



million or more as of January 1, 1994, to submit a proposed budget to the legislature and ARB, and prescribes procedures in that regard. Until January 1, 2000, this bill also requires those districts to prepare and submit to ARB a three-year budget forecast, as prescribed.

Existing law prohibits the fees assessed on stationary sources of pollution by SCAQMD from exceeding the actual costs of district programs for the preceding fiscal year, except as specified. This bill also limits the fees collected by the South Coast District from stationary sources of emissions to the level of expenditure in the 1993-94 fiscal year, adjusted for increases in the California Consumer Price Index. The bill excepts state or federal mandates, as specified, from those limits. This bill was signed by the Governor on September 21 (Chapter 712, Statutes of 1994).

**SB 455 (Presley)**, as amended August 10, requires SCAQMD—with respect to the implementation of its market-based incentive program, the Regional Clean Air Incentives Market (RECLAIM)—to provide a progress report based on annual audits by July 1, 1998, receive public comment on the report, and refrain from lowering the emission threshold for mandatory participation in the RECLAIM program. This bill was signed by the Governor on September 30 (Chapter 1179, Statutes of 1994).

The following bills died in committee: **AB 3264 (Campbell)**, which would have made any business or person who negligently emits any acutely hazardous material which causes actual injury to the health or safety of the public, or which poses a real or an imminent threat to public health or safety beyond the property of origin, civilly liable to the administering agency in an amount not to exceed \$250,000, but in no case less than \$15,000; **AB 2910 (Baca)**, which would have required the state to promote the development and use of alternative fuels and alternative-fueled vehicles and to purchase alternative-fueled vehicles; **SB 1883 (Campbell)**, which would have, until January 1, 1998, exempted from sales and use taxes the incremental costs of new low-emission vehicles (LEVs); **SB 1455 (Rosenthal)**, which would have required the state to purchase zero-emission vehicles (ZEVs) and ultra-low-emission vehicles (ULEVs); **SB 381 (Hayden)**, which would have required ARB to require the purchase of LEVs and ZEVs by state and local governmental agencies, and authorized those agencies to form a consortium to purchase electric vehicles; **SB 668 (Hart)**, which would have enacted the Zero-Emission Vehicle Development Incentive Program, to be administered by

ARB; and **SB 1113 (Morgan)**, which would have, except as specified, prohibited any emission standard, rule, regulation, or other requirement from taking effect or being implemented prior to July 1, 1997, in specified districts to require the owner or operator of any stationary source, which is required to make vehicular fuel composition modifications, to make any capital expenditure to reduce NOx emissions.

## ■ LITIGATION

*In Citizens for a Better Environment—California v. California Air Resources Board*, No. 378401 (filed June 14, 1994 in Sacramento County Superior Court), Citizens for a Better Environment—California (CBE), a nonprofit environmental organization, challenges ARB's March 10 decision to permit implementation of SCAQMD's recently approved Regional Clean Air Incentives Market (RECLAIM) program. RECLAIM is a market-based pollution control strategy which allows industries in Los Angeles, Orange, Riverside, and San Bernardino counties an annual pollution limit and then lets them choose the cheapest way to stay within the limit, including trading of pollution credits. [14:2&3 CRLR 153; 14:1 CRLR 125; 13:4 CRLR 145-46]

CBE alleges that ARB should not have approved RECLAIM because it will fail to achieve equivalent pollution reductions compared with the District's 1991 Air Quality Management Plan; it will delay, postpone, or hinder compliance with state ambient air quality standards; it fails to require the installation of the best available retrofit control technology at all existing sources; it fails to show expeditious progress toward attainment of state ambient air quality standards; it fails to assure the earliest practicable attainment date for ambient air quality standards; and it fails to maintain progress toward attainment of state ambient air quality standards. CBE's action is related to *Coalition for Clean Air, et al. v. Air Resources Board*, which was filed and dismissed prior to ARB's final approval of the RECLAIM program. [14:1 CRLR 124-25; 13:4 CRLR 145]

Despite the controversy surrounding RECLAIM, its implementation has already begun. Union Carbide Corporation's Torrance plant became the first major participant in the program shortly after CBE filed its new action. In mid-June, the plant sold 3.4 million credits (or \$1.2 million worth) to Anchor Glass Container Corporation in Huntington Beach.

## ■ FUTURE MEETINGS

September 22-23 in Los Angeles.  
October 27 in Sacramento.

November 9-10 in Sacramento.

December 8-9 in Sacramento.

January 26-27, 1995 in Sacramento (tentative).

February 23-24, 1995 in Sacramento (tentative).

## CALIFORNIA INTEGRATED WASTE MANAGEMENT AND RECYCLING BOARD

*Executive Director:*

*Ralph E. Chandler*

*Chair: Jesse Huff*

*(916) 255-2200*

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 recycled 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.

## MAJOR PROJECTS

**CIWMB Survives Proposed Abolition, Consolidation.** In his January 1994 "State of the State" address, Governor Wilson proposed to abolish CIWMB in order to bring about efficiencies in government; SB 2026 (Bergeson) was subsequently introduced to carry out the Governor's proposal. Specifically, SB 2026 would have abolished CIWMB, created the Department of Waste Management (DWM) within Cal-EPA, and transferred CIWMB's duties to DWM. SB 2026 would also have abolished the Department of Conservation's (DOC) Division of Recycling, 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. However, on April 19, the Senate Governmental Organization Committee rejected SB 2026 by a 7-2 vote. [14:2&3 CRLR 160-62]

Another legislative effort to streamline the activities of CIWMB and DOC took the form of AB 3392 (Sher), which would have required DOC and CIWMB, by July 1, 1995, to prepare, adopt, and submit to the Governor and the legislature a memorandum of understanding (MOU) to improve coordination and implementation of the recycling programs which the two agencies are responsible for administering. The bill would also have required DOC, CIWMB, and the Department of Toxic Substances Control to establish an interagency task force to coordinate all market and technology development activities. On September 17, however, Governor Wilson vetoed AB 3392. According to Wilson, DOC and CIWMB "have identified areas of overlap and duplication and initiated administrative steps to ensure that coordination takes place. The requirement for a MOU, an interagency task force, and reports back to the legislature are unnecessary and an infringement upon the functions of the Administrative branch" (see below; see also LEGISLATION).

Accordingly, CIWMB—an agency the Governor set out to abolish in January—survived the recent legislative session intact, and is currently operating in the 1994-95 fiscal year with a budget of almost \$40 million.

**CIWMB Approves Memorandum of Understanding with DOC for Inter-agency Coordination.** At its August 31 meeting, CIWMB approved an MOU with DOC's Division of Recycling, in order to better coordinate operations between the two agencies and reduce duplication. CIWMB's efforts to enter into this MOU were apparently motivated by recent criticisms of the agency emanating from the Governor, the legislature, the Little Hoover Commission, and Cal-EPA Secretary James Strock, among others; critics have long complained that much overlap and duplication of efforts exists between CIWMB and DOC. [14:2&3 CRLR 160-61]

The MOU states that both agencies provide unique services to the public, local government, nonprofit agencies, and program constituents; the MOU is intended to serve as the formal agreement between the two agencies "in identifying more ways to complement and capitalize upon each others' knowledge, research, creativity, and products." Under the MOU, both agencies are committed to improving the quality, efficiency, and accessibility of recycling and waste reduction information; fostering better communication and coordination between the agencies, local government, private citizens, program constituents, and other state and federal agencies; and defining any collaborative efforts in separate MOUs.

The MOU notes that CIWMB and DOC engage in the same or similar activities with regard to a number of program areas. For example, both agencies are currently collecting a variety of data on recyclable materials which is then used for program evaluation, program development, and distribution to various parties; conducting ongoing "buy recycled" programs; assisting recycling businesses to locate or expand production; conducting market research studies to assess price, supply, and demand of recyclable materials, identify barriers to the use of those materials, and recommend activities to overcome those barriers; assisting local governments and private collectors to reduce collection costs and improve material quality and quantity; evaluating the results of market development programs to assess program results, cost-effectiveness, and applicability to other efforts; and engaging in public education programs and activities. The MOU states how the agencies' efforts in



each of these areas can be better coordinated in order to eliminate duplication of effort.

At its August 31 meeting, CIWMB adopted the MOU by a 4-2 vote, with Board members Kathy Neal and Wesley Chesbro voting against the MOU because they believed it circumvents the authority of CIWMB's committees. At this writing, the MOU awaits approval by DOC. Upon the date of DOC's approval, projects proposed for further development would be due to the DOC Director and CIWMB's Executive Director within thirty days. However, DOC has indicated to CIWMB staff members that the DOC is modifying the MOU and may return it to CIWMB for the Board's agreement to the revisions and/or amendments.

**CIWMB and WRCB Develop Joint Implementation Work Plan.** At its June 29 meeting, CIWMB adopted the CIWMB/Water Resources Control Board (WRCB) Joint Implementation Work Plan, as required by AB 1220 (Eastin) (Chapter 656, Statutes of 1993), which created the Solid Waste Disposal Regulatory Reform Act of 1993. [13:4 CRLR 151; 13:2&3 CRLR 163] AB 1220 requires CIWMB and WRCB to (1) remove the overlap, duplication, and conflict among the state agencies and boards which regulate solid waste in the areas of enforcement, permits, closure/postclosure maintenance, and financial assurances; (2) develop a streamlined permitting process; (3) provide a clear division between the duties of CIWMB staff and the staff of the local enforcement agencies (LEAs) which are responsible for enforcing the terms of solid waste facilities permits; (4) assess the feasibility of combining financial assurances mechanisms for operating liability and corrective action; and (5) consolidate all solid waste disposal facility regulations into one area within the CCR. The Joint Implementation Work Plan seeks to achieve AB 1220's goals by the required date of December 31, 1995, by setting goals for the two boards to undertake and accomplish.

In order to remove overlap, duplication, and conflict among the state agencies and boards which regulate solid waste in the areas of enforcement, permits, closure/postclosure maintenance, and financial assurances, CIWMB and WRCB will review numerous sections of the Public Resources Code regarding standards, closure and postclosure maintenance plans, enforcement action, corrective action, and financial assurance mechanisms to determine those provisions which overlap or conflict; develop interim guidance for LEAs and regional water quality control

board (RWQCB) staff to begin to eliminate the duplication of effort; and develop proposals to provide that both CIWMB and WRCB have access to funds for closure and postclosure maintenance. The boards must also develop mechanisms, such as MOUs and memoranda of agreement (MOA), to ensure coordination between the two agencies.

In order to streamline the permitting process, CIWMB, its LEAs, WRCB, and its RWQCBs must combine all applications for solid waste facility permits into one document under Public Resources Code section 43101. The boards must also revise the report and review requirements so that one report will satisfy CIWMB, WRCB, LEA, and RWQCB permit review procedures.

In order to provide a clear division between the duties of CIWMB staff and LEA staff, CIWMB and the LEAs must develop an ongoing training program to ensure adequacy of performance in LEA duties. CIWMB and the LEAs must also establish review procedures to enable CIWMB to conduct LEA performance reviews every eighteen months; conduct inspections of landfills every eighteen months; and require CIWMB to take specific action if an LEA is not fulfilling its responsibilities. Furthermore, CIWMB and the LEAs must review specific sections of the Public Resources Code to determine any duplication and overlap between the two entities. CIWMB has begun to carry out these goals through proposed rulemaking (*see below*).

In order to assess the feasibility of combining financial assurances mechanisms for operating liability and corrective action, CIWMB and WRCB will prepare a "Course of Action" work plan to assess which financial assurance mechanisms for operating liability and corrective action can be combined. After determining whether combining financial mechanisms is feasible, both boards would revise their regulations as appropriate.

In order to consolidate all solid waste disposal facility regulations into one area within the CCR, CIWMB and WRCB will seek to develop a format for consolidation, and develop draft regulatory language in five areas: permitting; standards; closure/postclosure maintenance; financial assurances; and LEA grants, certifications, and decertifications.

The boards will also seek to implement programs relevant to the furtherance of AB 1220's goals. Among these programs, CIWMB and WRCB will award Household Hazardous Waste grants to local governments; fund source reduction, public education, and market development pro-

grams; and implement pilot programs for encouraging state agencies to purchase recycled products.

**Permit Reform Act Regulations.** On August 12, CIWMB published notice of its intent to adopt new sections 18998-18999, Title 14 of the CCR, to comply with the state's Permit Reform Act of 1981. The new sections would establish time periods required for the processing of all permits issued by CIWMB and the LEAs; establish an appeals process by which an applicant who has been denied a permit or whose permit is delayed may appeal; and set forth the historical median, minimum, and maximum times of CIWMB and the LEAs for processing a permit from the receipt of the initial application to the final permit decision. The time period information is to be based on CIWMB's or an LEA's actual performance during the two years immediately preceding the proposal of the regulation. At this writing, CIWMB is accepting public comments on the proposed regulations through October 10; no public hearing has been scheduled.

**Recycled Content Trash Bag Program Amendments.** On August 26, CIWMB published notice of its intent to amend sections 17975-17985, Title 14 of the CCR, to reflect legislative changes to the Recycled Content Trash Bag Program, to provide a review of the recycled post-consumer material quality standards, and to reflect experience gained from the Board's first annual certification for the Recycled Content Trash Bag Program. [14:2&3 CRLR 163; 14:1 CRLR 129; 13:4 CRLR 150] Under the Board's proposed amendments, bag manufacturers would no longer be asked to supply CIWMB with customer lists as part of their annual certification to the Board. The changes would also clarify and make specific definitions of terms, the certification process, and audit procedures; according to CIWMB, the amendments would "ease understanding of the program for the regulated community, and thus increase compliance with its requirements." The Board also contends that the amendments would impose no additional recordkeeping costs.

At this writing, the public comment period on these proposed regulatory changes is scheduled to end on October 11; no public hearing is scheduled, although CIWMB plans to hold a public workshop on the proposed changes on September 22 in Sacramento.

**Disposal Reporting System Regulations.** On August 19, CIWMB published notice of its intent to adopt new sections 18800-18813, Title 14 of the CCR, to establish a reporting system to determine the jurisdiction of origin of solid waste



and quantify the aggregate amounts from each jurisdiction; the quantification is necessary to determine the percentages attained in achieving the diversion goals mandated by PRC section 41780. [14:2&3 CRLR 163] At this writing, CIWMB is scheduled to conduct public hearings on the proposed reporting regulations on October 3 in Sacramento and on October 5 in Irvine.

**Rulemaking Initiated to Establish Regulatory Tiers.** Also on August 19, CIWMB published notice of its intent to adopt new sections 18000-18105.11, Title 14 of the CCR, to establish a framework of five "regulatory tiers" of solid waste facilities, which will vary in the degree of regulatory review and oversight by the Board. Facilities or operators that pose a lesser potential threat to public health, public safety, and the environment would qualify for tiers with less oversight. The first tier is the pre-authorized tier: Operators would not be required to obtain a license, permit, or even notify the Board of their operations. The second tier is the enforcement agency notification tier: Operators would be required to notify enforcement agencies of their operations. The remaining three tiers—registration permit, standardized permit, and full permit—would be more closely monitored by the Board and the Board would issue permits applicable to the corresponding tier. At this writing, CIWMB is scheduled to hold a public hearing on these proposed regulatory changes on October 4 in Sacramento.

**CIWMB Initiates Rulemaking Concerning Minimum Standards for Composting Facilities.** On August 19, CIWMB published notice of its intent to adopt new sections 17850, 17852, 17854, 17858, 17860, 17862, 17862.1-17862.11, 17865, 17866, 17867.1-17867.5, 17868.1-17868.4, 17869.1-17869.3, and 17870; amend sections 17851, 17853, 17855, 17856, 17857, 17859, and 17861; and repeal sections 17867, 17869, 17871, 17873, 17875, 17876, 17877, 17879, 17881, 17883, 17885, 17886, 17887, 17889, 17891, 17893, and 17895, Title 14 of the CCR, to change the minimum standards for green materials facilities and establish minimum standards for design and operation of other types of composting facilities. According to the Board, the proposed regulatory action is aimed at ensuring that composting facilities are designed and operated in a manner which protects the public health, public safety, and the environment. The proposed rulemaking would also establish a tiered structure for regulatory facilities classified as enforcement agency notification, registration permit, and standard permit facilities

(see above). At this writing, CIWMB is scheduled to conduct a public hearing on these proposed changes on October 4 in Sacramento.

**CIWMB Adopts Public Disclosure Policy and Procedure.** On June 16, CIWMB adopted, on an emergency basis, new sections 17041-17046, Title 14 of the CCR, which articulate CIWMB's policy regarding the disclosure of public records; on July 22, the Board published notice of its intent to permanently adopt those sections. Presently, the Board receives numerous requests for documents in its possession; however, individuals requesting information often do not know how to address their inquiries to the Board. The new sections seek to clarify the procedure for requesting documents and provide a uniform procedure for CIWMB to follow in processing such requests.

Among other things, the proposed regulations would require any person submitting to CIWMB any records containing data claimed to be a "trade secret" to identify, at the time of submission, all information which the person believes is a trade secret; any information not identified by the person as a trade secret shall be made available to the public, unless exempted from disclosure by another provision of law. Also, any person submitting to CIWMB any records containing data claimed to be confidential or otherwise exempt from disclosure under California law must, at the time of submission, identify in writing the portions of the records containing such data as "confidential" or "proprietary," and provide the name, address, and telephone number of the individual to be contacted if the Board receives a request for disclosure of or seeks to disclose the data claimed to be confidential. The regulations would also set forth the Board's procedure for handling requests for records which have been identified by their submitters as "trade secrets," "confidential," or "proprietary" in nature.

The written comment period on these proposed changes ended on September 5; in response to comments received during the public comment period, CIWMB staff made minor modifications to the proposed sections, and released the revised language for an additional 15-day public comment period which ends on September 21. At this writing, the proposed changes await adoption by CIWMB and review and approval by the Office of Administrative Law (OAL).

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

• **Required Contents of a CoIWMP and RAIWMP.** On July 12, OAL approved

CIWMB's new sections 18757-18758.1, Title 14 of the CCR, which fully describe the required contents of a CoIWMP and RAIWMP. The regulations 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. [14:2&3 CRLR 162; 14:1 CRLR 126; 13:4 CRLR 147]

• **Siting Element Contents and Procedures.** On July 15, OAL approved CIWMB's new sections 18755-18756.7, Title 14 of the CCR, which fully describe the required contents of the siting element of a CoIWMP or RAIWMP. [14:2&3 CRLR 162; 14:1 CRLR 127; 13:4 CRLR 147]

On July 22, OAL approved CIWMB's amendments to sections 18776-18790, Title 14 of the CCR, which describe procedures which must be followed in preparing, obtaining public review of, revising, and adopting a countywide siting element in a CoIWMP and a regional siting element in a RAIWMP. [14:2&3 CRLR 162; 14:1 CRLR 127; 13:4 CRLR 147]

• **Rigid Plastic Packaging Container Program.** On June 29, CIWMB adopted proposed 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. [14:2&3 CRLR 161] At this writing, the new sections await review and approval by OAL.

• **Funding Formula Revision.** At its July 27 meeting, CIWMB permanently adopted its emergency amendments to sections 18281 and 18282, Title 14 of the CCR; the amendments 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. [14:2&3 CRLR 163; 14:1 CRLR 129] On August 29, CIWMB submitted the rulemaking file on these proposed changes to OAL, where it is pending at this writing.

• **Used Oil Recycling Program.** On August 26, CIWMB published modifications to its proposed amendments to sections 18601-18655.6, Title 14 of the CCR, which describe the requirements of the Board's used oil recycling program. [14:2&3 CRLR 162; 13:4 CRLR 149; 13:2&3 CRLR 165] The proposed changes clarify the procedures for certifying and operating used oil collection centers and reduce the amount of information required from used



oil recycling program applicants. The 15-day public comment period on the modifications closed on September 12; at this writing, the Board is expected to consider adoption of these amendments at its September 21 meeting.

• **LEA Designation and Certification Revisions.** At its May 25 meeting, CIWMB adopted proposed amendments to Chapter 5, Division 7, Title 14 of the CCR, which establishes guidelines for the designation, certification, and evaluation of LEAs responsible for enforcing state minimum standards governing the design and operation of solid waste facilities and disposal sites. [14:2&3 CRLR 161] Specifically, CIWMB adopted changes to sections 18011, 18020, 18050, 18051, 18052, 18054, 18055, 18056, 18060, 18070, 18071, 18072, 18073, 18075, 18076, 18077, 18081, 18083, 18353, and CIWMB Form 1000. At this writing, these amendments await review and approval by OAL.

• **CIWMB Readopts Emergency Earthquake Regulations.** In response to the January 17 Northridge earthquake, 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; by allowing solid waste facility operators to waive any standard imposed by any term or condition of a solid waste facilities permit in accepting earthquake-related solid waste, CIWMB hopes to expedite the recovery process by allowing owners to quickly clear their property. [14:2&3 CRLR 161] On May 25, CIWMB readopted the emergency regulations for another 120 days. In September, CIWMB is expected to adopt the emergency regulations for a third time, keeping them in effect until January 19, 1995.

• **Business Waste Reduction Program.** At its May 25 meeting, the Board adopted a Business Waste Reduction Program, which is aimed at helping businesses conduct waste assessments and identify opportunities to reduce waste and save money. The program represents the implementation of one top-priority goal identified by the Board in its May 1993 *Statewide Waste Prevention Plan*. [13:4 CRLR 148] Under the program, a trained program coordinator would meet with a selected business' top management, and arrange for a team of volunteer waste reduction experts to visit the business and conduct a waste assessment. The team and the business then meet and collectively propose waste reduction ideas, the program coordinator writes a detailed report of findings, and the business chooses whether to implement any of the options presented; businesses making significant reductions in waste

will receive special recognition. CIWMB will implement this program for a one-year pilot period with selected businesses throughout the state; if the program is successful, CIWMB will consider its expansion.

• **Medical Wastes Issues Study.** When the California Integrated Waste Management Act was signed in 1989, health care-generated wastes were classified as hazardous waste and regulated by the Department of Health Services. In 1990, the Medical Waste Management Act (MWMA) removed infectious waste from the definition of hazardous waste and created a new category called "medical waste." The MWMA allows medical waste, after treatment, to be handled according to regular solid waste regulations. CIWMB has no authority over medical waste or medical waste treatment, but has authority over the disposal of treated materials. According to CIWMB, a large amount of medical waste was incinerated prior to 1991, when the Air Resources Board promulgated a control measure for cadmium and dioxin emissions from medical waste incinerators, prompting the closure of many incinerators in the state. The net effect was to direct an increased but unknown quantity of treated medical waste to solid waste landfills.

In 1992, CIWMB commissioned a "Medical Waste Issues Study" to analyze the impact of medical waste on the solid waste stream. The study concluded that, in 1992, medical waste comprised only .12%–.16% of the total waste stream. Overall, the study found that the disposal of medical waste does not pose a significant threat to the public or landfill workers, but noted some risk to material recovery workers (who separate mixed wastes) and landfill equipment maintenance staff of contact with "sharps" that can puncture gloves. The Board approved the study at its June 29 meeting.

• **Implementation of Solid Waste Disposal and Codisposal Site Cleanup Program.** AB 2136 (Eastin) (Chapter 655, Statutes of 1993) created the Solid Waste Disposal 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. [14:2&3 CRLR 164–65; 13:4 CRLR 154]

Under the program, CIWMB may finance—through loans, grants, and direct expenditures—a wide range of cleanup projects. At its May 25 meeting, CIWMB approved the allocation of \$885,500, the

balance of the Board's 1993–94 fiscal year funds, to three established AB 2136 cleanup contracts and transferred fiscal year 1994–95 funds from state operations to local assistance, so that staff may access funds for anticipated grants and loans.

## LEGISLATION

• **ACR 139 (W. Brown)** urges state agencies to act expeditiously to increase their purchase of biodegradable plastics; urges CIWMB and other appropriate agencies to analyze the efficacy of biodegradable plastics, including an analysis of potential impacts resulting from the mixing of biodegradable plastic resins with other plastic resins, as a means of reducing the state's solid waste stream; and requests CIWMB to adopt standards and specifications, as appropriate, for biodegradable plastics. This measure was chaptered on September 9 (Chapter 122, Resolutions of 1994).

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 165–67:

• **AB 3392 (Sher).** Under existing law, both DOC and CIWMB have responsibilities with regard to recycling programs. As amended August 30, this bill would have required DOC and CIWMB, by July 1, 1995, to prepare, adopt, and submit to the Governor and the legislature an MOU 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. The bill would also have required, on or before July 1, 1995, DOC, CIWMB, and the Department of Toxic Substances Control to establish an interagency task force to coordinate all market and technology development activities; and required the task force, on or before January 1, 1996, to report to the Governor and specified committees of the legislature on the implementation of these provisions. On September 17, Governor Wilson vetoed this bill; according to Wilson, DOC and CIWMB "have identified areas of overlap and duplication and initiated administrative steps to ensure that coordination takes place. The requirement for a MOU, an interagency task force, and reports back to the legislature are unnecessary and an infringement upon the functions of the Administrative branch" (see MAJOR PROJECTS).

• **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 postcon-



mer waste material and secondary waste material. Until July 1, 1997, the Act provides for the designation of recycling market development zones, provides for a Recycling Market Development Revolving Loan Program, and creates in the Integrated Waste Management Account the Recycling Market Development Revolving Loan Subaccount. The Act authorizes the Board to sell loans made pursuant to the Act, with a specified exception, on the secondary market and to pool its loans, and restricts the use of the proceeds therefrom. As amended June 21, this bill defines, for purposes of those provisions, the term "recycling-based business" as any business that increases market demand for, or adds value to, postconsumer waste material or secondary waste material. This bill was signed by the Governor on September 6 (Chapter 436, Statutes of 1994).

**AB 2938 (Aguilar).** The California Integrated Waste Management Act of 1989 authorizes CIWMB to grant a time extension for compliance with AB 939's waste 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 the Board 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 August 24, this bill deletes those conditions as requisites for obtaining a time extension from AB 939's diversion requirements, and authorizes 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. This bill was signed by the Governor on September 30 (Chapter 1150, Statutes of 1994).

**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 May 31, this bill revises the definition of recycled paper products for those purposes. It also defines the term "recycled paper" for certain fine grades of paper and increases the postconsumer material content in these papers, effective January 1,

1999. This bill was signed by the Governor on September 27 (Chapter 942, Statutes of 1994).

**AB 3582 (Richter).** Under existing state 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. Used oil is classified as a recyclable material which is subject to regulation as a hazardous waste, unless it meets certain requirements. A violation of the requirements concerning used oil is a crime. As amended August 25, this bill conforms state law to new federal regulations by prohibiting any use of used oil or recycled oil as a dust suppressant or insect or weed control agent unless allowed under another applicable law, but only to the extent that the use is consistent with federal law; requiring that used oil which is not subject to regulation as a hazardous waste be managed in accordance with specified federal regulations; requiring all copies of each receipt for manifested used oil under specified procedures to contain the Environmental Protection Agency identification number; requiring 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; revising the definition of used oil and recycled oil for purposes of conforming with federal provisions regulating the management of used oil; and requiring, if the material is used oil, that the containers, aboveground tanks, or fill pipes used to transfer the oil into underground storage tanks be labeled or clearly marked with the words "Used Oil." This bill was signed by the Governor on September 30 (Chapter 1154, Statutes of 1994).

**AB 2762 (Sher).** The California Oil Recycling Enhancement Act requires every oil manufacturer, as defined, to pay to CIWMB, on or before the last day of the month following each quarter, a charge of \$0.04 for each quart and \$0.16 for each gallon of lubricating oil sold or transferred in the state, or imported into the state for use in the state that quarter; the Act exempts specified sales or transfers from that charge, including the sale or transfer of oil handled by the oil manufacturer otherwise subject to the charge pursuant to those provisions if the lubricating oil has a volume of five gallons or less. As amended September 30, this bill instead exempts, until January 1, 2000, the sale or transfer of oil handled by the oil manufacturer

otherwise subject to payment by those provisions, if the oil has a total volume of 500 gallons or less each quarter. On and after January 1, 2000, that exemption would return to the existing exemption for oil which has a volume of five gallons or less.

The Act defines, for purposes of the Act, the terms "bulk oil" and "used oil hauler." This bill clarifies the definition of "bulk oil," revises the definition of "used oil hauler," and defines the terms "used oil storage facility" and "used oil transfer facility."

Existing law requires CIWMB to maintain a toll-free telephone for the purpose of informing callers of specified information related to used oil. Existing law also requires manufacturers of containers for lubricating oils or industrial oils, which are intended for sale in California, to label the containers in a specified manner. This bill recasts those provisions as part of the Act.

The Act authorizes CIWMB to issue grants or loans to, among others, nonprofit entities for projects which include specified programs or activities. This bill also authorizes the Board to issue those grants or loans for research, testing, and demonstration projects to develop collection technologies for recycled or used oil.

The 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. This bill extends the date when those reports are due to the 45th day following each quarter. The bill also authorizes CIWMB to delegate to its Executive Director the authority to accept reports submitted after the 45th day, and to reduce, eliminate, or approve the amount of the incentive fee to be paid due to the late submission of the report.

The bill authorizes CIWMB, on or before July 1, 1995, to establish a two-year pilot program for recycling used oil filters. The bill requires the Board, on or before November 1, 1997, to prepare a report on the success or failure of any pilot program so established, including recommendations for legislation, if warranted, and to make the report available to the Governor, the appropriate policy and fiscal committees of the legislature, and, upon request, to members of the legislature. The bill prohibits the Board from expending more than \$120,000 annually during each year of the two-year pilot program, for purposes of conducting the program. The pilot program would be terminated if a



statewide oil filter recycling program is enacted. This bill was signed by the Governor on September 30 (Chapter 1147, Statutes of 1994).

**AB 688 (Sher).** The California Integrated Waste Management Act of 1989 authorizes CIWMB to reduce the Act's waste diversion requirements 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 August 29, this bill repeals those provisions, and instead authorizes the Board to reduce the diversion requirements for a rural city, as defined, a rural county, as defined, and a rural regional agency under prescribed conditions, and makes clarifying changes in those provisions. The bill authorizes CIWMB, notwithstanding specified provisions, to grant a two-year time extension from the diversion requirements to a rural city, rural county, or rural regional agency if specified conditions are met.

The Act requires, to the extent practicable, disposal facility operators to submit to counties specified information from periodic tracking surveys on the disposal tonnages by jurisdiction or region of origin, which are disposed of at each facility, and requires counties to submit periodic reports to cities within the county and to the regional agency of which it is a member agency, and to the Board, on the amounts of waste disposed by jurisdiction or region of origin. This bill authorizes CIWMB to make adjustments in the amounts reported pursuant to those provisions if the jurisdiction demonstrates, and the Board concurs based on substantial evidence in the record, that achievement of the diversion requirements is not feasible due to specified circumstances.

The Act provides that, for any city, county, or regional agency SRR element submitted to the Board after January 1, 1995, the 50% diversion requirement may include not more than 10% through transformation, as defined, if specified conditions are met, including a public hearing conducted by the Board, in the city, county, or regional agency within which a transformation project is proposed. This bill revises those conditions to additionally require any facility where that transformation occurs to be permitted and operating on or before January 1, 1995.

The bill defines the term "biomass conversion" as the controlled combustion of specified materials, when separated from other solid waste and used for producing electricity or heat, and revises the definition of transformation to exclude biomass

conversion. The bill provides that, for any city, county, or regional agency SRR element submitted to CIWMB on or after January 1, 1995, the 50% diversion requirement may not include more than 10% through biomass conversion, if specified conditions are met.

The Act authorizes a city or county to form a regional agency with another city or county for the purpose of complying with the planning requirements of the Act; and makes a regional agency which has been specified in the regional agency formation agreement as the responsible party for compliance with the diversion requirements or any member of the regional agency ineligible for a reduction in the diversion requirements. This bill repeals those provisions making a regional agency ineligible for a reduction in the diversion requirements, and instead authorizes the Board to reduce the diversion requirements for a rural regional agency, if the agency demonstrates, and the Board concurs based on substantial evidence in the record, that achievement of the diversion requirements is not feasible due to specified circumstances.

The Act requires CIWMB, within 120 days of receiving a city SRR element or a countywide or regional integrated waste management plan, to determine whether the element or plan complies with specified requirements of the Act and, based on that determination, to approve or disapprove the element or plan. This bill includes in those provisions any element of the plan, gives the Board the option of conditionally approving a plan or element, and makes clarifying changes in those provisions. The bill requires the Board, if the Board conditionally approves a countywide or regional integrated waste management plan, or any element of a plan, to issue a notice of conditional approval to the city, county, or regional agency identifying the specific reasons for the conditional approval, along with specific recommendations on how to correct the deficiencies in the plan or element. The bill requires any city, county, or regional agency which receives a notice of conditional approval, within 60 days of receiving the notice of conditional approval, to submit a compliance schedule to CIWMB that demonstrates how the city, county, or regional agency will correct the deficiencies identified in the notice of conditional approval by the earliest possible date, but in no event beyond one year from the date the conditional approval was issued. The bill authorizes CIWMB, if it determines, based on substantial evidence in the record, that a city, county, or regional agency is not in substantial compliance

with an approved compliance schedule, to revoke the notice of conditional approval.

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 specifies circumstances under which the Board is not to impose penalties against a city or county, and defines, for purposes of those provisions, the term "good faith effort."

The Act requires any manufacturer of a product packaged in a rigid plastic packaging container, on or before January 1, 1995, to make a specified report to CIWMB and, on or before January 1, 1996, to diligently seek one or more "non-objection letters" from the U.S. Food and Drug Administration which will permit the manufacturer to use recycled plastic in the manufacture of rigid plastic packaging containers for use with food or cosmetics, defined as specified. This bill specifies that every manufacturer of a product packaged in a rigid plastic packaging container that is manufactured for use with food or cosmetics is required to make that report and to seek one or more "nonobjection letters."

The bill requires CIWMB to adopt, by regulation, a permitting, inspection, and enforcement program for the disposal of asbestos-containing waste, as defined, at any solid waste facility or disposal site regulated pursuant to specified provisions of the Act. The bill requires, on or before March 1, 1995, or on the earliest feasible date thereafter, the Board and the Department of Toxic Substances Control to enter into a specified MOU that defines the enforcement duties of each agency at those sites. The bill requires any regulations adopted by the Board to implement this program to be deemed emergency regulations. This bill was signed by the Governor on September 30 (Chapter 1227, Statutes of 1994).

**AB 1829 (Sher),** as amended August 29, would have established detailed procedures under which CIWMB would assume enforcement agency responsibility for a city or county which chooses not to be an LEA; expressly authorized CIWMB to regulate solid waste containing asbestos; and specified that—for solid waste facilities which accept both low-level radioactive wastes (LLRW) and other solid wastes—the Department of Health Services (DHS) shall exercise enforcement and regulatory powers relating to the LLRW and CIWMB shall control the solid wastes. Governor Wilson vetoed this bill on September 30, stating that it would impose dual regulation of the Ward Valley



LLRW facility by both DHS and CIWMB. Wilson argued that, while the bill exempts hazardous waste facilities from dual regulation for nonhazardous waste that is incidental to the burial of hazardous waste, it does not exempt DHS-licensed LLRW facilities from CIWMB regulation for the same incidental wastes. The Governor contended that state law already affords for the regulation of LLRW and LLRW disposal facilities; Wilson opined that "the dual regulation required by this bill is unnecessary. Moreover, this bill will add yet another governmental hurdle to the opening of this much needed site. Without the facility, LLRW is being stored at urban locations throughout the state due to the lack of access to out-of-state disposal facilities imposed by federal law." Wilson concluded that, "[i]n view of the serious situation in which the State finds itself as the result of the lack of LLRW disposal access, I cannot approve legislation which could lead to further delay in the opening of the licensed California LLRW disposal facility." [12:4 CRLR 11-12; 12:2&3 CRLR 13-14; 12:1 CRLR 12]

**SB 799 (Presley)**, as amended August 9, is no longer relevant to CIWMB.

The following bills died in committee: **AB 3796 (Horcher)**, which would have required CIWMB's market development plan to stimulate market demand for post-consumer and secondary waste materials to include promotion of the availability of public information on the use of post-consumer and secondary waste materials; **AB 3116 (Solis)**, which would have required CIWMB to develop and implement a program to provide economic incentives to businesses which purchase recycled materials or reduce the amount of solid waste they generate; **SB 2062 (Thompson)**, which would have—among other things—extended the availability of a credit for purchasing machinery or equipment to manufacture recycled products; **SB 1577 (Thompson)**, which would have—among other things—defined the term "composting" and excluded 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; **AB 173 (V. Brown)**, which would have limited the salaries paid to the chair and each member of CIWMB; **SB 1089 (Killea)**, which would have transferred the Division of Recycling and its functions from the Department of Conservation to CIWMB; **SB 1090 (Killea)**, which would have excluded compost that meets state and federal product quality standards from the definition of "solid

waste"; and **SB 1132 (Leslie)**, which would have revised existing law which requires each SRR element to include an implementation schedule that shows how the local agency will meet AB 939's waste diversion requirements.

## RECENT MEETINGS

At the Board's July 27-28 and August 31 meetings, CIWMB Chair Jesse Huff commented that California is on course to meet AB 939's required 25% waste stream reduction from landfills by 1995. Latest preliminary estimates by CIWMB suggest that at the end of 1993, the diversion rate was an estimated 20%, compared to a diversion rate of 14% of the 45 million tons of garbage created by Californians in 1990. The statewide projection is based on a comparison of solid waste tonnage disposed in landfills in 1990, with subsequent tonnage in 1991, 1992, 1993, adjusted to remove the effects of inflation, population, and economic changes. However, the statewide diversion rate projection is not necessarily based on individual county and regional diversion rates. Further, Huff cautioned that although the projections indicate CIWMB waste reduction laws are working, CIWMB still has a lot of work ahead to ensure that these projections become a reality.

## FUTURE MEETINGS

September 22 in Stockton.  
October 26-27 in San Jose.  
November 15 in Sacramento.  
December 14 in Sacramento.  
January 25, 1995 in Sacramento.  
February 22-23, 1995 in Palm Springs.  
March 29, 1995 in Sacramento.  
April 26-27, 1995 in San Diego.  
May 24-25, 1995 in Bakersfield.

## DEPARTMENT OF PESTICIDE REGULATION

Director: James Wells  
(916) 445-4000

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

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

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

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