



CALIFORNIA INTEGRATED WASTE MANAGEMENT AND RECYCLING BOARD

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The California Integrated Waste Management and Recycling Board (CIWMB) was created by AB 939 (Sher) (Chapter 1095, Statutes of 1989), the California Integrated Waste Management Act of 1989. The Act is codified in Public Resources Code (PRC) section 40000 *et seq.* AB 939 abolished CIWMB's predecessor, the California Waste Management Board. [9:4 CRLR 110-11] CIWMB is located within the California Environmental Protection Agency (Cal-EPA).

CIWMB reviews and issues permits for landfill disposal sites and oversees the operation of all existing landfill disposal sites. The Board requires counties and cities to prepare Countywide Integrated Waste Management Plans (CoIWMPs), upon which the Board reviews, permits, inspects, and regulates solid waste handling and disposal facilities. Alternatively, local governments may join together to form regional agencies which must file Regional Agency Integrated Waste Management Plans (RAIWMPs). Approved CoIWMPs or RAIWMPs must outline the means by which the locality will meet AB 939's required 25% waste stream reduction by 1995 and 50% waste stream reduction by 2000. Under AB 939, the primary components of waste stream reduction are recycling, source reduction, and composting.

CoIWMPs and RAIWMPs are comprised of several elements. Each area must produce a source reduction and recycling (SRR) element, which describes the constituent materials which compose solid waste within the area affected by the element, and identifies the methods the city will use to divert a sufficient amount of solid waste through recycling, source reduction, and composting to comply with the requirements of AB 939. Each area must also produce a household hazardous waste (HHW) element which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes which are generated by households in the area and should be separated from the solid waste stream. The siting element describes the methods and criteria a jurisdiction will use in the process of siting a new or expanding an existing solid waste

disposal and transformation facility. The nondisposal facility (NDF) element must include a description of new facilities or expansion of existing facilities that will be needed to reach AB 939's mandated disposal reduction goals, and must identify transfer stations to be used by the local jurisdiction.

The statutory duties of CIWMB also include conducting studies regarding new or improved methods of solid waste management, implementing public awareness programs, and rendering technical assistance to state and local agencies in planning and operating solid waste programs. Additionally, CIWMB staff is responsible for inspecting solid waste facilities such as landfills and transfer stations, and reporting its findings to the Board. The Board is authorized to adopt implementing regulations, which are codified in Division 7, Title 14 of the California Code of Regulations (CCR).

CIWMB is composed of six full-time salaried members: one member who has private sector experience in the solid waste industry (appointed by the Governor); one member who has served as an elected or appointed official of a nonprofit environmental protection organization whose principal purpose is to promote recycling and the protection of air and water quality (appointed by the Governor); two public members appointed by the Governor; one public member appointed by the Senate Rules Committee; and one public member appointed by the Speaker of the Assembly.

Issues before the Board are delegated to any of six committees; each committee includes two Board members and is chaired by a third. The Permitting and Enforcement Committee handles all matters pertaining to the issuance and enforcement of solid waste facilities permits and state standards for solid waste. The Legislation and Public Affairs Committee recommends positions to the Board regarding relevant legislation, and oversees Board involvement in public affairs activities. The Policy, Research, and Technical Assistance Committee is responsible for all issues and policy development regarding research, development, and special wastes activities. The term "special wastes" refers to those wastes which require unique collection, handling, or disposal methods, such as HHW, sludge, and medical wastes. The Integrated Waste Management Planning Committee deals with the CoIWMPs and local waste reduction plans submitted by cities and counties, and helps cities and counties implement their plans. The Market Development Committee is responsible for developing new markets for re-

cycled materials. The Administration Committee is responsible for contracts entered into by the Board, and for issues that do not clearly belong to any other committee.

In March, Governor Wilson announced his appointment of Edward Heidig, a Republican from Sacramento, to replace Michael Frost on CIWMB. Heidig resigned his job as Director of the Department of Conservation to accept the position on the Board; he will earn an annual salary of \$90,852.

MAJOR PROJECTS

Bill to Abolish CIWMB Defeated in Senate. On January 5 in his "State of the State" address, Governor Wilson proposed to abolish CIWMB in order to bring about efficiencies in government; on February 25, Senator Marian Bergeson introduced legislation to carry out the Governor's proposal. Among other things, SB 2026 (Bergeson) would have abolished CIWMB, created the Department of Waste Management (DWM) within Cal-EPA, and transferred the powers and duties of CIWMB to DWM. The bill would also have abolished the Department of Conservation's Division of Recycling (DOR), which administers the California Beverage Container and Litter Reduction Act, various provisions regarding plastic waste, and the Fiberglass Recycled Content Act of 1991, and transferred DOR's functions to DWM. Pursuant to the bill, the Department would have been under the control of an executive officer, referred to as the Director of Waste Management, who would have served at the pleasure of the Governor (*see* LEGISLATION).

The Governor's proposal and SB 2026 are consistent with testimony presented by Cal-EPA Secretary James Strock to the Little Hoover Commission last year. Strock noted that DOR was created within the Department of Conservation in 1986 to administer several recycling programs under the Beverage Container and Litter Reduction Act. As with many such bills passed at that time across the nation, the focus was exclusively on recycling and thus the program was placed under the Department of Conservation. At that time, CIWMB's predecessor agency—the California Waste Management Board—was still in existence and its focus remained narrowly defined and directed almost exclusively to regulation of solid waste facilities. With passage of the Integrated Waste Management Act of 1989, however, the Board's functions were greatly expanded to emphasize source reduction, recycling, and composting in order to meet the bill's 25% and 50% waste stream diversion goals. "It is this expansion of the previous Board's charter that has led to



growing overlap and duplication of effort between the two programs," Strock told the Little Hoover Commission. Strock then suggested several scenarios to remedy the problem, each of which involved abolishing the current CIWMB, creating a new Department within Cal-EPA, and consolidating the staff and duties of the current Board with those of the Division of Recycling.

In its March report entitled *Beyond Bottles and Cans: Reorganizing California's Recycling Efforts*, the Little Hoover Commission made various findings and recommendations to streamline the state's solid waste and recycling programs, and found that "the placement of overlapping recycling mandates in two separate agencies has resulted in duplication of work, public confusion and lost opportunities." Among other things, LHC recommended that the Governor and the legislature enact legislation establishing a consolidated and comprehensive waste reduction, reuse, and recycling program within Cal-EPA. (See agency report on LHC for a summary of the Commission's report.) In its 1994-95 budget analysis, the Legislative Analyst's Office concurred, and recommended the transfer of DOR to CIWMB because CIWMB is responsible for all other waste recycling programs, and DOR's consolidation with CIWMB would improve coordination of state recycling efforts.

According to an analysis of SB 2026 prepared by the Senate Governmental Organization Committee, Cal-EPA estimated that a total of approximately \$5 million and 65 positions in savings could be achieved through enactment of this measure. CIWMB staff completed a fiscal analysis of SB 2026 that is similar to the analysis prepared by Cal-EPA. CIWMB staff estimated that this bill would result in a savings to the Integrated Waste Management Account of approximately \$1.9 million annually by eliminating the six Board member positions, their personal staff, and related operating expenses. In addition, CIWMB's fiscal analysis estimates that this measure would lead to an expenditure reduction of approximately \$2.6 million in fiscal year 1993-94 and \$4.6 million in fiscal year 1994-95 and thereafter. Sixty percent of the projected annual savings would result from the consolidation of various common CIWMB and DOR programs; the remaining 40% of these savings would be attributable to elimination of the CIWMB and support staff.

Opponents of the legislation—the California Refuse Removal Council, Norcal Waste Systems, Inc., and the California State Association of Counties—generally

agreed that there is room for improvement within the existing Board framework but contended that a policymaking board is preferable to the proposal contained in SB 2026; opponents further agreed that there is overlap and duplication between DOR and CIWMB but preferred moving all recycling functions to an improved Board structure rather than a department.

On April 19, SB 2026 was rejected by the Senate Governmental Organization Committee by a 7-2 vote. However, several other bills are still pending which could become vehicles for consolidation of the activities of CIWMB and DOR.

CIWMB Proposes LEA Regulatory Revisions. On December 31, CIWMB published notice of its intent to amend Chapter 5, Division 7, Title 14 of the CCR, which establishes guidelines for the designation, certification, and evaluation of local enforcement agencies (LEAs), which are responsible for enforcing state minimum standards governing the design and operation of solid waste facilities and disposal sites. Specifically, CIWMB's proposed rulemaking would amend sections 18011, 18020, 18050, 18051, 18052, 18054, 18055, 18056, 18060, 18070, 18071, 18072, 18073, 18075, 18076, 18077, 18081, 18083, and 18353, and CIWMB Form 1000. According to staff, the Board's existing LEA regulations require several minor modifications to improve clarity and consistency, repeal obsolete language, update the language to reflect current statutory provisions, and meet changing CIWMB and LEA needs.

CIWMB held a public hearing on the proposed changes on February 22; in response to comments received during the public comment period, CIWMB staff modified one section, and released the revised language for an additional 15-day public comment period which ended on April 22. At this writing, CIWMB is expected to consider the adoption of the changes at its May 25 meeting.

Rigid Plastic Packaging Container Program. On January 14, CIWMB published notice of its intent to adopt new sections 17942-17952, Title 14 of the CCR, to implement SB 235 (Hart) (Chapter 769, Statutes of 1991), the Rigid Plastic Packaging Container Act. Under the Act, a rigid plastic packaging container (RPPC) must be source reduced by 10%; be routinely reused or refilled five times; meet one of four specific recycling rates; or contain 25% post-consumer material. [13:4 CRLR 148-49] The Act also requires CIWMB to adopt regulations—by July 1, 1994—to establish procedures for certifying compliance, including a requirement that product manufacturers include in their

container specifications a requirement that the packaging manufacturer certify that RPPCs comply with specified law; procedures for considering and granting waivers pursuant to the criteria established in specified statutes; and procedures that outline how manufacturers shall submit required reports.

On March 16, CIWMB conducted a public hearing on the proposed sections; in response to comments received during the public comment period, CIWMB revised the proposed language and released the modified text for an additional 15-day public comment period which ended on May 5. In response to additional comments received, the Board again revised the proposed language, and released the new text for an additional 15-day public comment period which is scheduled to end on June 1. At this writing, the Board is expected to consider the adoption of the proposed sections at its June 29 meeting.

CIWMB Adopts Emergency Regulations to Assist Earthquake Victims. On January 21, in response to the January 17 Northridge earthquake and aftershocks, CIWMB adopted—on an emergency basis—sections 17008-17014, Title 14 of the CCR, which allow landfills to exceed their tonnage limits in accepting earthquake debris, in order to expedite recovery by allowing owners to clear their property quickly. Among other things, the regulations grant to solid waste facility operators waivers of any standard imposed by any term or condition of a solid waste facilities permit related to origin of waste, rate of inflow for storage, transfer or disposal, type and moisture content of solid waste, hours of facility operation, and storage time before transfer or disposal of wastes at existing solid waste facilities; and provide that an operator who proposes to accept earthquake-related solid waste under circumstances which would normally not conform to state standards or the terms and conditions of his/her solid waste facilities permit must report to the LEA, as specified. All other state minimum solid waste standards and permit conditions which are not the subject of the waiver must be adhered to, and all other local, state, and federal ordinances, regulations, and laws must be followed; this waiver is valid only if the operator uses maximum efforts to recycle, reuse, or otherwise divert from disposal as much of the waste received as is feasible; and the LEA must review the operator's written report on receipt of waste pursuant to the waiver, and must transmit the report, together with comments its review, to CIWMB within fourteen days of the receipt of the operator's written report.



These emergency regulations will remain in effect until May 23; at this writing, however, CIWMB is expected to readopt the sections as emergency regulations, keeping them in effect until September 16.

Used Oil Recycling Program. On May 6, CIWMB published notice of its intent to amend sections 18601–18655.6, Title 14 of the CCR, which describe the requirements of the Board's used oil recycling program. [13:4 CRLR 149; 13:2&3 CRLR 165] According to CIWMB, the proposed changes would clarify the procedures for certifying and operating used oil collection centers and reduce the amount of information required from used oil recycling program applicants. At this writing, the public comment period on these proposed changes is scheduled to end on June 20; no hearing is scheduled.

Rulemaking Update. The following is a status update on other CIWMB rulemaking proposals discussed in detail in previous issues of the *Reporter*.

• **Subtitle D Regulations.** At its January meeting, CIWMB adopted, on a permanent basis, its emergency amendments to sections 17225, 17601, 18250, 18266, and 18280, and new sections 17258.1, 17258.2, 17258.10, 17258.16, 17258.20, 17258.21, 17258.23, 17258.24, 17258.29, 17258.60, 17258.61, 17258.73, and 17258.74, Title 14 of the CCR. These changes conform California's standards to the U.S. Environmental Protection Agency's so-called "Subtitle D" regulations establishing minimum federal criteria for municipal solid waste landfills. [14:1 CRLR 126; 13:4 CRLR 147–48; 13:2&3 CRLR 162] OAL approved these changes on April 19.

• **Required Contents of a CoIWMP and RAIWMP.** On February 10, CIWMB released modified language of proposed new sections 18757–18758.1, Title 14 of the CCR, which would fully describe the required contents of a CoIWMP and RAIWMP, for an additional 15-day public comment period. The proposed regulations would require counties and regional agencies to identify existing and proposed solid waste management facilities, waste management programs, SRR programs in the area and its jurisdictions, regional and countywide integrated approaches to solid waste management, and alternatives to long-range waste reduction and disposal. [14:1 CRLR 126; 13:4 CRLR 147] At its April 27 meeting, CIWMB adopted the proposed regulatory changes, which await review and approval by OAL.

• **Contents of Source Reduction and Recycling Element.** On January 3, OAL approved CIWMB's emergency amendments to sections 18730–18748, Article 6.2, Title 14 of the CCR, which describe

the contents of the SRR element of a CoIWMP or RAIWMP required by the Integrated Waste Management Act, as modified by AB 1520 (Sher) (Chapter 718, Statutes of 1991), AB 3322 (Sher) (Chapter 1293, Statutes of 1992), AB 2494 (Sher) (Chapter 1292, Statutes of 1992), AB 3001 (Cortese) (Chapter 1291, Statutes of 1992), and AB 440 (Sher) (Chapter 1169, Statutes of 1993). [14:1 CRLR 126; 13:4 CRLR 150; 12:4 CRLR 176–78] Specifically, the SRR element must address four components—source reduction, recycling, composting, and special waste—in a specified format which evaluates alternatives in each component area and sets forth a jurisdiction's reasons for selecting a particular alternative. Additionally, the SRR element must include an education and public information component, a solid waste facility capacity component which identifies the capacity of all existing solid waste and transformation facilities within the jurisdiction, a funding component, and an integration component which explains how the source reduction, recycling, composting, and special waste components combine to achieve the 25% and 50% waste diversion mandates in PRC sections 41780 and 41780.1. Pursuant to PRC section 40502, as amended by AB 440 (Sher) (Chapter 1169, Statutes of 1993) [13:4 CRLR 150–51], these emergency regulations will remain in effect for three years.

• **Siting Element Contents and Procedures.** The siting element of a CoIWMP or RAIWMP must describe the methods and the criteria that a jurisdiction will use in the process of siting a new or expanding an existing solid waste disposal and transformation facility. On March 15, CIWMB released modified language of proposed new sections 18755–18756.7, Title 14 of the CCR, which would fully describe the required contents of the siting element, for an additional 15-day public comment period. [14:1 CRLR 127; 13:4 CRLR 147] The proposed regulations would require counties and regional agencies to identify existing and proposed solid waste management facilities and alternatives to either expanding existing facilities or constructing new facilities. They also require counties and regional agencies to identify criteria to be used in locating new facilities, identify the socioeconomic and environmental impacts, and assure that any expanded or new facilities are consistent with local general plans. At its April 27 meeting, CIWMB adopted the proposed sections, which await review and approval by OAL.

On February 10, CIWMB released modified language of proposed amendments to sections 18776–18790, Title 14 of the CCR, for an additional 15-day pub-

lic comment period; the proposed amendments would describe the procedures which must be followed in preparing and revising a countywide siting element in a CoIWMP and a regional siting element in a RAIWMP. [14:1 CRLR 127; 13:4 CRLR 147] As a result of the passage of AB 2494 (Sher) (Chapter 1292, Statutes of 1992) [12:4 CRLR 176–77], CIWMB's existing regulations required modification to address when counties and cities may form regional agencies and the type of siting element the regional agencies must prepare and adopt as part of a RAIWMP. The Board's proposed changes to the regulations would also eliminate redundant reviews and streamline the local jurisdiction's review and adoption process. At its April 27 meeting, CIWMB adopted the proposed changes, which await review and approval by OAL.

• **Contents of Nondisposal Facility Element.** On January 3, OAL approved CIWMB's emergency adoption of new sections 18752–18754.5, Article 6.4, Title 14 of the CCR, which specify the type of information which must be provided in the nondisposal facility (NDF) element of a CoIWMP or RAIWMP; a NDF is defined by PRC section 40150 as any solid waste facility required to obtain a state solid waste facility permit other than solid waste disposal and transformation facilities. PRC sections 41730–36 require local jurisdictions to prepare and adopt a NDF element which identifies the facilities a jurisdiction is using to reach AB 939's disposal reduction goals; the NDF element should also identify new facilities or the expansion of existing facilities a jurisdiction will need in order to reach the mandated goals. The regulations require the NDF element to specify the type of facility involved; the estimated amount of waste sent to the facility; diversion rate or expected diversion rate; the participating jurisdictions; location of the facility; and a description of the general area, including a land use map, zoning map, or other type of planning map. [14:1 CRLR 127; 13:4 CRLR 147] Pursuant to PRC section 40502, as amended by AB 440 (Sher) (Chapter 1169, Statutes of 1993) [13:4 CRLR 150–51], these emergency regulations will remain in effect for three years.

• **Procedures for Preparing and Adopting the Source Reduction and Recycling Element, Household Hazardous Waste Element, and Nondisposal Facility Element.** On January 3, OAL approved CIWMB's emergency amendments to sections 18760–18775, and adoption of new sections 18775.2 and 18775.4, Article 7.0, Title 14 of the CCR. The emergency regulations describe the procedures for the



preparation, adoption, and CIWMB approval of the SRR, HHW, and NDF elements of a CoIWMP or RAIWMP; the regulations also describe the procedures for petitioning for approval of sludge and excluded waste diversion. [14:1 CRLR 127] Pursuant to PRC section 40502, as amended by AB 440 (Sher) (Chapter 1169, Statutes of 1993) [13:4 CRLR 150-51], these emergency regulations will remain in effect for three years.

• **Solid Waste Generation Study Requirements.** At its January 26-27 meeting, CIWMB adopted, on an emergency basis, amendments to sections 18722, 18724, and 18726, and new sections 18726.1 and 18726.2, Article 6.1, Title 14 of the CCR, regarding solid waste generation study requirements. Each ColWMP or RAIWMP must include a waste characterization component which identifies the constituent materials which comprise the solid waste generated within the area covered by the plan. The resulting solid waste characterization studies enable the Board to measure the diversion requirements for each city, county, city and county, or regional agency. This regulatory action modifies the required procedures for preparing solid waste generation studies and solid waste disposal characterization studies to include modifications to the Integrated Waste Management Act contained in AB 2494 (Sher) (Chapter 1292, Statutes of 1992). [14:1 CRLR 127]

On March 31, OAL approved the emergency rulemaking actions; pursuant to PRC section 40502, as amended by AB 440 (Sher) (Chapter 1169, Statutes of 1993) [13:4 CRLR 150-51], the amendments and new sections will remain in effect for three years.

• **Funding Formula Revision.** On April 29, OAL approved CIWMB's adoption, on an emergency basis, of proposed amendments to sections 18281 and 18282, Title 14 of the CCR, which change the minimum annual deposit requirements for operators of solid waste disposal facilities who demonstrate the required financial assurance for closure and/or postclosure maintenance costs with either a trust fund or enterprise fund. Among other things, the changes clarify the information a facility operator must submit to CIWMB when providing financial assurance with either a trust fund or enterprise fund; clarify the "straight-line" funding formula; clarify when an enterprise fund or trust agreement must be completely funded; and allow the facility operator the flexibility to amend the anniversary date of an enterprise fund or trust agreement for purposes of funding calculations. [14:1 CRLR 129] These revisions will remain in effect

for three months; CIWMB must transmit a Certificate of Compliance to OAL by August 29 or the emergency language will be repealed by operation of law on the following day.

Meanwhile, on March 25, the Board published notice of its intent to permanently adopt the emergency changes to sections 18281 and 18282, with minor modifications. The public comment period on these proposed changes ended on May 10; no hearing was held. At this writing, the changes await adoption by CIWMB and review and approval by OAL.

• **Recycling Market Development Zone Program.** On March 7, OAL approved CIWMB's proposed amendments to section 17901 and adoption of new section 17914, Title 14 of the CCR, regarding the Recycling Market Development Zone Program; the regulatory action enables CIWMB to redesignate recycling market development zones. [14:1 CRLR 129; 13:4 CRLR 149]

• **Recycled Content Trash Bag Regulations.** On March 9, OAL approved CIWMB's proposed adoption of new sections 17975-17985, Title 14 of the CCR, which define terms, reporting requirements, and certification procedures for the recycled content trash bag program. [14:1 CRLR 129; 13:4 CRLR 150]

Board Adopts Final Report on Used Oil Collection Demonstration Grant Program. SB 1200 (Chapter 1657, Statutes of 1990) required CIWMB to award grants to cities, counties, and city and county agencies which have proposed or established used oil curbside collection programs to prevent the disposal of used motor oil into the environment. As a result, CIWMB established the Used Oil Collection Demonstration Grant Program, under which it awarded 19 grants totalling \$840,057. SB 1200 also required that CIWMB submit a final report to the legislature with recommendations on the statewide use of curbside oil collection programs. At its February 24 meeting, CIWMB adopted staff's final report, which concluded that a statewide program for curbside oil recycling is feasible and desirable. Of the 19 grant recipients, each city or county reported a substantial increase in participation and no major problems in the administration of large scale curbside oil collection programs.

Board Drafts Disposal Reporting System Regulations. On April 29, CIWMB staff released preliminary draft regulatory proposals to implement a system for reporting waste content and diversion rates; the regulations would implement PRC section 41821.5, which was added by AB 2494 (Sher) (Chapter 1292,

Statutes of 1992). [12:4 CRLR 176] The new reporting system is meant to encourage uniformity and standardization at the county level, and reduce the need for individual cities to require detailed disposal reports from haulers, transfer stations, landfills, and transformation facilities. At this writing, CIWMB is scheduled to hold a May 19 workshop on the proposals in Diamond Bar, a May 20 workshop in Long Beach, a May 24 workshop in Concord, and a May 27 workshop in Sacramento; CIWMB expects to formally publish this regulatory action for a 45-day public comment period in late June.

CIWMB's Public Education Campaign. PRC section 42600 requires CIWMB to establish a statewide public information and education program to encourage consumers to reuse waste and businesses to reduce excess packaging. At its March 30 meeting, CIWMB announced this year's recipients of the Waste Reduction Award Presentation (WRAP); this particular program encourages reuse, recycling, and reduction within California industries. During 1993-94, over 140 businesses have received WRAP awards. Among the recipients are Jones & Stokes, an environmental consulting firm, which now diverts 80% of its waste; Sutter Memorial Hospital, which diverts 25% of its waste; and "Eat Your Vegetables," an all-natural restaurant in Sacramento, which diverts over 90% of its waste. CIWMB's Public Affairs Committee, chaired by Kathy Neal, commented on the success of the WRAP campaign by emphasizing that these businesses are participating voluntarily and that receiving a WRAP award has become a noteworthy and envied achievement.

Goals Established for Recycling Post-Consumer Waste Paper. In an effort to stimulate greater recycling of post-consumer waste paper generated in California, CIWMB recently established a voluntary 50% recycling goal of post-consumer waste paper by 2000; the Board also agreed to establish a working group—comprised of representatives of local government, environmental groups, and interested industries—to develop definitions and a monitoring and reporting system to determine rates of recovery. The Board's action followed over 18 months of study on options to increase demand for fiber and other materials. These options included establishing minimum recycled content and utilization requirements for old corrugated containers and post-consumer printing and writing papers.

Post-consumer waste represents 30% of waste going into California's landfills, some 11 million tons; currently, the supply



of post-consumer waste paper exceeds market demand.

Specifically CIWMB established an overall recycling goal of not less than 50% by 2000 and a goal of not less than 40% by 1995; established annual reduction, recovery, and reuse goals for all major grades of California post-consumer waste paper—goals which will result in a reuse and recovery rate of not less than 50% post-consumer paper; and established a process by which CIWMB will annually evaluate progress toward meeting these goals.

The Board's plan also calls for the establishment of product- and company-specific minimum content or utilization rates if CIWMB determines that sufficient voluntary progress is not being made toward reaching its goals.

Adoption of Revised Board Policy for Maintaining the Inventory of Solid Waste Facilities Which Violate State Minimum Standards. In 1982, SB 1346 (Presley) required the Board to perform regular inspections of all permitted solid waste facilities and to maintain a state list of non-complying facilities which are violating state minimum standards (SMS) for solid waste handling and disposal. In 1989, the passage of AB 939 (Sher) recodified this requirement in PRC section 44104; this section requires CIWMB to provide a notification of intent (NOI) to the operator and a 90-day grace period before placing a facility on the inventory. Under AB 939, once a facility is placed on the inventory, the LEA would develop a compliance schedule with the owner/operator to bring the site into compliance with SMS within one year of being placed on the inventory. Furthermore, if after one year a facility is still found to be in violation of one or more SMS for which it was placed on the inventory, the LEA was to revoke the solid waste facility permit.

AB 1220 (Eastin) (Chapter 656, Statutes of 1993) will have a significant impact on the process by which facilities are placed on the inventory. AB 1220 emphasizes the Board's role in LEA training, assistance, evaluation, rather than a direct role in compliance, by reducing the frequency of state inspections for active solid waste landfills from once every twelve months to once every eighteen months. AB 1220 also deleted the one-year maximum timeframe in the LEA's compliance agreement for facilities included on the inventory, as well as the provision for automatic revocation of the solid waste facilities permit for failure to meet the compliance agreement deadline, giving the LEAs discretion in that matter. [13:4 CRLR 151]

According to CIWMB staff, the above changes must be incorporated into the Board's policy for maintaining the inventory; also, CIWMB's policy regarding the publication of the inventory and removal of facilities from the inventory should be clarified. Accordingly, at its March 30 meeting, CIWMB approved a revised policy for maintaining the inventory, including different guidelines for triggering the issuance of NOIs, and modification of the operator appeal process when he/she is issued an inventory inclusion letter. Specifically, the Board agreed upon the incorporation of the following changes and additions:

- CIWMB will issue NOIs at the request of a LEA based upon its inspections and other documentation, including the results of joint state/LEA inspection results. Also, reinspection for inclusion or removal of a facility from the inventory will now primarily be conducted by the LEA as part of its regular monthly inspection.

- CIWMB will alter the guidelines for issuance of NOIs in order to focus resources on the most problematic sites.

- CIWMB will modify the operator's appeal process for inclusion of a facility on the inventory; this change will provide an opportunity for the operator, Board, and LEA staff to resolve appeals with the Board's Deputy Director of the Permitting and Enforcement Division prior to appealing to the Board.

- CIWMB will require consistent compliance over a span of several inspections with all SMS for which a facility was placed on the inventory, to the satisfaction of the LEA, before a facility's removal from the inventory. Also CIWMB will remove a facility from the inventory by sending the owner/operator a standard form letter notifying them of the action.

- CIWMB will publish the inventory list as an information item to be presented to the Board at its monthly business meeting twice annually.

- For facilities which are currently in the inventory process, CIWMB will review their recent compliance status while considering the new guidelines for issuance of NOIs and changes in regulatory responsibilities prompted by AB 1220.

Implementation of Solid Waste Disposal and Codisposal Site Cleanup Program. AB 2136 (Eastin) (Chapter 655, Statutes of 1993) created the Solid Waste and Codisposal Site Cleanup Program within CIWMB, beginning January 1, 1994; the program requires the Board to initiate a cleanup program for solid waste disposal and codisposal sites. AB 2136 targets sites where either the responsible

party cannot be identified or is unable or unwilling to pay for timely mediation. [13:4 CRLR 154]

The program received first-year start-up funding of \$8 million on January 1 and, beginning July 1, 1994, will receive \$5 million annually with an aggregate cap not to exceed \$30 million. To qualify for funding, sites must have no responsible party or the responsible party must be unable to or unwilling to pay for cleanup, and the site must pose a threat to the public health and safety or the environment. Under the program, CIWMB may finance, through loans, grants, and direct expenditures, a wide range of cleanup projects. The Board may expend funds for cleanup or emergency actions, provide loans to responsible parties who demonstrate the ability to repay state funds, or provide matching grants to local governments to assist in local cleanup(s). In addition, the Board may expend or provide grants to LEAs for the cleanup of illegal disposal sites.

AB 2136 also requires CIWMB to prioritize sites for cleanup; in order to accomplish this task, the Board will collectively consider the degree of risk posed to the public health and safety and the environment by conditions at the site, the solvency of the owner of the site, the ability of the Board to adequately cleanup the sites while maximizing the use of available funds, and other factors as determined by the Board. The Board will use the Solid Waste Ranking System (SWRS) in determining the level of public and environmental health and safety.

At its February 24 meeting, CIWMB approved the allocation of \$2.5 million in grants and loans for fiscal year 1993-94 and \$5 million for fiscal year 1994-95. In either fiscal year, if eligible grant and loan requests do not total the allocations, the funds will be directed into funds for direct cleanup by the Board. The Board also agreed that the loan rate for repayment of the loans will be based on State of California general obligation bonds sold prior to the date the loan is approved; as of January, that rate was 4.8%. The maximum time allowed to repay the debt shall not exceed twenty years and the Board may choose to place a lien on the borrower's property or require collateral from the borrower to ensure repayment of the loan.

In addition, CIWMB provides matching grants to local governments to assist in site cleanups. The matching ratio for funding is proposed to be 50%-50%; the intent of this provision is for the grantee to provide a fair share of the cost of remediation. This part of the program is intended to provide help to local governments which are unable to raise the neces-



sary funds through such mechanisms, such as increased tipping or parcel fees.

As noted, AB 2136 also authorizes direct cleanup by the Board. Sites with environmental problems range in scope from quick cleanups to major remediations involving problems from illegal dumping, landfill gas, leachate, soil erosion, settlement of covers, etc.; the administrative mechanism for CIWMB to achieve cleanup and/or remediation is through contracts. At its February 24 meeting, CIWMB approved \$5 million for Board contracts for fiscal year 1993-94; these contracts would have a two-year term (which could be extended to a third year).

LEGISLATION

SB 2026 (Bergeson). In addition to the recycling responsibilities delegated to CIWMB in AB 939, state law also establishes the Department of Conservation within the Resources Agency and delegates to the Department's Division of Recycling responsibility for administering and implementing the California Beverage Container and Litter Reduction Act (the "bottle bill"), various provisions regarding plastic waste, and the Fiberglass Recycled Content Act of 1991. As introduced February 25, this bill would have abolished CIWMB, created the Department of Waste Management within CalEPA, and transferred the powers and duties of CIWMB to the Department of Waste Management. The bill would also have abolished the Division of Recycling and transferred its functions to the Department of Waste Management. On April 19, this bill was rejected by the Senate Governmental Organization Committee by a 7-2 vote (see MAJOR PROJECTS).

AB 3392 (Sher). Provisions in the Health and Safety Code administered by CIWMB prohibit the sale of a beverage in beverage containers connected to each other with plastic rings or similar plastic devices which are not degradable, as defined, after CIWMB has determined that degradable plastic connectors are commercially available. [14:1 CRLR 128] As amended April 20, this bill would transfer those provisions to the California Integrated Waste Management Act of 1989.

The California Beverage Container Recycling and Litter Reduction Act requires every beverage container sold or offered for sale in this state to have a minimum refund value for every beverage container redeemed and requires every beverage distributor to pay a redemption payment to the Department of Conservation for every beverage container sold or offered for sale in this state by the distributor. The Act requires the Department of

Finance to submit a report to the legislature by January 10, 1992, regarding administrative expenditures under the Act. This bill would repeal those obsolete provisions.

Under existing law, both the Department of Conservation and CIWMB have responsibilities with regard to recycling programs. This bill would require the Department and CIWMB, by July 1, 1995, to prepare, adopt, and submit to the Governor and the legislature a memorandum of understanding that would include, but not be limited to, prescribed information relating to improving coordination and implementation of recycling programs which the two agencies are responsible for administering, and would prescribe other, related matters.

The bill would, on or before July 1, 1995, require the Department of Conservation, CIWMB, and the Department of Toxic Substances Control to establish an interagency task force to coordinate all market and technology development activities to create a single, centralized database and computerized format for use by the public for specified programs. The bill would require, on or before January 1, 1996, those state agencies to report to the Governor and the legislature on the implementation of these provisions for purposes of consideration of the budget bill of 1996. [A. Floor]

SB 1021 (Thompson). The California Integrated Waste Management Act of 1989 requires CIWMB, using existing resources, to develop a comprehensive market development plan that stimulates market demand within the state for post-consumer waste material and secondary waste material, as defined. The Act, until July 1, 1997, provides for the designation of Recycling Market Development Zones and provides for a Recycling Market Development Revolving Loan Program. As amended April 14, this bill would define, for purposes of those provisions, a "recycling-based business" as any business that increases market demand for, or adds value to, post-consumer waste material or secondary waste material. The bill would authorize CIWMB to enter into a contract or other agreement with state agencies and nonprofit organizations for the purpose of increasing access to financing for recycling-based businesses or for leveraging existing money in the Revolving Loan Program, for specified purposes.

The Act requires CIWMB to file an annual report with the legislature summarizing the progress achieved by CIWMB in implementing, or assisting in the implementation of, specified solid waste management programs; and requires CIWMB,

as part of that report, to report on nonyard wood waste diversion and on the implementation of the high-grade white office paper recovery assistance program. This bill would delete obsolete provisions and make technical changes in those reporting requirements. [A. NatRes]

AB 3796 (Horcher), as amended April 4, would require CIWMB's market development plan to stimulate market demand in the state for post-consumer waste materials and secondary waste materials to include the promotion of the availability of public information on the use of post-consumer waste materials and secondary waste materials. [A. Floor]

AB 2938 (Aguiar). The California Integrated Waste Management Act of 1989 requires cities and counties to divert 25% of all solid waste from landfill or transformation facilities by January 1, 1995, and, with specified exceptions, to divert 50% by January 1, 2000, through source reduction, recycling, and composting activities. The Act requires each city or county, based on the number of years of remaining disposal site capacity, to submit a SRR element which demonstrates how the city or county will achieve those diversion requirements, in accordance with a prescribed schedule; and authorizes CIWMB to grant a time extension from the diversion requirements to a city that was incorporated after January 1, 1990, if the city meets specified conditions, including (among others) that the city is a successor agency to more than one solid waste franchise agreement entered into by the county within which the city is located prior to the incorporation of the city and the city has prepared a SRR element which has been approved by CIWMB and which demonstrates that the city will comply with the diversion requirements on or before the date on which the time extension expires. As amended April 28, this bill would delete those conditions as requisites for obtaining a time extension from the diversion requirements, and authorize CIWMB to allow a city which meets the revised conditions, notwithstanding existing provisions of law regarding the schedule for submitting a SRR element, to submit a SRR element, a HHW element, and a NDF element in accordance with a specified schedule. [S. GO]

AB 3116 (Solis), as introduced February 23, would require CIWMB to develop and, on or before July 1, 1995, implement a program to provide economic incentives to businesses which purchase recycled materials or which reduce the amount of solid waste that they generate. The bill would require the Controller, upon appropriation by the legislature in the annual Budget Act, to transfer the sum of \$2



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million from the Integrated Waste Management Account in the Integrated Waste Management Fund to the Solid Waste Reduction Economic Incentives Subaccount, which the bill would create, for purposes of implementing the program. [A. *W&M*]

SB 2062 (Thompson). The Personal Income Tax Law and the Bank and Corporation Tax Law authorize various credits against the taxes imposed by those laws including, until January 1, 1994, a credit for purchasing machinery or equipment to manufacture recycled products, as specified, not to exceed a cost of \$625,000. As amended April 26, this bill would extend the availability of this credit to January 1, 2000; extend the credit to property that is leased by the taxpayer; increase the cost of the qualified property upon which the credit may be claimed to \$1 million; and make other technical changes to that credit. [S. *Appr*]

SB 1915 (Marks). Existing law provides that it is the intent of the legislature to encourage the procurement of recycled paper products by various state agencies and requires state agencies to give purchase preference to recycled paper products and to set percentage goals for the purchase of recycled paper. As amended April 18, this bill would revise the definition of recycled paper products for those purposes. It would also define the term "recycled paper" for certain fine grades of paper and increase the post-consumer material content in these papers, as specified, effective January 1, 1999. [S. *Inactive File*]

AB 3582 (Richter). Under existing law, the use of used oil, recycled oil, or oil exempted pursuant to specified provisions as a dust suppressant or weed control agent is prohibited unless the oil meets specified requirements and standards. As amended April 7, this bill would prohibit any use of used oil or recycled oil as a dust suppressant or insect or weed control agent. The bill would require all copies of each receipt for manifested used oil under specified procedures to contain the Environmental Protection Agency identification number; require a transfer facility that accepts used oil and holds the oil for more than 24 hours, but less than 144 hours, and does not handle the used oil, other than the transfer of packaged or containerized used oil from one vehicle to another, to comply with the requirements for used oil transfer facilities in specified federal regulations; revise the definition of the terms "used oil" and "recycled oil" for purposes of provisions regulating the management of used oil; and require, if the material is used oil, that the containers, above-ground tanks, or fill pipes used to transfer the oil

into underground storage tanks be labeled or clearly marked with the words "Used Oil." [S. *T&PSM*]

AB 2762 (Sher). The California Oil Recycling Enhancement Act requires that, to receive payment of a recycling incentive, an industrial generator of used lubricating oil, a used oil collection center, or a curbside collection program is required to submit a specified report to CIWMB on or before the last day of the month following each quarter. As introduced February 9, this bill would extend the date when those reports are due to the 45th day following each quarter. [S. *GO*]

SB 1577 (Thompson). The California Integrated Waste Management Act 1989 defines the term "compost" as the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal solid waste stream, or which are separated at a centralized facility, and includes vegetable, yard, and wood wastes which are not hazardous wastes. The Act employs, but does not define, the term "composting facility." As amended May 3, this bill would define "composting" as the production of compost, but would exclude from that definition the production of compost from agricultural waste, feedstock, manure, vegetation, or yard waste which was generated on agricultural land, if the compost is returned to agricultural land for agricultural purposes, and is not sold commercially; define a "composting facility" as a permitted solid waste facility at which composting is conducted; and define the terms "agricultural waste" and "yard waste" for these purposes. [A. *NatRes*]

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 129-30:

AB 173 (V. Brown), as amended August 30, 1993, would limit the amount of salary paid to the chair and each member of CIWMB on or after July 1, 1994, to an amount no greater than the annual salary of members of the legislature, excluding the Speaker of the Assembly, President pro Tempore of the Senate, Assembly majority and minority floor leaders, and Senate majority and minority floor leaders. [S. *Inactive File*]

AB 315 (Hauser), as amended January 10, is no longer relevant to CIWMB.

AB 688 (Areias). Under the California Integrated Waste Management Act of 1989, CIWMB is authorized to reduce AB 939's solid waste diversion requirements of the Act if a city or county demonstrates, and the Board concurs, that the achievement of the diversion requirements is not feasible due to specified circumstances, including the small geographic size or low

population density of the city or county. As amended January 5, this bill would instead require that the requirements not be feasible due to the large geographic size and low population density of the city or county.

This bill would also authorize the Board to establish a process for the conditional approval of SRR elements which provides flexibility for a city, county, or regional agency to meet the requirements of the Act at the earliest feasible date.

Under the Act, CIWMB is authorized to impose administrative civil penalties on any city or county which fails to submit an adequate element or plan or which fails to implement its SRR element or HHW element. This bill would specify circumstances under which CIWMB is not to impose penalties against a city or county which is in substantial compliance, as specified, and would make a related declaration of intent with regard to cities and counties that have not willfully or intentionally violated the planning and diversion requirements of the Act and that have made a good faith effort to comply. [S. *GO*]

SB 1089 (Killea), as amended May 27, 1993, would transfer the Division of Recycling and its functions from the Department of Conservation to CIWMB, make related changes in the California Beverage Container Recycling and Litter Reduction Act, in provisions pertaining to plastic waste, in the Fiberglass Recycled Content Act of 1991, and in the California Integrated Waste Management Act of 1989, and prescribe related matters.

The California Integrated Waste Management Act of 1989 establishes the Board as a six-member body, appointed as specified, including two members who are appointed by the Governor to represent the public. The Act requires the chair to be elected by a majority of the Board members. This bill would, effective January 1, 1996, reduce the membership of the Board to five members by eliminating one of the positions appointed by the Governor to represent the public, and would instead require the Governor to appoint the chair of the Board. [A. *NatRes*]

SB 1090 (Killea), as amended May 27, 1993, would exclude compost that meets state and federal product quality standards from the definition of "solid waste." [A. *NatRes*]

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, sub-



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

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

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

The California Integrated Waste Management Act of 1989 requires CIWMB and certified LEAs to perform specified functions with regard to the regulation of solid waste management, including with regard to the issuance and enforcement of solid waste facilities permits. This bill would require each proposed LEA, as part of the certification process, to submit a proposed inspection program to the Board.

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

The Act provides for the denial, suspension, or revocation of permits, and generally provides for the administrative enforcement of solid waste management. This bill would provide that if the enforce-

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

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

The bill would repeal and recast provisions of the Act allowing an applicant to request a hearing if the enforcement agency denies a permit or if the applicant determines that the permit is inappropriate. The bill would revise provisions pertaining to the denial, suspension, or revocation of permits, and provide for a temporary permit suspension where changed conditions at the solid waste facility necessitate a permit modification. The bill would also revise and recast provisions pertaining to corrective action and cease and desist orders, provide for civil penalties and compliance orders, and specify enforcement procedures.

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

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

■ LITIGATION

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

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

■ FUTURE MEETINGS

May 25 in Sacramento.

June 29 in Sacramento.

July 27-28 in East San Gabriel Valley.

August 31 in Sacramento.

September 21-22 in Stockton.

DEPARTMENT OF PESTICIDE REGULATION

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 (FAC) section 11401 *et seq.*; its regulations are codified in Titles 3 and 26 of the California Code of Regulations (CCR).

With the creation of Cal-EPA, all jurisdiction over pesticide regulation and registration was removed from CDFA and transferred to DPR. Pest eradication activities (including aerial malathion spraying, quarantines, and other methods of eliminating and/or preventing pest infestations) remain with CDFA. The important statutes which DPR is now responsible for implementing and administering include the Birth Defect Prevention Act (FAC section 13121 *et seq.*), the Pesticide Contamination Prevention Act (section 13141 *et seq.*), and laws relating to pesticide residue monitoring (section 12501 *et seq.*), registration of economic poisons (section 12811 *et seq.*), assessments against pesticide registrants (section 12841 *et seq.*), pesticide labeling (section 12851 *et seq.*), worker safety (section 12980 *et seq.*), restricted materials (section 14001 *et seq.*), and qualified pesticide applicator certificates (section 14151 *et seq.*).

DPR includes the following branches:

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

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