



REGULATORY AGENCY ACTION

lature and each state department and agency to take a leadership role in promoting recycling and reuse by ordering and using recycled office supplies whenever possible. This bill was chaptered by the Secretary of State on September 7 (Res. Chapter 193, Statutes of 1988).

RECENT MEETINGS:

At its June 9-10 meeting, CWMB considered guidelines proposed by its Household Hazardous Waste Advisory Committee. Household products which should be disposed of as hazardous waste include solvents, adhesives, sealants, waste oil, pool chemicals (acids), auto antifreeze, and batteries of all types.

During its July 6-8 meeting, the Board received a staff update on implementation of AB 2448 (Chapter 1319, Statutes of 1987), which gives CWMB authority to develop regulations for closure and postclosure maintenance of facilities scheduled to close in the next two years. CWMB must develop criteria for loan guarantees by June 30, 1989. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 105-08 and Vol. 7, No. 4 (Fall 1987) p. 89 for background information on AB 2448.)

At the August 10-12 meeting, CWMB reviewed a \$1 million contract to sample and analyze air emissions and ash at the City of Commerce WTE plant. The contract was signed with the Los Angeles County Sanitation Districts (LACSD) and is part of CWMB's Waste-to-Energy Demonstration Program (see CRLR Vol. 8, No. 3 (Summer 1988) p. 106 for details).

CWMB is required by section 66786.3 of the Government Code to report to the legislature annually on the status of WTE projects. At its September meeting, CWMB approved a report regarding the three currently operational WTE projects: Long Beach (the SERRF project), Crow's Landing (the Stanislaus project), and the City of Commerce. Three other projects are actively seeking permits. The appropriate classification and management of ash residues is the major environmental issue confronting WTE projects. CWMB believes that WTE has an important place in the management of California's increasing amount of solid waste, especially when combined with other waste reduction technologies such as recycling.

CWMB has conducted a two-year study of the characteristics of constituents in 63 of the state's landfills. The results of the study were revealed at CWMB's September meeting. For those ten sites with gas recovery systems (and

hence multiple collection points), benzene, ethylbenzene, toluene, and vinyl chloride were found in all ten sites. Dichloromethane was found in nine sites. All have been classified by the U.S. Environmental Protection Agency as volatile priority pollutants.

FUTURE MEETINGS:

December 14-16 in Sacramento.

COASTAL COMMISSION

Director: Peter Douglas

Chairperson: Michael Wornum
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The California Coastal Commission was established by the California Coastal Act of 1976 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 determines the geographical jurisdiction of the Commission. The Commission has authority to control development in state tidelands, public trust lands within the coastal zone and other areas of the coastal strip where control has not been returned to the local government.

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. After certification of an LCP, the Commission's regulatory authority is transferred to the local government subject to limited appeal to the Commission. There are 69 county and city local coastal programs.

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.

MAJOR PROJECTS:

Lease Sale Decelerated. The U.S. Senate recently announced it would drop attempts to accelerate Lease Sale 95, which would have permitted offshore oil drilling in southern California in September 1989. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 109; Vol. 8, No. 2 (Spring 1988) p. 103; Vol. 7, No. 4 (Fall 1987) pp. 92-93; Vol. 7, No. 3 (Summer 1987) p. 116; and Vol. 7, No. 2 (Spring 1987) p. 91 for background information on the Department of the Interior's lease sale plan.) Lease Sale 95 is currently scheduled to occur in January 1990. An acceleration provision in a federal appropriations bill would have allowed Lease Sale 95 to take place a year earlier than planned. The purpose of the advancement was to replace revenues lost by the delay in the finalizing of Lease Sale 91, which will allow drilling off the northern California coast. That lease sale, originally scheduled for February 1989, has been delayed until October 1989. The revenues will be replaced by proposed lease sales in the Aleutian Islands and also by reducing the Interior Department's administrative funds by 2%.

Commission Budget Cut. On July 8, the Governor signed a state budget bill which includes a 14% cut to the Coastal Commission's budget, reducing it by almost \$1 million. Governor Deukmejian is also attempting to force the Commission to close its Santa Barbara and Santa Cruz offices. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 109 for background information.)

LEGISLATION:

The following is an update of bills discussed in detail in CRLR Vol. 8, No. 3 (Summer 1988) at pages 109-10 and Vol. 8, No. 2 (Spring 1988) at pages 103-05:



AB 2766 (Hauser) amends section 4400 of the Health and Safety Code to include discarded nonbiodegradable materials within the definition of "garbage", and prohibits the dumping of garbage within twenty miles off the coast. This bill was signed by the Governor on September 29 (Chapter 1529, Statutes of 1988).

AB 2338 (Farr), which would have enacted the California Ocean Resources Management Act of 1988, died in the Senate Committee on Natural Resources and Wildlife.

SB 2211 (McCorquodale), which would have changed the procedures for certification of land use plans of LCPs, was vetoed by the Governor on August 22.

AB 4639 (Friedman), which would have required Coastal Commission members to report any ex parte communications, died on the Assembly floor.

SB 2006 (Dills), which would have exempted some Los Angeles industrial properties from the requirement of obtaining a coastal development permit from the City of Los Angeles prior to certification of its LCP, died in the Assembly Committee on Natural Resources.

SB 2630 (McCorquodale), which would have amended the Coastal Act to declare the importance of fishing activities, was vetoed by the Governor on September 26.

SB 2691 (Hart), as amended August 15, would have required the Water Resources Control Board's (WRCB) California Ocean Plan to include a water quality control policy and objectives for bays and estuaries by January 1, 1991. The Governor vetoed this bill on September 28.

SB 2694 (Hart) would have required the State Lands Commission to prepare a comprehensive study of the effects of exploration of gas and oil resources on the California coast, both onshore and offshore. This bill was defeated in the Assembly.

AJR 76 (Sher), requesting the President and the U.S. Department of Commerce to discontinue procedures to decertify the California Coastal Commission, was chaptered on August 12.

AB 639 (Killea), which originally would have enacted the Coastal Resources Conservation Bond Act of 1988, was amended in the Senate on August 4 to delete the Bond Act and to appropriate money to the State Lands Commission solely to defend a lawsuit brought by ARCO, which is pending in Los Angeles Superior Court. This bill was defeated in conference committee

on August 31.

AB 1990 (Hayden), which would have required the WRCB to conduct a study of a standardized ocean monitoring and discharge reporting system for national pollutant discharge elimination system (NPDES) permit holders who are required to file discharge reports, was vetoed by the Governor on September 23.

SB 529 (Dills), which would have created the California Wetlands Mitigation Task Force, died on the Assembly floor.

SB 267 (Dills), which would have allowed the ports of Long Beach, Los Angeles, and San Diego to use revenues from their granted lands for acquisition or improvement of other lands, died in the Assembly Committee on Natural Resources.

AB 1987 (Hayden), which would have required the state to prepare a plan to establish a marine pollution health risk assessment program, was vetoed by the Governor on September 23.

AB 284 (Hauser), which would have prohibited the State Lands Commission from leasing state-owned tidelands and submerged lands in Mendocino and Humboldt counties for oil and gas drilling, was vetoed by the Governor on August 29.

SB 1517 (Bergeson), the Bolsa Bay Harbor and Conservation District Act, died in the Assembly Natural Resources Committee. (See also CRLR Vol. 7, No. 4 (Fall 1987) pp. 91-92 for background information on this bill.)

LITIGATION:

State of California v. Mack was settled, consistent with the preliminary injunction granted on April 14. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 110; Vol. 8, No. 2 (Spring 1988) p. 103; Vol. 8, No. 1 (Winter 1988) p. 92; and Vol. 7, No. 4 (Fall 1987) p. 91 for background information.) The National Oceanic and Atmospheric Administration (NOAA) had withheld much of the Commission's federal funding in an attempt to enforce its demand that the Commission issue fixed guidelines for proposed activities affecting the Outer Continental Shelf. The settlement does not give the NOAA the right to condition the granting of federal funds on the Commission's modification of its previously-approved coastal management program. The Commission agreed to issue a summary of its past determinations on offshore projects but retains the right to review offshore proposals.

Texaco filed suit over the Commission's rejection of its proposed oil and

gas exploration project in the Santa Barbara Channel. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 110.) Texaco also appealed the Commission's decision to the Secretary of the U.S. Department of Commerce. The lawsuit is stayed pending the Secretary's decision.

In *WOGA v. Sonoma, et al.*, Western Oil and Gas Association (WOGA) filed suit against several local governments challenging ordinances which restrict or prohibit offshore oil and gas exploration. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 110 and Vol. 7, No. 4 (Fall 1987) pp. 92-93.) The Coastal Commission intervened as a defendant. The government defendants prevailed in their motions to dismiss in April; the court held that the local coastal plans are not preempted by federal statutes. WOGA has petitioned for reconsideration of that ruling.

In *WOGA v. Santa Barbara*, WOGA challenges a proposed consolidation amendment to Santa Barbara County's LCP. The Commission intervened, seeking to protect its procedures for reviewing LCPs and its implementation of the Coastal Act consolidation policies. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 111 for background information.) WOGA is expected to file an amended complaint.

In *People of the State of California v. Hodel*, the Coastal Commission, the State Lands Commission, and Attorney General John Van de Kamp sued the Secretary of the U.S. Department of the Interior over his approval of the Final Lease Program for 1987-92. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 109 and Vol. 7, No. 3 (Summer 1987) p. 116 for background information.) On September 14, oral arguments were heard in the District of Columbia Circuit Court of Appeals; at this writing, a decision has not been issued.

In *Santa Barbara and Ventura Counties v. California Coastal Commission*, Santa Barbara and Ventura counties alleged that the Commission failed to properly implement the counties' air pollution requirements and the California Environmental Quality Act. The parties are attempting to negotiate a settlement.

RECENT MEETINGS:

At its September 16 meeting in Marina del Rey, the Commission rejected a proposal to delete affordable housing resale controls on numerous housing units in Orange County.

From 1977 to 1982, a provision in the Coastal Act required the Commis-



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sion to provide and maintain affordable housing in the coastal zone. Developers were required to build a percentage of their units for low-cost housing purposes. Only qualified buyers were allowed to purchase the units, and resale controls were imposed to assure that the units would continue to meet affordable housing needs. The Orange County Housing Authority (OCHA) agreed to administer the program, whereby it would find qualified buyers when the units were to be resold. In 1984, OCHA withdrew from the program. The Commission asked Community Housing Enterprises (CHE) to administer the program. CHE agreed and served as administrator until 1987. In mid-1987, CHE withdrew, citing a lack of resources and unmanageability of the program. The Commission was unable to implement the program itself due to a lack of expertise, funding, and staff. No other agency would accept the burden, and the possibility of losing over 500 units of low-cost housing became more certain.

The homeowners, who were still subject to the resale controls, no longer had an agency which would find qualified buyers. Unable to sell their units, several owners petitioned the Commission to remove the controls from their units. In February 1988, the Commissioner released thirteen units whose owners complained they were suffering from undue hardship. This release prompted petitions from other owners seeking a similar exemption. On May 9, Deputy Attorney General Anthony Summers issued an opinion stating that because the release of the units appeared to be "a complete abandonment of the housing conditions in Orange County" which "might give millions of dollars to private purchasers who obtained units subject to resale controls," it may have violated the gift clause of the California Constitution. A footnote to the opinion advised that an alternative procedure where excess profits from the resale of the units would be placed in escrow for housing purposes would not run afoul of the gift clause, and would be within the Commission's power.

At its September 16 meeting, the Commission rejected several homeowners' petitions to delete the resale controls. It gave the homeowners the option of finding qualified buyers and keeping the controls intact, or finding a "normal" buyer and giving all profits up to \$10,000 to the Commission. This "recaptured" money would be placed in an escrow account and would be used for affordable housing purposes. If the

sale does not generate \$10,000 in profit, subsequent sellers of the property would be forced to give up profits until that sum is met. Whichever option a homeowner chooses, he/she will have to find their own buyer. The Commission will issue a list of buyers who are qualified under the resale control program, but the Commission has neither the funds nor the personnel to procure buyers under the original resale program.

Efforts continue in the legislature to obtain funding for the continuation of the resale program. If the funding is provided and an agency is appointed to administer the program, resale controls will be reinstated on the properties which have not yet been sold under the escrow account procedure.

The fate of the property released in February remains unclear. According to the Deputy Attorney General, it is possible that the Commission could be sued for the value of the low-cost housing that was released.

FUTURE MEETINGS:

December 13-16 in San Francisco.

January 10-13 in Marina del Rey.

February 7-10 in San Francisco.

March 7-10 in Marina del Rey.

April 11-14 in San Diego.

DEPARTMENT OF FISH AND GAME

Director: Pete Bontadelli
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The Department of Fish and Game (DFG) 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) is the policy-making 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.

As part of the management of wildlife resources, DFG maintains fish hatcheries for recreational fishing, sustains game and waterfowl populations and protects land and water habitats. DFG manages 100 million acres of land, 5,000 lakes, 30,000 miles of streams and rivers and 1,100 miles of coastline. Over 1,100 species and subspecies of birds and mammals and 175 species and subspecies of fish, amphibians and reptiles are under DFG's protection.

The Department's revenues come from several sources, the largest of which is the sale of hunting and fishing licenses and commercial fishing privilege taxes. Federal taxes on fish and game equipment, court fines on fish and game law violators, state contributions and public donations provide the remaining funds. Some of the state revenues come from the Environmental Protection Program through the sale of personalized automobile license plates.

DFG contains an independent Wildlife Conservation Board which has separate funding and authority. Only some of its activities relate to the Department. It is primarily concerned with the creation of recreation areas in order to restore, protect and preserve wildlife.

MAJOR PROJECTS:

OAL Approves Bighorn Sheep, Tule Elk, and Mountain Lion Hunting Seasons. The Office of Administrative Law (OAL) has approved proposed sections 263, 364, and 369, Title 14 of the California Code of Regulations (CCR), adopted by the FGC in April. The approved regulations would establish the hunting seasons for bighorn sheep, tule elk, and mountain lions. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 111-12; Vol. 8, No. 2 (Spring 1988) pp. 107-08; Vol. 8, No. 1 (Winter 1988) p. 95; Vol. 7, No. 4 (Fall 1987) p. 95; and Vol. 7, No. 3 (Summer 1987) p. 118 for detailed background information.) OAL's approval is the last regulatory hurdle the DFG must overcome in order to institute these hunts in the state. However, several lawsuits have been filed to stop the hunts. (*See infra* LITIGATION.)

According to DFG, it has authorized the hunts because the animal populations of these groups have increased dramatically. However, several groups challenge official state estimates of these populations. They claim that several methods used by DFG to determine animal populations have been unreliable in the past. Further, the groups claim that