as well as the water made available through the state's emergency drought bank established by Governor Wilson. Since February 1991, the state bank has purchased approximately 850,000 acre-feet of water from water-rich farming areas and other sources and sold more than half of it to needy water districts. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 163 for background information.)

Despite the water reservoirs' increases over last year, the past five years of drought have reduced California's reservoir holdings to only 61% of the overall average amount in years past, which amounts to just 39% of full holding capacity. Moreover, the statewide precipitation for the 1991 water year was only 77% of normal.