



REGULATORY AGENCY ACTION

Clean Transportation Act of 1989, and impose an additional tax under the Motor Vehicle Fuel License Tax Law and the Fuel Tax Law on specified motor vehicle fuels, at designated rates, based on whether the fuel meets specified standards.

LITIGATION:

In *Western Oil and Gas Ass'n v. Monterey Bay Unified Air Pollution Control District*, No. 5006708 (Aug. 17, 1989), the California Supreme Court ruled that the 1983 Tanner Act does not preclude air pollution control districts from regulating nonvehicular emissions of a substance before ARB has identified the substance as a toxic air contaminant (TAC). In so holding, the court reversed a Sixth District Court of Appeal judgment. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 99-100 for background information.)

The Tanner Act, Health and Safety Code sections 39650-39674, establishes an elaborate process for ARB's identification of substances as TACs and authorizes it to adopt airborne toxic control measures for those contaminants. In its decision, the Supreme Court noted that the Tanner Act does not expressly preclude regional districts from regulating emissions of a substance prior to ARB's identification of that substance as a TAC, and recognized that regional districts had such authority prior to the enactment of the Tanner Act. The court found no evidence that the legislature had intended to repeal by implication that pre-existing authority of the districts.

In reaching its conclusion, the court stated that since the enactment of the Tanner Act in 1983, ARB has identified only nine substances as TACs. The court added that if ARB identification and regulation were a prerequisite for district control, nearly all substances would remain unregulated for the foreseeable future. The court concluded that the purpose of the Tanner Act is to improve air pollution regulation, not to eviscerate it.

RECENT MEETINGS:

At its July 13 meeting in Sacramento, ARB adopted sections 1990-1994, Title 13 of the CCR, which provide the mechanism for collecting annual new motor vehicle certification fees to fund mobile source activities required under the CCAA. In response to testimony by the Motor Vehicle Manufacturers Association that the regulations would impose a financial hardship, the Board directed staff to schedule the collection of fees on a quarterly basis beginning in fiscal

year 1990-91. These regulatory changes await filing with the OAL.

Also at the July meeting, ARB adopted an amendment to section 93000, Titles 17 and 26 of the CCR, to identify methylene chloride as a TAC. This proposal also awaits review and approval by OAL.

Also on July 13, ARB staff presented a two-part informational report on current activities and future plans pertaining to the control of volatile organic compound (VOC) emissions from solvent use sources. The report separately addressed industrial applications and consumer products. Regarding industrial application, the Board's function is to provide technical assistance to the districts, which have the primary authority to develop regulations. Regarding consumer products, however, the CCAA mandates that the Board adopt regulations by January 1, 1992 to achieve the maximum feasible reduction in VOC emissions. Toward this end, staff outlined the activities currently scheduled to meet this mandate. The preliminary goal is to achieve a 50% reduction in VOC emissions from consumer products by the year 2000. Staff will present a progress report to the Board annually.

After an August 10 public hearing, ARB adopted section 86000, Title 17 of the CCR, which will amend the New and Modified Stationary Source Review Rules of the eight San Joaquin Valley County Air Pollution Control Districts. Upon consideration of public comments and information from the districts, interested persons, the Basinwide Air Pollution Control Council (BCC), and ARB staff, the Board concluded that the Valley has not attained the state and national ambient air quality standards for ozone and particulate matter. Thus the Board adopted the proposed regulation which would apply threshold levels of zero pounds per day for best available control technology (BACT), and 150 pounds per day for emissions offsets to sources whose applications for authority to construct were pending on or received after March 10, 1989. In addition, those sources which have received authority to construct permits or renewals of authority to construct permits, but have not yet acquired a vested right under California law to proceed in accordance with those permits, are also within the scope of the amended regulation. This regulatory change awaits approval by OAL.

FUTURE MEETINGS:

December 14-15 in Los Angeles.

CALIFORNIA WASTE MANAGEMENT BOARD

Executive Officer: George T. Eowan
Chairperson: John E. Gallagher
(916) 322-3330

Created by SB 5 in 1972, the California Waste Management Board (CWMB) formulates state policy regarding responsible solid waste management. Although the Board once had jurisdiction over both toxic and non-toxic waste, CWMB jurisdiction is now limited to non-toxic waste. Jurisdiction over toxic waste now resides primarily in the toxic unit of the Department of Health Services. CWMB considers and issues permits for landfill disposal sites and oversees the operation of all existing landfill disposal sites. Each county must prepare a solid waste management plan consistent with state policy.

Other statutory duties 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. The Board has also attempted to develop economically feasible projects for the recovery of energy and resources from garbage, encourage markets for recycled materials, and promote waste-to-energy (WTE) technology. Additionally, CWMB staff is responsible for inspecting solid waste facilities, e.g., landfills and transfer stations, and reporting its findings to the Board.

The Board consists of the following nine members who are appointed for staggered four-year terms: one county supervisor, one city councilperson, three public representatives, a civil engineer, two persons from the private sector, and a person with specialized education and experience in natural resources, conservation, and resource recovery. The Board is assisted by a staff of approximately 92 people.

On June 27, Governor Deukmejian appointed Leslie Brown, the president and general manager of a farming company, to the Board. The Governor also reappointed Ginger Bremberg, a member of the Glendale City Council, to the Board's city councilperson position.

MAJOR PROJECTS:

Integrated Waste Management Approach Prevails. California's waste management crisis—that is, the fact that many counties will run out of landfill capacity within the next decade—has spurred a tremendous amount of legis-



lative activity in the past two years. That legislative attention and pressure from public interest groups finally convinced the Board to shift its focus from a heavy emphasis on landfills to an "Integrated Waste Management" (IWM) approach.

On July 18, CWMB released a report entitled *IWM: A Waste Reduction Strategy for California*, in which the Board detailed its proposed IWM Program of 1989. The plan called for the expenditure of \$40 million annually and proposed to reduce solid waste deposits by more than one-third by the year 2000. CWMB's IWM program called for source reduction activities and the incineration of several million tons of solid waste in WTE plants annually. However, the plan set forth much less stringent recycling goals than those contained in then-pending legislation, and continued to divert an inordinate amount of tonnage each year to landfills. The Governor adopted CWMB's plan and offered it in contrast to the legislature's IWM proposal, which stressed a much stronger recycling effort than did CWMB's proposal.

The Senate's IWM plan was summarized in *California's Waste Management Crisis: The Report of the Senate Task Force on Waste Management* (June 1989). Senate Resolution 33 (Roberti) created the bipartisan Task Force in 1988 to "evaluate alternative solutions and develop a comprehensive legislative program to help solve the solid waste crisis." Chaired by Senator Rose Ann Vuich, the Senate Task Force recommended that California adopt the federal-model IWM hierarchy of source reduction, recycling/composting, transformation, and disposal (landfills) as its cornerstone policy in endeavoring to reduce and redirect the California waste stream. The Task Force also recommended the restructuring of the existing CWMB and local enforcement agency (LEA) system as prerequisites for achieving an effective institution of IWM in California. In recent years, many environmentalists, public interest groups, recycling enthusiasts, and the legislature have charged that the trash hauling industry and trash incineration interests have largely co-opted CWMB. Critics of CWMB claim that, because of this conflict of interest and a strong bias in favor of the trash hauling/landfill status quo, CWMB has failed to deal effectively with the state's waste management crisis and has neglected its duties by failing to pursue and implement a strong recycling and general IWM program.

Consequently, the Senate Task Force proposed a restructuring of CWMB, de-

creasing board membership to seven or five persons with specified expertise (thereby eliminating conflicts of interests); limiting ex parte communications in board proceedings; establishing quasi-judicial processes as needed; and providing a clear mandate, greater authority, and greater resources to develop and implement an integrated waste management system, including recycling. In turn, the proposal would strengthen the existing LEAs, providing them with definitive minimum standards, more funds, more personnel, and more responsibilities, including a more frequent inspection routine of all facilities.

In the end, CWMB's efforts proved to be too little too late. The legislature passed and the Governor signed a multi-bill package which will institutionalize the IWM approach, establish strong recycling and source reduction programs, and de-emphasize the use of landfills as depositories for the state's trash. The centerpiece bill of the package is AB 939 (Sher), which scraps CWMB and replaces it with the California Integrated Waste Management and Recycling Board consisting of six full-time members. The bill authorizes the new board to compel local governments to reduce the amount of garbage deposited in landfills 25% by 1995, and 50% by 2000. (See *infra* LEGISLATION for further information on this bill package.)

CWMB Policy on Sludge. In anticipation of the adoption of regulations proposed by the U.S. Environmental Protection Agency (EPA) on management of municipal sludge, several state agencies are attempting to formulate a coherent and effective state policy on this issue. At this time, CWMB is interfacing with the state Water Resources Control Board (WRCB), the Air Resources Board (ARB), and the Department of Health Services (DHS) in conducting research, drafting issue papers, and making recommendations for policy formulation. Recently, WRCB was designated the lead agency in dealing with the EPA as the latter formalizes its regulations. CWMB is working with WRCB in order to clearly define the jurisdiction and management responsibilities between the two boards concerning the organic waste stream. CWMB is also working with ARB with regard to air pollution concerns involving the burning of municipal sludge.

CWMB staff currently recommend that regulations defining sludge in terms of a grading system, governed by the level of chemical and toxic pollutants contained in the sludge, be adopted by

the Board when it acts again on these policy issues. This grading system would facilitate the proper and acceptable employment of sludge technologies. For example, sludge with an extremely low content of industrial or metal contaminants and pathogenic potential could be made available for use in fertilizer programs or for providing cover to landfill refuse sites in lieu of soil. At the Board's August 31 meeting, CWMB staff reported on a pilot program sponsored by the Municipality of Metropolitan Seattle. In this project, a relatively safe grade of sludge was used as fertilizer on trees in the University of Washington's Pack Forest, which consequently produced astounding enhanced growth rates in those trees.

Implementation of AB 2448. One of the Board's major activities at the present time is implementing AB 2448 (Eastin) (Chapter 1319, Statutes of 1987). (See CRLR Vol. 9, No. 3 (Summer 1989) p. 102; Vol. 9, No. 2 (Spring 1989) p. 98; and Vol. 9, No. 1 (Winter 1989) p. 86 for background information.)

Among other things, AB 2448 required CWMB to adopt emergency regulations for the closure and postclosure maintenance of solid waste facilities by July 1, 1989. Accordingly, the Board adopted emergency regulations at its June meeting; but early versions were disapproved by the Office of Administrative Law (OAL) for various reasons, including objections filed by WRCB. However, on August 17 and 18, OAL approved the amendment and addition of numerous emergency regulatory provisions to CWMB's regulations, which appear in Title 14 of the California Code of Regulations (CCR). The new articles implementing AB 2448 are as follows: Chapter 5, Article 3.5 (sections 18280-18297) (Financial Responsibility for Closure and Postclosure Maintenance); Chapter 3, Article 7.8 (sections 17760-17796) (Disposal Site Closure and Postclosure); Chapter 3, Article 7.6 (sections 17705-17725.5) (Disposal Site Controls); and Chapter 5, Article 3.4 (sections 18250-18277) (Application and Approval of Closure and Postclosure Maintenance Plans).

The regulations, effective immediately, require operators to have a plan enabling them to close, maintain, and monitor their sites after closure, and pay for the process. These sets of regulations form a package of comprehensive measures because section 66796.22(d) of the Government Code requires that these emergency regulations specify uniform closure and postclosure standards. In



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this regard, AB 2448 may be unique and innovative, because many states merely require the creation of closure and post-closure plans for landfills only six months before the anticipated closure date, whereas this statute requires them for all operating landfills and authorizes the imposition of sanctions (including suspension and revocation of operating permits) for any active landfill operator not in compliance. Public notice, an opportunity for comment, and hearings will likely occur within the next six months in order to complete the process of converting these emergency regulations to permanent ones. The regulations are expected to remain largely the same when they are adopted as permanent.

Under corollary provisions of AB 2448, all solid waste landfill operators were required to make an initial financial certification to CWMB and their local enforcement agency (LEA) by January 1, 1989. This certification must include the initial cost estimate, the financial mechanism which has been established, and evidence of the adequacy of the mechanism chosen for closure and postclosure maintenance. As of July 1989, the Board received "responses" from approximately 360 of the 416 landfill operators subject to these guidelines for certification (80 of the 416 received alternative certificates, leaving only 336 subject operators). However, only 116 of these responses constituted complete applications, and only one has been approved by the Board. The landfill operators are relying on a variety of financial mechanisms, ranging from bonds, trusts, and guarantees to suretyships and letters of credit. As noted above, noncompliance may result in suspension or revocation of landfill operating permits. The sanctions also apply pressure to local governments because the Board may choose to "discount" a non-certified landfill from the County Solid Waste Management Plan (CoSWMP) of a given county. This means that the county may face fiscal or other sanctions if it relied on that landfill in its CoSWMP to prove that the county had a minimum of eight years' future landfill capacity, as is required by section 66780.2 of the Government Code.

At its August meeting in Sacramento, the Board adopted regulations implementing a loan guarantee program created by a provision of AB 2448 which amended section 66799.30 of the Government Code. Section 66799.30 authorizes CWMB to make loan guarantees on behalf of owners or operators of solid waste landfills in order to implement

corrective actions. Within this last decade especially, lending institutions have tended to reject loan and credit applications to prospective clients who pose a risk of causing environmental hazards. It is expected that these state-guaranteed loans will permit landfill owners or operators to take timely action. This action, in turn, will not only advance the policy of vigilantly maintaining a safe environment, but will also prevent exacerbation of the waste management crisis by aiding the landfill operators in their attempts to comply with the law, thereby freeing them and the local government or county region they serve from sanctions and landfill closures.

AB 2448 included a funding mechanism for administration of this guarantee program, the established account being funded by fees charged to landfill operators. In order to ensure the integrity of this account, a reserve ratio requirement was instituted to provide this assurance: CWMB at all times is required to maintain in reserve an amount equal to no less than 75% of the total amount of the guaranteed principal and interest which is currently outstanding. The maintenance of such a high reserve ratio should induce lenders to participate. Guarantees will be administered according to predetermined priorities specified in the regulations. This priority system is based upon the relative degree of severity of a given environmental hazard in need of remedy. The maximum loan amounts to be guaranteed will not exceed \$1,000,000, or the cost of the corrective action, whichever is less. CWMB may guarantee no more than 90% of the principal balance to be loaned; upon a default, the Board shall be obligated to purchase no more than 90% of the outstanding principal balance and the accrued unpaid interest.

At this writing, these loan guarantee regulations are under review by the OAL. If the regulations are approved, however, the funds will not be made available until July 1990.

HHW Program Grant Regulations. The Solid Waste Disposal Site Hazard Reduction Act of 1987 established the Solid Waste Disposal Site Cleanup and Maintenance Account to be used, in part, to provide grants to local agencies to initiate and implement waste separation programs to prevent disposal of household hazardous waste (HHW) in nonhazardous solid waste landfills. Government Code section 66799.26 requires CWMB to adopt regulations for the issuance of grants to cities and counties to implement such HHW separation pro-

grams. Government Code section 66799.23 requires the Board to establish criteria for selecting grant recipients.

At its June 1989 meeting, CWMB discussed proposed regulations for HHW separation program grants. Specifically, the Board considered draft regulatory sections 18500-18537.6, Chapter 7, Articles 1, 2, and 3, Title 14 of the CCR. The subjects of these regulations include requirements for non-discretionary and discretionary awards, award application periods, award criteria, and post-award monitoring of grant funds. The Board determined that these draft regulations need additional work, and will reconsider them at a future meeting.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 3 (Summer 1989) at pages 102-05:

AB 939 (Sher), as amended September 14, is the centerpiece bill in a package of solid waste management reform bills passed by the legislature and approved by the Governor this year. AB 939 enacts the California Integrated Solid Waste Management Act of 1989. This bill repeals existing law providing for CWMB and, instead, provides for the California Integrated Waste Management and Recycling Board, consisting of six full-time members. This bill transfers the duties, staff, and funds of CWMB to that board, and provides for the appointment, salaries, terms, and duties of the board. AB 939 repeals and recasts provisions of law requiring counties and cities to prepare waste management plans and to permit, inspect, and regulate solid waste handling and disposal facilities, and revises the requirements for the solid waste management plans, designating them countywide integrated waste management plans. This bill deletes the exemption in existing law which exempts counties and cities from liability for failure to provide services or for actions and omissions of solid waste enterprises. This bill was signed by the Governor on September 29 (Chapter 1095, Statutes of 1989).

SB 1322 (Bergeson) requires CWMB to implement specified state programs to promote integrated waste management, including resource recovery, recycling, and composting, of specified materials, develop markets for recovered materials, and to provide technical assistance and public information relating to integrated waste management. This bill requires CWMB to make biennial reports to the legislature on its progress in implementation of the Integrated Waste Management Act. This bill was signed



by the Governor on September 29 (Chapter 1096, Statutes of 1989).

AB 1305 (Killea), as amended September 8, requires, on and after January 1, 1991, and with prescribed exceptions, every consumer of newsprint to ensure that at least 25% of all newsprint that is used is made of recycled-content newsprint, under specified conditions. The percentage of newsprint used which would be required to be made from recycled-content newsprint would be gradually increased to 30, 35, 40, and 50%. If the newsprint consumer is unable to obtain recycled-content newsprint for specified reasons, the bill requires a certification of that fact. This bill was signed by the Governor on October 1 (Chapter 1093, Statutes of 1989).

AB 1308 (Killea), as amended September 13, provides a credit under the Personal Income Tax Law against the tax in an amount equal to a specified percentage, for each of three specified years, of the purchase price paid or incurred by the taxpayer for qualified property, which would be defined, generally, as machinery or equipment used to manufacture finished products composed of a specified amount of secondary waste materials and postconsumer waste. This bill was signed by the Governor on September 29 (Chapter 1091, Statutes of 1989).

AB 1306 (Killea) requires the Department of Transportation to review and modify all bid specifications for paving material, and base, subbase, and previous backfill materials, using recycled materials, as specified, based on standards developed by the Department, to provide that the specifications encourage the maximum use of recycled materials. This bill was signed by the Governor on September 29 (Chapter 1092, Statutes of 1989).

AB 4 (Eastin), as amended September 13, states the intent of the legislature to encourage the procurement of recycled paper products by the University of California and requires the trustees of the California State University to revise the procedures for the purchase of paper products to give purchase preference to recycled paper products, when the products can be substituted for, and cost no more than, nonrecycled paper products, and the products meet all applicable standards and regulations. This bill was signed by the Governor on September 29 (Chapter 1094, Statutes of 1989).

SB 1221 (Hart), as amended September 11, increases the redemption value for every beverage container sold or offered for sale in California to two

cents, on and after November 1, 1989, and increases the refund value, on and after January 1, 1990, to five cents for every two containers redeemed or two cents for each single container redeemed. The bill provides for increases in the redemption rate to three cents and in the refund value to five cents, on and after January 1, 1993, if the redemption rate for the container is less than 65%, as specified. This bill was signed by the Governor on October 2 (Chapter 1339, Statutes of 1989).

AB 1041 (LaFollette), which requires CWMB to submit a report of specified content on the use, disposal, and recyclability of plastic materials and containers which are not subject to the California Beverage Container Recycling and Litter Reduction Act, was signed by the Governor on September 19 (Chapter 498, Statutes of 1989).

AB 888 (LaFollette), as amended September 5, requires that, at the next review of each CoSWMP occurring after January 1, 1990, a household hazardous waste plan (HHWP) or a method to address the needs of households, be prepared and attached to the CoSWMP. This bill requires that specified solid waste facility permits include a permit condition which precludes the solid waste facility from accepting any solid waste originating in a county which has not submitted a HHWP or method. This bill was signed by the Governor on September 25 (Chapter 809, Statutes of 1989).

AB 1101 (LaFollette), as amended August 30, requires local agencies which do not directly charge a fee for solid waste collection, transportation, and disposal, or which charge a fee which equals less than 90% of the cost of providing these services, to arrange to inform all residential households, as defined, at least once every three months, concerning the monthly costs of solid waste handling, and the monthly volumes of solid waste produced. This bill was signed by the Governor on September 25 (Chapter 815, Statutes of 1989).

AB 1570 (Sher), as amended September 13, requires state agencies and contractors with state agencies to purchase lubricating oil and industrial oil, as defined, containing the greatest percentage of recycled oil, unless a specified certification is made. This bill was signed by the Governor on October 1 (Chapter 1226, Statutes of 1989).

AB 1843 (W. Brown), which, as amended September 12, requires CWMB to adopt specified regulations for issuing permits for waste tire facilities, as defined, and authorizes CWMB to clean

up or abate the effects of waste tires stored, stockpiled, or accumulated in violation of this bill, was signed by the Governor on September 29 (Chapter 974, Statutes of 1989).

SB 228 (Garamendi), which, as amended August 29, specifies that the fee imposed on every operator of a solid waste landfill shall be based on the amount of solid waste disposed at each disposal site, was signed by the Governor on September 21 (Chapter 654, Statutes of 1989).

AB 58 (Roybal-Allard), as amended June 22, requires public agencies to use three different methods of providing notice that an environmental impact report or negative declaration is being prepared for projects involving a new facility for the burning of municipal wastes, hazardous wastes, or refuse-derived fuel, and for projects to expand the permitted capacity of an existing facility which burns hazardous waste. This bill was signed by the Governor on July 14 (Chapter 141, Statutes of 1989).

AB 1530 (Katz), as amended September 13, would have required CWMB, by July 1, 1991, to adopt regulations requiring that all new and lateral expansions of existing solid waste landfills which are used for the disposal of non-hazardous solid waste be equipped with landfill gas monitoring systems, as specified. This bill was vetoed by the Governor on October 1.

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: *SB 700 (Ayala)*, which would provide that reviews and reports regarding existing CoSWMPs be submitted to CWMB triennially; *SB 1450 (Roberti)*, which would require CoSWMPs to include an implementation schedule no later than July 1, 1991, and would require CWMB to review the plans and report to the legislature on or before January 1, 1992; *AB 1293 (Filante)*, which, as amended August 30, would require CWMB to consult with representatives from specified industries and organizations in developing state policy for the resource recovery component of an integrated approach to waste management; *AB 1796 (Moore)*, which, as amended July 1, would enact the Problem Plastics Elimination Act, and impose a fee of \$0.04 on each pound of problem plastics products, as defined, which are manufactured or sold for use in retail transactions, to be paid by the manufacturer or distributor for use in retail transactions; *AB 1948 (Killea)*, which would repeal the provision creating CWMB and would instead create



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the Board as a five-member Board and would specify the special qualifications of the members; *AB 204 (D. Brown)*, which would provide that the term "solid waste disposal site" does not include a site located on an island in the Pacific Ocean fifteen or more miles from the mainland coast; *SB 429 (Torres)*, which would restructure the CWMB as a five-person Board, requiring that the members serve full-time and receive a specified salary; *SB 65 (Kopp)*, which would—subject to voter approval—extend Proposition 65's discharge and exposure prohibitions to public agencies, with specified exceptions; *AB 42 (Jones)*, which, as amended September 7, would revise the exposure exemption of Proposition 65, and thus revise the definition of the term "significant amount"; *SB 12 (Robbins)*, which would prohibit any city, county, or city and county from authorizing the use of land for specified purposes if the land use will be located within 2,000 feet of an existing and operating solid waste disposal site or area, under specified conditions; *SB 1200 (Petris)*, which would enact the Used Oil Recycling Grant Program Act of 1989; *SB 1261 (Bergeson)*, which, as amended July 17, would decrease the number of members on CWMB to seven persons with specified experience, and would require one person, in addition to the chairperson, to serve full-time, and which would enact the California Recycling Act of 1989; *SB 1264 (Hart)*, which would require CWMB to adopt regulations requiring all solid waste disposal facilities to implement standard cost accounting methods for all solid waste disposal operations; *AB 1377 (Bates)*, which, as amended July 6, would require all state agencies and public entities, as defined, and the legislature, to give preference to recycled products; *AB 2192 (Margolin)*, which would require each county to revise its CoSWMP by July 1, 1990, to include a recycling convenience center element which would include specified information implementing the California Beverage Container Recycling and Litter Reduction Act; and *AB 80 (Killea)*, which, as amended August 21, would enact the Solid Waste Recycling Act of 1989 to require each local agency, as defined, to prepare, adopt, and implement a waste reduction and recycling plan of specified elements in accordance with guidelines adopted by the Department of Conservation.

LITIGATION:

City of Los Angeles v. California Waste Management Board. In 1978, the

City of Los Angeles acquired a permit for the Lopez Canyon Sanitary Landfill which contained the following provisions: (1) garbage may be piled no higher than 1,725 feet; (2) garbage dumping is limited to a maximum of 8,000 tons per month; (3) garbage may be dumped on only 140 of the site's 392 acres; and (4) garbage may be carted in by no more than 400 trucks per day.

The state and the county health department ordered an engineering study in 1983. This study recommended less restrictive provisions than those stated in the 1978 permit. The study would permit daily tonnage figures between 3,875 and 4,075 tons. The report also contained a proposed elevation of 1,740 feet and stated that the level would be surcharged to allow for natural settlement of deep fill areas. The City apparently considered the study recommendations to be part of the permit and expanded its use of the landfill beyond the permit's requirements.

On July 14, CWMB voted 7-0 to enforce the provisions of the original 1978 permit, and ordered the City to comply with those provisions or risk closure. On July 17, the City requested a temporary restraining order to prevent CWMB from implementing its decision. The City claimed that CWMB and the county have recognized the validity of the 1983 report by letting its provisions go unchallenged for six years. The Board maintained, however, that because the city failed to initiate a change to the 1978 permit, the permit prevails. The court denied the TRO and set an August hearing date on the City's motion for preliminary injunction.

On August 30, the court enjoined CWMB from enforcing its order or the provisions of the 1978 permit. The court noted that CWMB had not charged the Lopez Canyon facility with any health violation, and that it would cost the City \$1.6 million to divert its trash elsewhere. The court was scheduled to hold a September 26 hearing on the validity of the 1978 permit.

RECENT MEETINGS:

During its August 17-18 meeting, the Board reviewed a CWMB staff report on the Alameda County Local Enforcement Agency (LEA). The report revealed substantial compliance with the Government Code with respect to funding, staffing, training, organization, and facility investigations. However, staff noted that two Alameda County facilities are operating outside the terms and conditions of their current permit. Additionally,

three facilities—whose permits are now under review—missed the permit review date by more than one year. The Board approved the staff report with recommendations to the LEA for improving its performance.

Also during the August 17-18 meeting, the Board reviewed a staff report on the San Luis Obispo LEA. As was the case for Alameda County, CWMB staff found the San Luis Obispo LEA in substantial compliance with the Government Code. However, the staff report noted that the LEA needs to increase the inspection frequency at sites which are inspected less than quarterly. Additionally, the LEA has not consistently adhered to the required submittal deadlines for permit documents. The Board approved the staff report including recommendations to the LEA for improving its performance.

The Los Angeles County Department of Health Services (LADHS) acts as the LEA for the Los Angeles area. In August, the Board decided to inform LADHS that it had thirty days to submit a corrective action plan and schedule; otherwise, the Board would withdraw approval of LADHS' status.

The Board based this action on a number of claims. LADHS, in its capacity as LEA, is responsible for enforcing all health- and non-health-related standards for solid waste handling and disposal in Los Angeles county cities. The Board has found that LADHS has not fulfilled its obligations. LADHS has failed to complete five-year permit reviews required by Government Code section 66796.33(d) at a number of facilities; failed to take proper enforcement action against a number of facilities which have exceeded the weight and volume conditions specified in permits; has not pursued proper enforcement actions against a number of facilities to achieve compliance on the federal RCRA Open Dump Inventory; and failed to enforce the permit conditions of weight and volume, solid waste fill area, solid waste fill height, and refuse collection truck traffic at the Lopez Canyon Landfill in the City of Los Angeles (*see supra* LITIGATION). Based on these claims, the Board decided to take the action described above.

The Board's August 31 meeting was only an informational meeting because a quorum of Board members failed to appear. The Board heard information on a proposal to revise the permit at the Scholl Canyon Landfill in Glendale, to allow "green waste" to be used as cover on landfill slopes. "Green waste" refers



to leaves, lawn, and tree clippings. The Board was asked to decide whether green waste can be mulched or composted to cover, at the end of each day of operation at a refuse landfill, an exposed deposit of solid waste ("refuse cell"). Uncontaminated soil is the material typically used to cover a refuse cell. The use of green waste as cover was developed by the Los Angeles County Department of Sanitation in order to extend the longevity of a given landfill. That is, green waste contributes approximately 12% of the waste stream deposited at County landfills; under this proposed program, Scholl Canyon's capacity would be increased by the total volume of green waste removed from the refuse cell and used as cover in lieu of fresh soil.

However, an experimental study of green waste as cover indicated that it is not a suitable cover under present standards. Green waste is not fire-retardant, and it may provide an unsafe nesting and breeding ground for flies and other disease-carrying insects. However, the mayor of Glendale attended the meeting and stated that the City of Glendale would welcome the experimental green waste cover project, as the city believes the project is a necessary step towards progressive soil waste management. The Board was scheduled to vote on the proposal at its September meeting.

At the August 31 meeting, the Board also discussed its public awareness activities. Ray McNally and Associates presently advise and aid CWMB in the design of these activities. CWMB airs public awareness messages on radio, and Board Chair John Gallagher has been a guest on several media talk shows conducted by various radio stations throughout the state. CWMB plans to distribute several thousand bags displaying public awareness messages at the next Los Angeles County Fair. The Board has also sponsored a series of six very successful and well-attended workshops on recycling and source reduction.

FUTURE MEETINGS:

To be announced.

COASTAL COMMISSION

Director: Peter Douglas
Chairperson: Michael Wornum
(415) 543-8555

The California Coastal Commission was established by the California Coastal Act of 1976 to regulate conservation and development in the coastal zone. The coastal zone, as defined in the

Coastal Act, extends three miles seaward and generally 1,000 yards inland. This zone determines the geographical jurisdiction of the Commission. The Commission has authority to control development in state tidelands, public trust lands within the coastal zone and other areas of the coastal strip where control has not been returned to the local government.

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

A major component of the CCMP is the preparation by local governments of local coastal programs (LCPs), mandated by the Coastal Act of 1976. Each LCP consists of a land use plan and implementing ordinances. Most local governments prepare these in two separate phases, but some are prepared simultaneously as a total LCP. An LCP does not become final until both phases are certified, formally adopted by the local government, and then "effectively certified" by the Commission. After certification of an LCP, the Commission's regulatory authority is transferred to the local government subject to limited appeal to the Commission. There are 69 county and city local coastal programs.

The Commission is composed of fifteen members: twelve are voting members and are appointed by the Governor, the Senate Rules Committee and the Speaker of the Assembly. Each appoints two public members and two locally elected officials of coastal districts. The three remaining nonvoting members are the Secretaries of the Resources Agency and the Business and Transportation Agency, and the Chair of the State Lands Commission.

MAJOR PROJECTS:

Marine Review Committee Releases San Onofre Study. On September 6, the Commission's Marine Review Committee

presented the results of a fifteen-year \$46 million study of the effects of the San Onofre nuclear power station on the environment. The Committee, a team of three biologists, was appointed by the Commission in 1974 to conduct an independent review of the plant's impact on the ocean and to make specific recommendations to reduce future harmful effects.

The Committee concluded that some environmental damage had occurred, including a loss of twenty tons of fish and fish eggs per year into the plant's water intake system, and a 16% reduction in the amount of natural light in the water as a result of sediment stirred up by the plant's water discharge system. The reduced light was found to harm specific fish species as well as offshore kelp beds. The Committee also found that no significant harm had been done to plankton or most types of bottom-dwelling fish, and that no elevation in radioactivity level or heavy metal concentration had occurred.

The Committee made only a few major recommendations, including (1) construction of artificial reefs to reduce the effects of the discharge system; (2) upgrading the plant's water-cooling system to keep fish out of the intake pipes; (3) a reduction in the volume of water taken in by the plant at peak operation times; (4) modification of the schedule of plant operation around fish-hatching periods; and (5) commencement of work to restore damaged local wetlands.

The Commission was scheduled to vote on whether to approve the Committee's recommendations at its November 14 meeting. The cost of implementing all of the Committee's recommendations has been estimated at approximately \$30 million.

Sea Otter Relocation Project Continues Despite Setbacks. On September 12, the Commission conducted a public hearing on the status of a two-year project to establish a colony for over 100 sea otters on San Nicolas Island in the Channel Islands off the coast of Santa Barbara. (See CRLR Vol. 9, No. 3 (Summer 1989) pp. 108-09 for background information.) The project was initially designed to remove substantial numbers of the otters out of heavily-traveled sealanes in the event of an oil spill and is sponsored by state and federal wildlife agencies. As of July 20, of the 107 otters which had been flown to the island, eight have died, two are suspected of having died, seventeen have remained on the island, twenty have returned to the mainland, and the rest are unaccount-