



REGULATORY AGENCY ACTION

Board finds that a county or city and county has failed to implement its source reduction and recycling elements or household hazardous waste element, and authorizes the Board to make specified considerations in determining the amount of any penalties imposed pursuant to these provisions; requires CIWMB to deposit all revenues received in the Integrated Waste Management Fund; provides that the California Integrated Waste Management Act of 1989 does not abrogate any contract, license, or permit to collect solid waste previously granted or extended by a city, county, or city and county; and revises the definition of solid waste facility to include composting transformation and disposal facilities. This bill was signed by the Governor on September 25 (Chapter 1355, Statutes of 1990).

AB 4032 (Harvey), as amended July 28, requires CIWMB to adopt regulations, in consultation with the state Air Resources Board and the California Air Pollution Control Officers Association, which establish monitoring and control standards for the subsurface migration of landfill gas and which require owners and operators of disposal sites to report monitoring data to CIWMB and to perform site inventories and evaluations. This bill was signed by the Governor on September 9 (Chapter 668, Statutes of 1990).

SB 1813 (McCorquodale), which authorizes the Board to conduct a study on the disposal and recyclability of household batteries, was signed by the Governor on September 10 (Chapter 711, Statutes of 1990).

AB 3530 (Margolin), which, as amended August 16, requires CIWMB to conduct a study of specified contents on the disposal and potential recyclability of household batteries, was signed by the Governor on September 30 (Chapter 1631, Statutes of 1990).

AB 3749 (Sher), as amended August 29, would have enacted the California Oil Recycling Enhancement Act under which, beginning January 1, 1992, every oil manufacturer would be required to pay \$0.05 quarterly to CIWMB for each quart or \$0.20 for each gallon of lubricating or industrial oil sold or transferred in this state or imported into this state in that quarter, with specified exceptions. This bill was vetoed by the Governor on September 30.

SB 1200 (Petris), which enacts the Used Oil Recycling Grant Program of 1989, was signed by the Governor on September 30 (Chapter 1657, Statutes of 1990).

The following bills died in committee: *SB 2551 (Marks)*, which would have

prohibited furnishing the U.S. Postal Service for distribution any advertisements, billing statements, or solicitations which contain nonrecyclable materials; *SB 2837 (Killea)*, which would have prohibited furnishing for sale or offer for sale single use disposable diapers for use in this state that are not in a package labeled as specified in the bill; *SB 2910 (Calderon)*, which would have required each county to notify the public on the results of the SWAT reports in a specified manner; *AB 2199 (Bates)*, which would have required the inclusion of plastics in any waste characterization study prepared prior to designing and implementing a local recycling plan; *SB 1260 (Bergeson)*, which would have required CIWMB to implement specified state programs to promote integrated waste management, develop markets for recovered materials, and provide technical assistance and public information; *AB 1377 (Bates)*, which would have required all state agencies and public entities and the legislature to give preference to recycled products; and *AB 1293 (Filante)*, which would have required CIWMB to consult with representatives from specified industries and organizations in developing state policy for the resource recovery component of an integrated approach to waste management.

RECENT MEETINGS:

At its August 22-23 meeting, the Board considered supporting the California Museum of Science and Industry's "Our Urban Environment" exhibit, which is designed to increase public awareness of environmental issues by demonstrating the interdependence of urban life and the environment, and will demonstrate the costs and benefits of implementing recycling and source reduction plans. The Board voted to contribute \$300,000 to the Museum for the exhibit, which is scheduled to open in March 1991 and remain open for a minimum of five years. This amount constitutes the largest single contribution received by the Museum.

At the Board's September 27 meeting, the Arcata Community Recycling Center and Gainer & Associates presented "Recycling Entrepreneurship: Creating Local Markets for Recycled Materials," which has been effective in developing local markets for recycled materials while promoting economic development. The speakers discussed the difficulty of marketing collected recyclable materials in remote rural regions in the absence of large-scale industrial and manufacturing facilities; and showed how these problems are

being overcome by the creation of small-scale recycling industries in the Humboldt Bay area of northern California.

FUTURE MEETINGS:

To be announced.

COASTAL COMMISSION

Executive Director: Peter Douglas
Chairperson: Thomas Gwyn
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The California Coastal Commission was established by the California Coastal Act of 1976, Public Resources Code section 30000 *et seq.*, to regulate conservation and development in the coastal zone. The coastal zone, as defined in the Coastal Act, extends three miles seaward and generally 1,000 yards inland. This zone, except for the San Francisco Bay area (which is under the independent jurisdiction of the San Francisco Bay Conservation and Development Commission), determines the geographical jurisdiction of the Commission. The Commission has authority to control development of, and maintain public access to, state tidelands, public trust lands within the coastal zone, and other areas of the coastal strip. Except where control has been returned to local governments, virtually all development which occurs within the coastal zone must be approved by the Commission.

The Commission is also designated the state management agency for the purpose of administering the Federal Coastal Zone Management Act (CZMA) in California. Under this federal statute, the Commission has authority to review oil exploration and development in the three mile state coastal zone, as well as federally sanctioned oil activities beyond the three mile zone which directly affect the coastal zone. The Commission determines whether these activities are consistent with the federally certified California Coastal Management Program (CCMP). The CCMP is based upon the policies of the Coastal Act. A "consistency certification" is prepared by the proposing company and must adequately address the major issues of the Coastal Act. The Commission then either concurs with, or objects to, the certification.

A major component of the CCMP is the preparation by local governments of local coastal programs (LCPs), mandated by the Coastal Act of 1976. Each LCP consists of a land use plan and implementing ordinances. Most local governments prepare these in two separate phases, but some are prepared simultaneously as a total LCP. An LCP does not



become final until both phases are certified, formally adopted by the local government, and then "effectively certified" by the Commission. Until an LCP has been certified, virtually all development within the coastal zone of a local area must be approved by the Commission. After certification of an LCP, the Commission's regulatory authority is transferred to the local government subject to limited appeal to the Commission. Of the 125 certifiable local areas in California, 72 (58%) have received certification from the Commission as of January 1, 1990.

The Commission is composed of fifteen members: twelve are voting members and are appointed by the Governor, the Senate Rules Committee and the Speaker of the Assembly. Each appoints two public members and two locally elected officials of coastal districts. The three remaining nonvoting members are the Secretaries of the Resources Agency and the Business and Transportation Agency, and the Chair of the State Lands Commission. The Commission's regulations are codified in Chapters 1-11, Division 1.5, Title 14 of the California Code of Regulations (CCR).

MAJOR PROJECTS:

President Places Temporary Ban on Offshore Drilling. On June 26, President Bush banned new oil drilling off 99% of the California coast until at least the year 2000. In a long-awaited and surprising decision, the President said that more time is needed to study scientific concerns and environmental impacts of future offshore oil development. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 176-77; Vol. 10, No. 1 (Winter 1990) p. 135; and Vol. 9, No. 4 (Fall 1989) p. 100 for background information.) The announcement left oil developers pondering their future and environmentalists unsatisfied, since many had called for a permanent moratorium on new drilling.

The President also promised to establish a 2,200-square-mile National Marine Sanctuary in Monterey Bay, which is the largest breeding ground for marine mammals in the continental United States, and in which oil drilling will be permanently banned. The ban does not cover the oil and gas rich regions off the coast of Santa Barbara, where development is still possible.

Critics of the President see the resolution as simply a ploy to delay any real and ultimate decision on this volatile issue, since any future President could reverse this action, and Mr. Bush has the power to reopen banned areas in times of national necessity. This option has

already been mentioned in light of the current Persian Gulf crisis and rising oil prices. The President has remained vague when asked whether he will change his mind about the ban, vowing to keep all alternatives open.

Oil Spill Preparedness and Response Plan. On September 11, staff members of the Commission's Energy and Ocean Resources Unit submitted the final draft of a resolution outlining methods to both reduce the number and size of oil spills off the California coast and to improve clean-up response to spills that occur. The report was requested by the Commission in April 1989, in response to the Exxon Valdez spill off the coast of Alaska. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 176 for background information.)

The resolution is organized into two main sections: (1) prevention and safety; and (2) spill clean-up, animal rehabilitation, and impacts. The first section identifies methods to help reduce the actual occurrences of oil spills. Staff made recommendations concerning navigational procedures and safety, alternative methods of oil transportation, engineering and geotechnical safety, and the development of a comprehensive energy policy. These recommendations are very specific, but their overall design is to increase the level of safety in the transportation of oil by increasing the Commission's and the state's role in supervising that transportation.

The second section of the resolution identifies ways of reducing the impact of spills which do occur. Here, staff made recommendations dealing with the adequacy and availability of equipment, methods of containment, clean-up, and the treatment and rehabilitation of oiled wildlife. Staff covered socio-economic effects of oil development and spills, including a discussion of impacts on commercial and recreational fishing, tourism, and other coastal businesses. Also in this section are recommendations dealing with the responsibilities and liabilities of spillers, as well as those seeking applications for coastal development.

Throughout the resolution, the actions recommended by staff are organized in a format explaining which state or federal agencies are in the best position to carry out the recommended action, the Commission's role in carrying out or implementing the recommendation, and the reasons for the recommendation.

At the September meeting, the Commission expressed general satisfaction with the report; the only concerns raised were whether more attention should be

given to the impact spills have on tourism, and the need for the Commission to better inform the public on the safety of land pipelines.

The only public comment came from Mr. L.A. Onstad, who manages Clean Seas, an oil spill clean-up organization. Mr. Onstad argued that some of the recommendations in the resolution require major changes in current operations, and suggested that the Commission postpone adoption until the outcome of pending legislation could be incorporated into its resolution.

Mr. Onstad's greatest concern was with the resolution's provisions for mutual aid and vessel maintenance procedures. These and other provisions prescribe defined geographical areas in which particular oil spill clean-up cooperatives may respond to spills. Under these provisions, no more than one-third of the equipment inventory of the cooperatives should be committed to spills outside their area of responsibility. Any relocation of vessels requires consultation and approval of the Minerals Management Service, the Coastal Commission, and the State Lands Commission, as well as any other appropriate agency.

Mr. Onstad argued that these provisions are too restrictive. He testified that several firms have recently made large purchases of equipment whose use will be limited under these provisions. He also relayed his frustration in attempting to gain permission to release some of his vessels to the Huntington Beach spill last spring. Staff members justified the equipment release provisions by emphasizing the Commission's need to know where clean-up vessels are at all times. Apparently, the largest clean-up vessel of the California fleet was dispatched to Prince William Sound without agency approval and was kept there for months, leaving a gap in this state's oil spill response capability.

Mr. Onstad also announced the formation of the new Marine Spill Response Organization, which will be the largest clean-up cooperative of its kind. It will be a nonprofit corporation made up of twenty companies, and plans to invest approximately \$800 million in equipment over the next five years.

Commission staff also reported on pending federal actions concerning oil spill prevention and response, including regulations which will increase spiller liability, phase out single-hulled tankers by 2010, add ten new Coast Guard units to aid in oil spill response, review tanker pilots' driving records, and limit the hours that tanker crews may work.

Commission Recommends Against Locating SDG&E Power Plant in



Coastal Zone. In December 1989, San Diego Gas and Electric Company (SDG&E) filed a Notice of Intention with the California Energy Commission (CEC) to build a 460-megawatt power facility. Two of the five proposed sites for the power plant are within the coastal zone: one at the current Encina power plant site in Carlsbad and the other at the SDG&E facility in Chula Vista. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 177 for background information.) Under the Warren-Alquist State Energy Resources Conservation and Development Act and section 30413 of the Coastal Act, the Coastal Commission is required to submit findings and recommendations to the CEC regarding the suitability of locating power plants within the coastal zone. The Coastal Commission is relegated to this advisory role because CEC has peremptory permitting authority over power plants located in the coastal zone.

In September, the Commission released its staff report and recommendations regarding the sites. Staff concluded that the proposed power plant is unsuitable in both sites within the coastal zone and that the projects would be inconsistent with the Coastal Act. The report cited adverse impacts from thermal discharge, entrainment of marine organisms, increased turbidity, visual obstructions, and coastal access obstructions. Staff was also concerned about the impacts on endangered species habitat near both of the sites. Staff's report was adopted by the Commission at its September 11 meeting, with several Commissioners voicing their opposition to either of the two coastal sites. The report was then forwarded to CEC.

The City of Chula Vista and several environmental groups have also voiced their opposition to the coastal sites. Nevertheless, SDG&E considers the Chula Vista site as its preferred location. CEC was scheduled to begin a series of public hearings on the SDG&E application on September 24. (See *infra* agency report on CEC for detailed background information on the Energy Commission's hearings.)

Commission Approves State Route 56, I-5/I-805 Widening. At the Commission's September 12 meeting, as part of a series of proposed amendments to the City of San Diego Local Coastal Program (LCP), the City of San Diego and Caltrans proposed a major roadway improvement project which includes several separate but interrelated components. The two major components within the project are the widening of the I-5/I-805 confluence and the construction of State Route 56 in Carmel Valley in north

San Diego. The I-5/I-805 project will include a new six-lane freeway parallel to I-5, increase I-5 from eight to thirteen lanes, and create two high-occupancy vehicle lanes and associated interchanges. The six-lane State Route 56 would be constructed along an existing two-lane road.

Several critical issues relating to the Coastal Act and the California Coastal Management Programs were raised in staff's review of the projects. These include the following: (1) the individual project components received separate environmental review and were treated as independent in the sense that no one project required another for its justification; (2) the proposed mitigation for the series of projects was inadequate and was in fact responsible for half of the wetland impacts; (3) the grading required would cause permanent visual impacts to the river valley; and (4) the combined projects would have adverse impacts due to extra growth in the surrounding area, which lead to greater demand for coastal recreational facilities and adverse impacts on coastal access.

The projects were initially proposed in May, but were rejected for review by staff because they lacked detailed information overall impacts. Even after resubmission, staff concluded that several major questions remain unaddressed. As a result, staff requested that the proponents of the projects "demonstrate that each component, both individually and cumulatively, is: (a) necessary to the social and economic health of the region, (b) the least-environmentally-damaging alternative, and (c) fully and adequately mitigated for each form of resource impact."

When these factors were not addressed, staff recommended denial of the entire development as currently designed. Specifically, staff objections included in part: (1) the use of State Route 56 as constituting a buffer zone for wetland habitat; (2) wetland mitigation ratios well below the historic replacement thresholds used by the Commission; (3) section 30233 of the Coastal Act prohibits Commission approval of highway construction projects which encroach on wetlands; (4) the development lacks an enhancement component as is required by the certified LCP Land Use Plan; (5) approval of the project could preclude more environmentally sensitive road improvements in the future; and (6) section 30604(a) of the Coastal Act would be violated by prejudicing the ability of the City of San Diego to prepare a certifiable LCP for the Carmel Valley area.

Following three and one-half hours of heated public testimony both for and against the project, the Commission voted to reject staff's recommendation, and approved the project in a 7-4 vote.

The circumstances surrounding the vote are worth mention. Staff had recommended consideration of the LCP amendments in two votes: one vote which included all LCP amendments not pertaining to the I-5/I-805 and SR-56 project, and one vote directed specifically at the series of freeway projects. However, Commissioner Wes Pratt, alternate for Commissioner David Malcolm and an elected official for the project proponent (Pratt is a member of the San Diego City Council), moved to approve the amendments in their entirety in a single vote. The effect was to hold the unrelated amendments hostage, allowing their approval only if the freeway project were approved. Commissioners Cervantes, Giacomini, Robinson, Franco, and Glickfield all made separate requests to Commissioner Pratt to amend his motion so that two separate votes could be taken. Each stated that they could not support the I-5/I-805 and SR-56 projects, but wished to approve the amendments which were unrelated to them. Commissioner Pratt responded to each request with a refusal to amend his motion and an impassioned plea to approve the project, drawing on his experience as a San Diego City Council member. Finally, after a private conference between Commissioners Cervantes and Pratt, the roll was called and Commissioner Cervantes proved a critical vote in a 7-4 decision to approve the freeway projects and all amendments to the LCP.

The presence of a representative of the project proponent as a voting member of the Commission proved decisive in approving the projects. The City of San Diego had been provided time earlier in the meeting to state its case in describing its proposal. Pratt's fellow San Diego City Council representative, Abbe Wolfsheimer, had made her comments supporting the project during the public presentation forum. Under normal circumstances, the Commissioners would have ended testimony after the public comments, and would have engaged in discussion among themselves based on that testimony. However, in this instance, Commissioner Pratt acted as a vocal advocate for the project well after the period for public comments had ended.

The Coastal Act does not prohibit a commissioner from participating in or voting on a matter on which he/she has previously voted as an elected official



(section 30318). Section 30304 of the Coastal Act allows regional commissioners to use an alternate commissioner "at the pleasure of the member who appointed him." Commissioner Malcolm, present at other meetings of the Commission that week, chose to allow his alternate to attend a meeting which included an agenda item in which his alternate had a professional, if not personal, stake. The results of this arrangement raise questions regarding the propriety of both the alternate selection scheme and the ability of local elected officials to vote on projects in which they have a professional stake.

LEGISLATION:

SB 2040 (Keene), as amended August 31, creates the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, which requires the Governor to appoint an administrator for oil spill response who shall be a chief deputy director of the Department of Fish and Game; establish a state oil spill contingency plan pursuant to the California Emergency Services Act and, by January 1, 1993, amend that plan by adding a marine oil spill contingency planning section which provides for the best achievable protection of the cost and marine waters; and ensure that the state fully and adequately responds to all oil spills in marine waters. This bill was signed by the Governor on September 22 (Chapter 1248, Statutes of 1990).

AJR 74 (Peace) memorializes the Secretary of Transportation to require that double hulls be installed on all new tankers and those currently undergoing extensive repairs; and memorializes Congress to amend the Port and Tanker Safety Act to require double hulls or similar improvements to tanker design if the Secretary fails to act administratively, and to require specified steps to help prevent oil spills. This resolution was chaptered on July 12 (Chapter 68, Resolutions of 1990).

AJR 78 (Hauser), which memorializes the President and Congress to support and enact legislation designed to promote maritime safety and enhance oil spill prevention and emergency response in the operation of tankers and other vessels in coastal waters, was chaptered on July 12 (Chapter 69, Resolutions of 1990).

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 177-78:

SB 1787 (Rosenthal), as amended August 28, would have specified the circumstances in which the Coastal Commission may enforce violations of the

Coastal Act or a local coastal plan within the jurisdiction of a local government, and would have authorized civil liability to be imposed on any person who performs or undertakes development in violation of the Act, or inconsistent with any permit previously issued by the Commission or other authorized entities. This bill was vetoed by the Governor on September 21.

SB 1788 (Rosenthal), as amended August 9, would have required the Commission to develop and implement a comprehensive enforcement program, including prescribed elements, to ensure that any development in the coastal zone is consistent with the Coastal Act, and to ensure compliance with permits and permit conditions issued by the Commission. This bill was vetoed by the Governor on September 21.

SB 2401 (Marks), as amended May 15, is an urgency appropriations bill which will continuously appropriate funds to the Department of Fish and Game for purposes of investigations and projects directly related to improving the state's command, control, communications, training and practice drills, mapping of sensitive fish and wildlife and their habitat, and assessment and evaluation of natural resources at risk from or damaged by oil spills. This bill was signed by the Governor on September 11 (Chapter 799, Statutes of 1990).

AB 3748 (Sher), as amended August 28, would have directed the Commission to prepare, in cooperation with various state, federal, regional, and local agencies and other institutions and organizations, specified studies relating to San Francisco Bay dredging for use in specified activities. This bill was vetoed by the Governor on September 30.

AB 36 (Hauser), which would have prohibited the State Lands Commission from leasing all state-owned tide and submerged lands situated in Mendocino and Humboldt counties for oil and gas purposes, was vetoed by the Governor on July 18.

AB 145 (Costa), which, as amended August 16, enacts the California Park, Recreation, and Wildlife Enhancement Act of 1990, became law without the Governor's signature on September 14 (Chapter 920, Statutes of 1990).

AB 1735 (Friedman) and *SB 1955 (McCorquodale)* were substantially amended and are no longer relevant to the Coastal Commission.

The following bills died in committee: *AB 2603 (Lempert)*, which would have enacted the Oil Spill Prevention, Abatement, and Removal Act, and would have required the Governor to establish a state oil spill contingency

plan; *AJR 22 (Farr)*, which would have memorialized the President and Congress to amend the Submerged Lands Act to extend the ocean boundaries of coastal states from three to twelve geographical miles offshore; *SB 718 (Rosenthal)*, which would have appropriated funds received by the state to a specified agency to ensure that offshore oil operations conform to federal and state air pollution requirements; *AB 1000 (Hayden)*, which would have required that the state Water Resources Control Board oversee the preparation of specific quality standards for ocean waters; and *SB 1499 (Roberti)*, which would have required the Commission to conduct a study of options for disposition of several low- and moderate-income housing units in Orange County.

FUTURE MEETINGS:

January 9-12 in Marina del Ray.
February 13-16 in San Francisco.
March 13-16 in Marina del Ray.
April 10-13 in San Diego.

DEPARTMENT OF FISH AND GAME

Director: *Pete Bontadelli*
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The Department of Fish and Game (DFG), created pursuant to Fish and Game Code section 700 *et seq.*, manages California's fish and wildlife resources. Created in 1951 as part of the state Resources Agency, DFG regulates recreational activities such as sport fishing, hunting, guide services, and hunting club operations. The Department also controls commercial fishing, fish processing, trapping, mining, and gamebird breeding.

In addition, DFG serves an informational function. The Department procures and evaluates biological data to monitor the health of wildlife populations and habitats. The Department uses this information to formulate proposed legislation as well as the regulations which are presented to the Fish and Game Commission.

The Fish and Game Commission (FGC), created in Fish and Game Code section 101 *et seq.*, is the policymaking board of DFG. The five-member body promulgates policies and regulations consistent with the powers and obligations conferred by state legislation. Each member is appointed to a six-year term. FGC's regulations are codified in Division 1, Title 14 of the California Code of Regulations (CCR).