tion regarding the project and funding to conduct their own study to ensure that the project complies with the District's air quality emissions standards. The application was approved. Hearings were scheduled for January 22 in Sacramento regarding jurisdiction, air quality models, and reimbursement requests from the Santa Barbara District.

The revised proposed decision in *Hacienda Heights Improvement Association v. County Sanitation Districts of Los Angeles County* (CEC Docket No. 86-C&I-2), issued October 28, 1987 by Hearing Officer Garret Shean, provided spirited discussion at the December meeting. The case arose from a complaint filed February 5, 1986 by the Hacienda Heights Improvement Association (HHIA) against the Sanitation Districts of Los Angeles County (Districts) alleging avoidance of the Commission's power plant siting jurisdiction in connection with landfill gas-to-energy and waste-to-energy projects at the Puente Hills Landfill site. Complainant HHIA alleged that the Districts were developing electric generating facilities in excess of 50 megawatts (MW) on the Puente Hills Landfill and that the Districts had not complied with the Warren-Alquist Act, which requires developers of thermal power plants of 50 MW or more to submit such projects for certification to the Commission.

Specifically, the Complaint alleged that the Districts were engaged in an ambitious electrical generating program at the Puente Hills Landfill site; that a landfill gas project would be expanded from its current capacity to exceed the Commission's 50 MW jurisdictional threshold; that two 47 MW waste-to-energy projects were proposed for the Puente Hills Landfill site; that the Districts had improperly acted as lead agency in preparing the environmental evaluation, pursuant to the California Environmental Quality Act (CEQA); and that, as to these projects, the Districts had engaged in fraud and deceit by seeking to implement their electric generating program in small incremental pieces to avoid the cumulative environmental assessment required by the CEQA and to avoid the Commission's regulatory jurisdiction.

At the Commission's April 16, 1986 business meeting, HHIA and the Districts appeared before the CEC and presented their respective views on the allegations stated in the complaint. After consideration of the parties' presentations, the Commission appointed a hearing officer to conduct evidentiary hearings on the complaint pursuant to section 1232(b), Title 20 of the California Administrative Code. The hearing officer's subsequent findings were the basis of the discussion before the Commission on December 2.

The revised proposed decision of the hearing officer found that the Districts were indeed committed to construct a 94 MW waste-to-energy project at the Puente Hills Landfill site and that the project was properly within the siting jurisdiction of the CEC. The decision directed the Districts (1) to refrain from the pursuit of any licenses, permits, or equivalent authorization from any agency other than the CEC; (2) to cease acting as the lead agency on their Puente Hills waste-to-energy project; and (3) unless the Districts abandon the project, to submit their Puente Hills waste-to-energy project to the CEC sufficiently in advance of proposed construction to allow completion of Commission review.

The decision also found that the landfill gas-to-energy project and its predecessor demonstration projects were not within the Commission's siting jurisdiction.

The decision was not a decision on the merits of the Puente Hills waste-to-energy project, and while determining that the CEC had jurisdiction over the Puente Hills waste-to-energy project, the decision did not imbue the Commission with responsibility for management of waste disposal. The decision stated that protection of statewide interests cannot be defeated by artificially dividing larger projects into smaller units under 50 MW to foreclose Commission review. Projects comprised of two or more generating units—as were proposed for the Puente Hills Landfill site—each under 50 MW, and which if taken together produce more than 50 MW, have a similar level of impact on the environment, the economy, and the state's electricity supply as projects using larger or fewer units to produce the same amount of electricity. The decision found it appropriate that the two 2,000 tons-per-day, 47 MW Puente Hills waste-to-energy units, which would have an aggregate generating capacity of 94 MW, be subject to regulatory review by the Commission.

The Commission approved the revised proposed decision but refrained from finding bad faith on the part of the County Sanitation Districts of Los Angeles County.

FUTURE MEETINGS:

To be announced.

HORSE RACING BOARD

Secretary: Leonard Foote
(916) 920-7178

The California Horse Racing Board (CHRB) is an independent regulatory board consisting of seven members. Each member serves a four-year term and receives no compensation other than expenses incurred for Board activities.

The purpose of the Board is to allow parimutuel wagering on horse races while assuring protection of the public, encouraging agriculture and the breeding of horses in this state, generating public revenue, providing for maximum expansion of horse racing opportunities in the public interest, and providing for uniformity of regulation for each type of horse racing.

The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. If an individual, his/her spouse, or dependent holds a financial interest or management position in a horse racing track, he/she cannot qualify for Board membership. An individual is also excluded if he/she has an interest in a business which conducts parimutuel horse racing or a management or concession contract with any business entity which conducts parimutuel horse racing. (In parimutuel betting, all the bets for a race are pooled and paid out on that race based on the horses' finishing positions, absent the state's percentage and the track's percentage.) Horse owners and breeders are not barred from Board membership. In fact, the legislature has declared that Board representation by these groups is in the public interest.

The Board licenses horse racing tracks and allocates racing dates. It also has regulatory power over wagering and horse care.

MAJOR PROJECTS:

Harness Racing Licensing. In September, the Los Angeles *Herald Examiner* ran a series of articles pertaining to the licensing of "unsavory" individuals in the harness racing industry. On October 1, the CHRB responded to the *Herald Examiner* series by issuing a press release outlining steps the CHRB is taking to deal with the allegations contained in the articles.

First, the CHRB reminded race track operators of their broad discretion as private entities in denying access to suspected perpetrators of corrupt racing practices, even if information in the hands of public law enforcement authori-

ties has not prevented licensure. Second, the CHRB—as the principal enforcement agency of horse racing—has augmented its surveillance capabilities on racing fields and has increased direct racing supervision by state racing officials at tracks. Third, the CHRB secured the commitment of all major harness racing organizations to vigilance in the harness racing enclosure.

With the assistance of the harness racing industry, the CHRB is conducting a review of harness racing in California to determine whether and to what extent dishonest practices on the track are currently a problem. If it is necessary, the CHRB will ask the district attorney in the jurisdictions involved to investigate the matter.

Licensing Exemption for Fair Directors. At its November meeting, the Board adopted the recommendations of the Securities and Licensing Committee to exempt appointed directors of fairs from section 1481, Title 4 of the California Administrative Code, relating to occupational licensing. On a trial basis, credentials will be issued to fair directors at the discretion of the Board. Commissioner Seeley noted that most fair directors have little involvement with the management of horse racing conducted at the fairs.

The Board may set aside the application of section 1481 as permitted by section 1406, which states in part that "for good cause, with or without a hearing, the Board may temporarily suspend the application of any of its rules upon any condition it may impose."

Suspension of Regulation Requiring Locking of Public Phones. The Board set aside for a one- to two-year trial period enforcement of section 1459, Title 4 of the California Administrative Code, which requires that "[p]ublic telephones within the enclosure shall be locked from one hour before the post time of the first race of the day until after the last race has been declared official." The original purpose of section 1459 was to minimize the illicit communication of race results and illegal wagering.

With the introduction of simulcast wagering, results of races are now known at the simulcast location as soon as the horse race becomes official at the running racetrack. As previously noted above, the Board may exercise its discretion to suspend a rule by applying section 1406.

Problems Encountered with New Legislation. Several problems have arisen concerning provisions of recently-enacted SB 14 (Maddy) (Chapter 1273, Statutes of 1987). For example, Business and Professions Code section 19596.4 states in part that an association handling $1.5 million (average daily handle) or more is required "to produce an audiovisual simulcast signal and to make the signal available to any satellite wagering facility." Simulcast Enterprises (a joint venture, the members of which are the Bay Meadows Racing Association and Pacific Racing Association) has refused the Pleasanton and Vallejo satellite wagering facilities its signal unless an assessment of "impact fees" becomes part of the agreement between the "host" track and "guest" satellite facility.

The main issue is whether a host track can refuse a guest facility its signal if no agreement has been reached. At the November CHRB meeting, Senator Maddy stated that when the legislation was drafted, it was understood that impact fees could be considered as part of a host/guest agreement. The purpose of impact fees as an additional assessment would be to offset the host track's loss of patronage to satellite facilities which are in close proximity to the host track. Under Senator Maddy's view, section 19596.4 should be interpreted as providing a basis for the negotiation of a host/guest agreement. If no agreement is reached, then the host does not have to provide a broadcast.

Board Chair Deats asked Senator Maddy whether the Board had discretion to determine what would constitute an exorbitant impact fee. Senator Maddy responded by stating that if satellite facilities think a fee is unfair, they should go to the legislature. However, Maddy noted that the satellites could also seek assistance from the CHRB. Commissioner Liscom stated that the statute authorizes the Board to conduct audits of host and guest facilities to ensure equitable fees.

As of this writing, the Pleasanton satellite wagering facility and Simulcast Enterprises have reached an agreement. The Vallejo satellite wagering facility and Simulcast Enterprises are expected to reach an agreement similar to the Pleasanton/Simulcast accord.

LEGISLATION:

Senator Kenneth Maddy plans to introduce 1988 clean-up legislation to deal with problem areas in newly-enacted SB 14 (Chapter 1273, Statutes of 1987) (see *supra* MAJOR PROJECTS).

The CHRB also intends to address issues regarding SB 14 in one of two recommendations to be included in the Board's Seventeenth Annual Report, due to be presented to the Governor and the legislature on January 31, 1988, pursuant to section 19441 of the Horse Racing Law. The second recommendation would seek legislative exemption from the Administrative Procedures Act (APA) requirements for adoption, amendment, or repeal of regulations which deal with forms of parimutuel wagering. The Board considers the APA to be an undue in its consideration and approval of new forms of parimutuel wagering.

The following is a status update of bills reported in CRLR Vol. 7, No. 4 (Fall 1987) p. 103 and Vol. 7, No. 3 (Summer 1987) pp. 128-29:

AB 2597 (Hill). Current law provides that all wagers placed at a satellite wagering facility be included in the conventional or exotic pools at the racetrack conducting the actual race meeting. AB 2597 would provide that for purposes of determining license fees and breakage at the onsite racetrack, the satellite wagers will not be included in these pools. The bill is pending in the Senate Appropriations Committee.

AB 1566 (Floyd) failed to pass the Assembly on January 28. AB 1566 would allocated 70% of state revenues from satellite wagering to supplement purses at fair racing meetings in the northern zone which have an average daily handle of more than $300,000. The remaining 30% of the revenues would have been allocated to the California Standardbred Sires Stakes Program.

AB 310 (Floyd) was sent to the Governor on January 25. The bill would authorize the Board to permit owners to enter thoroughbred horses in quarter horse races at a distance of 870 yards, mixed breed meetings, and fair meetings.

AB 488 (Hill), AB 1010 (Bane), SB 520 (Dills), and *SB 979 (Rosenthal)* are inactive for the rest of the session, according to their respective authors.

AB 523 (Condit) and *AB 2318 (Waters)* are pending in the Senate Governmental Organization Committee. No hearing dates have been set.

AB 532 (Keene) is pending in the Assembly Governmental Organization Committee. No hearing date has been set.

RECENT MEETINGS:

At the September meeting, the California Horsemen's Benevolent and Protection Association (CHBPA) requested that purse funds generated from simulcast wagering on the fair racing programs during the 1987 fair circuit be paid retroactively to horsemen (that is, horse owners and trainers). The CHBPA

also requested that the Board act to protect purse monies which have, as a practice, been commingled with other track funds. Purses paid at fairs are based upon prior year handles, which are comprised of the total annual revenue generated through betting. The purses are augmented by appropriated funds from state license fees generated by simulcast wagering at fairs during the previous fiscal year. However, the 1987 purses did not include that portion of simulcast wagering on the fair wagering programs.

At the October meeting, the CHRB ordered distribution of "75% of the amount from the simulcast handle which was retained for distribution in the form of purses." The Board also ordered that the daily paymaster's report to the Board reflect a separate account status for purse funds.

At its November meeting, the CHRB recognized the Arabian Racing Association of California as the representative of Arabian horsemen. Under recently-enacted SB 287 (Maddy) (Chapter 154, Statutes of 1987), the Board is required to determine the organization which will represent each breed. (See CRLR Vol. 7, No. 4 (Fall 1987) pp. 103-04 for background information.) Recognized organizations act as agents for the breeds' owners and trainers in negotiating agreements with race track organizations, receiving in return a percentage of purse money for administrative expenses. Each organization is required to represent a majority of the horsemen with respect to the breed represented. CHRB recognition is required in order for a horsemen's organization to receive a distribution under the Horse Racing Law.

Also at the November meeting, the CHRB approved several satellite wagering facilities, including the 22nd District Agricultural Association (Del Mar); the 31st District Agricultural Association (Ventura); the National Orange Show (San Bernardino); and the 9th District Agricultural Association (Eureka).

FUTURE MEETINGS:

To be announced.

NEW MOTOR VEHICLE BOARD

Executive Officer: Sam W. Jennings (916) 445-1888

The New Motor Vehicle Board (NMVB) licenses new motor vehicle dealerships and regulates dealership relocations and manufacturer terminations of franchises. It reviews disciplinary action taken against dealers by the Department of Motor Vehicles. Most licensees deal in cars or motorcycles.

The Board also handles disputes arising out of warranty reimbursement schedules. After servicing or replacing parts in a car under warranty, a dealer is reimbursed by the manufacturer. The manufacturer sets reimbursement rates which a dealer occasionally challenges as unreasonable. Infrequently, the manufacturer's failure to compensate the dealer for tests performed on vehicles is questioned.

The Board consists of four dealer members and five public members. The Board's staff consists of an executive secretary, three legal assistants and two secretaries.

RECENT MEETINGS:

At its September 29 meeting in Los Angeles, the NMVB adopted the administrative law judge's (ALJ) decision in several cases.

In the matter of *Brian Chuchua's Jeep dba Brian Chuchua's Four Wheel Drive Center v. American Motors Sales Corporation (AMC)*, the ALJ found, after a hearing, that respondent AMC proved there was good cause for terminating the franchise. Thus, the protest was overruled and AMC was permitted to terminate the franchise. However, the termination was stayed on the condition that protestant will fully comply with all of its obligations under the franchise and the law in regard to performing service on Jeep vehicles, irrespective of where the vehicles were purchased. In the event AMC receives evidence that protestant has failed to comply with the conditions, it may move the Board for an order removing the stay.

In the matter of *Murray's Truck Service, Inc. v. Iveco Trucks of North America, Inc.*, the ALJ found that respondent established good cause for terminating the franchise of protestant, and overruled the protest.

In the matter of *Stevens Pontiac-GMC, Inc. v. Pontiac Motor Division, General Motors Corporation*, respondent had given notice to Stevens Pontiac of Pontiac Motor Division's intention to establish an additional franchise at 750 West Capitol Expressway, San Jose. Stevens Pontiac is located at 620 Blossom Hill Road, Los Gatos. After hearing the matter, the ALJ found that protestant failed to prove that there is good cause for not establishing the additional franchise. Therefore, the protest was overruled and Pontiac Motor Division was permitted to establish the proposed franchise in San Jose.

In the matter of *University Ford Chrysler Plymouth v. Chrysler Corporation*, it was determined that Chrysler failed to establish good cause to terminate the franchise of University Chrysler Plymouth. The protest was sustained upon condition that University Chrysler Plymouth (1) relocate to a suitable existing or new facility within two years and, in the interim, (2) follow through with its plans to modify its present facility to accommodate Chrysler Plymouth products.

FUTURE MEETINGS:

To be announced.

BOARD OF OSTEOPATHIC EXAMINERS

Executive Director: Linda Bergmann (916) 322-4306

In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners (BOE). BOE regulates entry into the osteopathic profession, examines and approves schools and colleges of osteopathic medicine and enforces professional standards. The 1922 initiative, which provided for a five-member Board consisting of practicing osteopaths, was amended in 1982 to include two public members. The Board now consists of seven members, appointed by the Governor, serving staggered three-year terms.

MAJOR PROJECTS:

Regulation Changes. On December 10, 1987, the Office of Administrative Law (OAL) approved the amended regulations originally submitted by BOE in December 1986. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 94.) The regulations affected are sections 1609, 1610(d), 1615(d), 1628(d), 1630(c), 1637(c), 1646(e), 1647(c), 1650, 1651(d), 1656(d), 1658, 1669(d), 1670, 1672, 1673(d), 1678(c), 1678(d), 1681(a), 1681(b), 1682(c), and 1691 in Title 16 of the California Administrative Code, which were the subject of a regulatory hearing on November 21, 1986. These regulations deal with the application and registration for new osteopaths.

At its December 11 meeting the Board expressed concern over the $200-per-hour attorneys' fees it was charged by OAL for review of its regulations. The Board decided to request a justification from OAL for its fee policy.

Diversion Program. At its December 11 meeting, the Board heard from Bradley Grant, DO, concerning the possibility of an intervention program for osteo-