consistencies in the definitions but do not see the need to make the definitions consistent at this time; DOT definitions and requirements address the international shipping and public safety hazards which are unique to transportations, whereas Fed-OSHA and Title 8 definitions and requirements have a slightly different occupational and general fire prevention purpose. Accordingly, OSB denied the petition.

Also at its April 21 meeting, OSB considered Petition No. 348, submitted by Robert Downey of Associated General Contractors of California, who requested that OSB repeal sections 5022 and 5023, Title 8 of the CCR, with regard to proof load testing of cranes and derricks. As the result of confusion over whether the petition was limited to boom-type mobile cranes or applied to all cranes in general, the Board granted petitioner's request to withdraw the petition in order to allow him to reconfer with DOSH on the specific issues that affect the construction industry.

FUTURE MEETINGS

May 19 in Los Angeles.
June 23 in San Francisco.
July 21 in San Diego.
August 25 in Sacramento.
September 22 in Los Angeles.
October 27 in San Francisco.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY (CAL-EPA)

AIR RESOURCES BOARD

Executive Officer: James D. Boyd
Chair: Jacqueline E. Schafer
(916) 322-2990

Pursuant to Health and Safety Code section 39003 *et seq.*, the Air Resources Board (ARB) is charged with coordinating efforts to attain and maintain ambient air quality standards, to conduct research into the causes of and solutions to air pollution, and to systematically attack the serious problem caused by motor vehicle emissions, which are the major source of air pollution in many areas of the state. ARB is empowered to adopt regulations to implement its enabling legislation; these regulations are codified in Titles 13, 17, and 26 of the California Code of Regulations (CCR).

ARB regulates both vehicular and stationary pollution sources. The California Clean Air Act requires attainment of state ambient air quality standards by the earliest practicable date. ARB is required to adopt the most effective emission controls possible for motor vehicles, fuels, consumer products, and a range of mobile sources.

Primary responsibility for controlling emissions from stationary sources rests with local air pollution control districts (APCDs) and air quality management districts (AQMDs). ARB develops rules and regulations to assist the districts and oversees their enforcement activities, while providing technical and financial assistance.

Board members have experience in chemistry, meteorology, physics, law, administration, engineering, and related scientific fields. ARB's staff numbers over 400 and is divided into seven divisions: Administrative Services, Compliance, Monitoring and Laboratory, Mobile Source, Research, Stationary Source, and Technical Support.

At ARB's January meeting, Jacqueline Schafer was sworn in as the Board's new Chair. Schafer replaces Jananne Sharpless, a strong and vocal clean air advocate who chaired the Board for eight years prior to her November 1993 resignation. *[14:1 CRLR 118]* Also sworn in at the January meeting was Lynne T. Edgerton, an attorney who is vice-president of CALSTART, a consortium of California industries and governments working to produce electric cars and other transportation technologies.

At ARB's February meeting, three new Board members were greeted and sworn in. Joseph C. Calhoun of Seal Beach, formerly with General Motors and a previous member of ARB staff, is president of an engineering consulting firm. Jack Parnell, of Auburn, is a familiar face in state government; he was formerly director of both the Department of Fish and Game and the Department of Food and Agriculture. Doug Vagim, of Fresno, is a business owner, Fresno County Supervisor, and former candidate for Assembly.

MAJOR PROJECTS

Board Reaffirms 1998 Deadline for Introduction of Electric Cars in California. After a public hearing and debate which lasted 24 hours over two days, ARB on May 13 withstood the demands of the auto and oil industries and upheld its implementation schedule for the required introduction of electric cars in California.

In September 1990, ARB approved its landmark low-emission vehicle and clean fuels regulations which require the phase-in of four new classes of light- and medium-duty vehicles with increasingly stringent emissions levels—transitional low-emission vehicles (TLEVs), low-emission vehicles (LEVs), ultra-low-emission vehicles (ULEVs), and zero-emission vehicles (ZEVs). *[11:1 CRLR 113]* Specifically, these regulations require that, beginning in 1998, 2% of all vehicles sold by each major manufacturer in California must be ZEVs; the sales quota increases to 5% of all vehicles sold in 2001 and to 10% in 2003. The only zero-emission vehicle technology that is sufficiently advanced to meet the ZEV requirement in the near term is the electric vehicle.

ARB's low-emission vehicle regulations—collectively known as the "LEV program"—are contained primarily in section 1960.1, Title 13 of the CCR, and the incorporated document entitled *California Exhaust Emission Standards and Test Procedures for 1998 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.* In Resolution 90-58 adopted at the September 1990 hearing, ARB directed staff to report to the Board every two years on the status of the implementation of the regulations. After staff's first presentation in June 1992, ARB adopted a resolution finding that the LEV program standards continue be technologically feasible within the designated timeframes. *[12:4 CRLR 170]*

In preparation for the Board's second assessment at its May meeting, staff convened a March 25 workshop to discuss, among other things, the cost estimates associated with the technologies which will likely be used by manufacturers in meeting the required emission levels for TLEVs, LEVs, and ULEVs, and recent advances in ZEV technology. Staff distributed three informational documents, including an extensive technical document, prior to the March 25 workshop. As a result of the workshop, staff released its major findings and recommendations in April which set the stage for the May hearing. First, staff found that the technology for meeting TLEV, LEV, and ULEV emission requirements is developing on schedule, and that no changes to ARB's fleet average emission requirements for these vehicles should be made. Staff also found that ARB's ZEV mandate remains technologically feasible in the timeframe provided, and that no changes to the ZEV implementation schedule should be made.

At the May 13 hearing, foreign and domestic auto makers and the oil industry urged ARB to delay its implementation of the LEV program regulations; they protested the notion that the government would require them to introduce new technology by a date certain when it may not be ready in the exact form expected by the public. When that argument failed, the industry urged ARB to undertake another comprehensive review of the status quo in six months or one year, rather than waiting until 1996. Following the two-day hearing, ARB agreed to stick to its original schedule. Board Chair Jacqueline Schafer noted the tremendous advancements which have been made since the Board's 1990 mandate and stated, "I don't think we want to take any actions that will slow down or stall this progress."

ARB Approves RECLAIM. After a daylong hearing at its March 10 meeting, ARB approved the South Coast Air Quality Management District's (SCAQMD) unique and innovative market-based strategy for reducing industrial emissions of nitrogen oxides (NOx) and sulfur oxides (SOx), entitled the Regional Clean Air Incentives Market (RECLAIM). *[14:1 CRLR 125; 13:4 CRLR 145–46; 12:4 CRLR 169]*

As approved by SCAQMD in October 1993, RECLAIM gives 431 of the region's large industrial facilities, each of which emits at least four tons per year of NOx and SOx, the right to buy, sell, or trade pollution credits to attain its allocated air quality emission limits. RECLAIM participants can meet those limits by installing advanced pollution control equipment, using less polluting products and/or manufacturing techniques, or purchasing trading credits from another participant which has more than complied with its emissions allocations. According to ARB and SCAQMD, actual pollution reductions will average 7–8% per year, approximately the same as would be realized under the District's 1991 plan.

Health and Safety Code section 39616, enacted in AB 1054 (Sher) (Chapter 1160, Statutes of 1992) *[12:4 CRLR 173]*, permits ARB to approve a market-based emission control program in place of the traditional command-and-control program so long as the market-based program meets specified criteria which are intended to ensure that it achieves a comparable rate of progress in improving air quality and does not aggravate any negative socioeconomic impacts such as job loss. The criteria may be summarized as follows: (1) the program must achieve equivalent or greater emission reduction at equivalent or less cost compared with current command-and-control regulations and future air quality measures that would otherwise be adopted as part of the district's attainment plan; (2) the program must provide a level of enforcement and monitoring, to ensure compliance with emission reduction requirements, which is comparable to that which is provided under command-and-control; (3) the program must establish a baseline methodology which recognizes and treats equitably those stationary sources which have reduced emissions in advance of the program's implementation; (4) the program must not result in greater job loss or significant shifts from higher- to lower-skilled jobs on an overall district-wide basis than would have occurred under command-and-control; (5) the program must not in any way delay, postpone, or hinder the district's compliance with the California Clean Air Act of 1988; and (6) the program must not result in disproportionate impacts (measured on an aggregate basis) on those facilities included in the program compared to other permitted stationary sources affected by the district's attainment plan.

Staff's report to the Board, which recommended that ARB approve RECLAIM, noted that staff has participated in RECLAIM's development from its conception in 1989, and has reviewed and commented upon draft and final SCAQMD documents and over 27,000 pages of public documents that form the administrative record of the program. Staff also noted that ARB itself conditionally approved RECLAIM in October 1992. *[13:1 CRLR 100]*

On the specific legal criteria required for ARB approval, staff found that: (1) RECLAIM will produce emission reductions in the 1994–2003 timeframe that are equivalent to those which would result from implementation of the District's 1991 plan, and RECLAIM will be less costly than the prior method of source-specific regulation; (2) RECLAIM contains a number of monitoring enhancements to ensure that the annual allocations of NOx and SOx are measurable and enforceable; (3) RECLAIM provides for baseline equity by incorporating control factors into the pollutant allocation formula for both the starting and ending points of the program; (4) RECLAIM will not result in greater job loss or skilled job shifts than would have occurred under the command-and-control regulations; (5) RECLAIM will neither impede nor retard progress toward attainment of state air quality standards in the South Coast District; and (6) RECLAIM will not result in disproportionate regulatory impacts.

Following the public hearing, the Board voted unanimously to approve RECLAIM.

Smog Check Legislation Signed by Wilson, Approved by EPA. For the past year, California's Smog Check Program, which is administered by the Department of Consumer Affairs' (DCA) Bureau of Automotive Repair (BAR) under standards set by ARB, has been the focus of heated debate between the state and federal governments. Under federal law, the state's Smog Check Program was required to comply with 1990 amendments to the federal Clean Air Act by November 15, 1993, or risk losing over $750 million in federal highway funds. Although the California legislature failed to agree upon a program which meets the federal standards before adjourning last September, the U.S. Environmental Protection Agency (EPA) agreed not to initiate sanctions against the state so long as state and federal officials continued negotiations toward an acceptable plan. *[14:1 CRLR 19; 13:4 CRLR 20]*

Specifically, EPA believes that California's current Smog Check Program has failed because of its "decentralized" format, which allows approximately 9,000 private auto repair garages to test, repair, and retest the same vehicle before issuing a smog certificate. EPA contends that such a self-serving system not only promotes the likelihood of fraud on the consumer, but also results in false test results due to lack of uniform testing equipment among the numerous smog inspection garages. Thus, EPA guidelines prefer a "centralized" model which provides for testing at approximately 200 government-operated sites; any needed repair work would be performed by independent garages.

During the first few months of 1994, the legislature designed a package of bills targeting the worst-polluting vehicles and requiring them to be fixed or get off the road, while saving the jobs of the mechanics currently employed at the Smog Check stations throughout the state. On March 24, EPA Administrator Carol Browner and Cal-EPA Secretary James Strock signed a memorandum of agreement (MOA) on the legislature's proposed changes to California's Smog Check Program. Among other things, the MOA commits both EPA and the state to test remote sensing, which uses lasers to detect gross-polluting vehicles, and allows the state to keep most test and repair functions in private facilities; the MOA also recognizes the new California program as complying with federal requirements.

Accordingly, on March 30, Governor Wilson signed the package of bills—AB 2018 (Katz), SB 521 (Presley), and SB 198 (Kopp). Together with a fourth bill (SB 629 (Russell), signed by Wilson on January 27), these bills create a new statewide Smog Check Program which:

–requires the establishment, by January 1, 1995, of test-only centers able to inspect 15% of vehicles in urban areas, including gross polluters, tampered vehicles, and high-mileage fleet vehicles; 2% of vehicles will be selected randomly through the Department of Motor Vehicles to go to test-only centers;

–directs BAR to award one or more contracts for the test-only centers to each affected area by January 1, 1995;

–increases the cost repair limit to $450 (except no limit applies to gross polluters), effective January 1, 1995; and

–establishes a repair and scrapping assistance program to cushion the impact to low-income drivers; this program will be funded by a voluntary fee of up to $50 paid by new car buyers who will, in turn, be allowed to skip one smog inspection.

California must now adopt regulations to implement the new Smog Check Program and submit a state implementation plan for EPA approval. (*See* LEGISLATION for more information.)

Board Adopts Annual Nonvehicular Source Permit Fees. At its April 14 meeting, ARB held a public hearing on proposed new section 90800.5 and amendments to section 90803, Title 17 of the CCR; pursuant to Health and Safety Code section 39612, these regulatory amendments would establish the fee rate which APCDs and AQMDs must pay ARB to offset the state costs of air pollution control programs related to nonvehicular sources during the sixth year of ARB's implementation of the California Clean Air Act of 1988. *[13:2&3 CRLR 156; 12:2&3 CRLR 199–200]*

Proposed new section 90800.5 would specify the fee rate and amounts to be remitted to ARB by the districts for the 1994–95 fiscal year, and exempt from the regulations emissions from a facility if the emissions would be subject to the regulations solely because the facility is in a district which has been designated as nonattainment for ozone solely as a result of transported air pollutants. Section 90803 is being amended to be applicable to fees to be collected under new section 90800.5. As with the fee regulations for the first five years, the proposed regulations provide for the collection of the emission fees by districts on a dollar-per-ton basis, recovery of administrative costs by the districts, imposition of additional fees on facilities that do not pay in a timely manner, and relief for districts from the fee collection requirements for demonstrated good cause.

Following the public hearing, the Board modified the proposed regulations in several respects, including a recalculation of the fee rate due to emission changes reported by the districts. ARB approved the modified version of the proposed regulations subject to an additional 15-day comment period, after which the rulemaking file will be submitted to the Office of Administrative Law (OAL) for review and approval.

Board Modifies Evaporative Emission Standards and Test Procedures for 1995 Vehicles. On February 10, the Board held a public hearing on staff's proposal to amend section 1976, Title 13 of the CCR, and the incorporated document entitled *California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles.* ARB has administered evaporative emissions standards and test procedures for California motor vehicles and engines since the 1970s. Following a hearing in August 1990, the Board adopted "enhanced test procedures" which were designed to more effectively control evaporative emissions during summer months when high ambient temperatures exacerbate the potential for high evaporative emissions. These enhanced test procedures are phased in beginning in the 1995 model year, with full compliance required for the 1998 model year. *[10:4 CRLR 142]*

On March 24, 1993, EPA published enhanced test procedures for the federal evaporative emissions standards to be phased in beginning in the 1996 model year, with full compliance required for the 1998 model year. The federal enhanced test procedures are generally patterned after ARB's enhanced test procedures with one major difference (EPA added a "supplemental procedure" which provides additional assurance of adequate evaporative canister purge during short trips) and various other relatively minor differences. Thus, ARB's proposed amendments to section 1976 would incorporate EPA's supplemental procedure and conform ARB's test procedures with the new federal procedures; most of the proposed amendments to the enhanced test procedures would be implemented in the 1996 model year, when the phase-in of the federal regulations begins. In addition, ARB proposes that the enhanced test procedures be made applicable to the heavy complete medium-duty vehicle class (8,501–14,000 lbs., gross vehicle weight rating); this is currently the only class of vehicles for which the enhanced test procedures have not been adopted.

Following the public hearing, staff recommended several modifications to the originally proposed language. The Board adopted the modified language subject to an additional 15-day public comment period; at this writing, the rulemaking file on these proposed regulatory changes has not yet been submitted to OAL for review and approval.

Board Adopts Off-Highway Recreational Vehicle Emission Standards and Test Procedures. At its January 13 meeting, the Board adopted new sections 2410–2440 (nonconsecutive), Title 13 of the CCR. This regulatory action contains important new regulations establishing emission standards, test procedures, certification procedures, and labeling and registration requirements for 1997 and later model year "off-highway recreational vehicles," defined to include off-road motorcycles, all-terrain vehicles, golf carts, go-karts, and specialty vehicles (such as hotel and airport shuttle vehicles). To date; these vehicles have not been required to comply with emissions-related regulations in California. As a result, engines have been optimized primarily for performance rather than emissions. Because of this, emission levels from some off-highway vehicles can be as high as 100 times that of other vehicles which are equipped with emission controls.

This regulatory package is required by the terms of the California Clean Air Act of 1988 in order to help achieve an overall 5% per year reduction of carbon monoxide and ozone precursor emissions, was developed in conjunction with industry and other interested parties, and is designed to reduce emissions from these vehicles in a cost-effective and technologically feasible manner.

As originally proposed on November 26, the regulations would require all new 1997 and later model year golf carts operating in federal ozone nonattainment areas to conform to zero emission standards (*i.e.*, essentially, they must be electrically powered). This caused great concern at the National Golf Car Manufacturers Association (NGCMA), which subsequently petitioned the Board to classify the engines used in golf carts as utility engines instead of off-highway recreational vehicles. In its January 7 decision denying NGCMA's petition, the Board noted that when it adopted its landmark lawn and garden utility engine emission regulations in December 1990 *[11:1 CRLR 115]*, golf cart manufacturers at that time argued that they should not be included in the utility engine category but rather the off-highway engine category, such that the instant petition is inconsistent with NGCMA's earlier position. ARB also stated that "significant differences do exist between golf car engines and utility engines; and, accordingly, distinct emission standards are appropriate for golf cars. Namely, zero emission technology through electric power is presently available, and more than 50% of all golf cars in California are electrically powered." At the January 13 hearing, NGCMA again requested reclassification of golf cart engines as utility engines; ARB refused, finding that NGCMA had submitted no information which was new or different from that which it included in its petition.

The Board modified staff's original proposal in other respects, however. ARB's changes include a two-year delay (until 1999) in the implementation of the emission standards for off-road motorcycles and all-terrain vehicles with engines less than 90 cc, and deleted a requirement that manufacturers report the number of competition vehicles sold in California in favor of voluntary reporting by the manufacturers.

Update on Other Regulatory Changes. The following is a status update on regulatory changes proposed and/or adopted by ARB in recent months, and discussed in previous issues of the *Reporter*:

• ARB's November 1993 amendments to sections 70300–70306 and Appendices 1–4 thereto, Title 17 of the CCR, which change the criteria used by the Board in designating areas of California as nonattainment, attainment, or unclassified for state ambient air quality standards, have not yet been submitted to OAL at this writing. *[14:1 CRLR 120; 13:1 CRLR 97]*

• The Board's November 1993 amendments to its area designations in sections 60200–60209, Title 17 of the CCR, which (1) change the requirements for determining complete data—when less than three years of data are available—to exclude data affected by highly irregular or infrequent events before using the maximum pollutant concentration to determine if the data meet the completeness criteria, and (2) change the emission screening value for the annual emissions of NOx in an air basin to reflect ARB staff's improved procedure for estimating NOx emissions, have not yet been submitted to OAL for review. *[14:1 CRLR 120]*

• ARB's October 1993 adoption of new sections 93109 and 93110, Titles 17 and 26 of the CCR, which establish an airborne toxic control measure for perchloroethylene (perc) in dry cleaning operations and an environmental training program for perc dry cleaning operations, was approved by OAL on May 4. *[14:1 CRLR 119–20]*

• The Board's September 1993 adoption of new sections 2259, 2283, and 2293.5, amendments to sections 2251.5, 2258, 2263, and 2267, and repeal of section 2298, Title 13 of the CCR, which enhance the effectiveness of its wintertime oxygenated gasoline program which started last year and proved successful in reducing carbon monoxide levels, has not yet been submitted to OAL for approval. *[13:4 CRLR 140; 13:2&3 CRLR 157]*

• ARB's August 1993 amendments to sections 70500 and 70600, Title 17 of the CCR, which identify six additional "transport couple" regions and add new areas to the list of areas subject to mitigation requirements under Health and Safety Code section 39610(b), have not yet been submitted to OAL for approval. *[13:4 CRLR 139–40]*

• The Board's July 1993 amendments to sections 90700–90705, Titles 17 and 26 of the CCR, which establish new fee schedules which APCDs and AQMDs must adopt to cover the state's cost of implementing the Air Toxics "Hot Spots" Information and Assessment Act of 1987, are pending at OAL at this writing. *[13:4 CRLR 139]*

• ARB's June 1993 amendments to sections 1956.8, 1965, and 2112, Title 13 of the CCR, which establish emissions standards and test procedures for transit buses pursuant to SB 135 (Boatwright) (Chapter 496, Statutes of 1991), were approved by OAL on May 12. *[13:4 CRLR 139]*

• ARB's June 1993 amendments to sections 93300–93354, Titles 17 and 26 of the CCR, which streamline the emission inventory reporting requirements and the biennial update process under the Air Toxics "Hot Spots" Information and Assessment Act of 1987, were approved by OAL on January 31. *[13:4 CRLR 138–39]*

• ARB's April 1993 adoption of new section 93001, Titles 17 and 26 of the CCR, which designates 189 federal hazardous air pollutants as toxic air contaminants, was approved by OAL on March 9. *[13:2&3 CRLR 156]*

LEGISLATION

SB 629 (Russell), AB 2018 (Katz), SB 198 (Kopp), and **SB 521 (Presley)** is a package of bills which finally resulted from the prolonged negotiations between California and EPA over the state's Smog Check Program. The compromise has been approved by EPA as in compliance with federal law which became effective in November 1993 (*see* MAJOR PROJECTS).

• ***SB 629 (Russell)***, as amended September 7, 1993, revises the Smog Check Program by requiring the Department of Consumer Affairs' (DCA) Bureau of Automotive Repair (BAR) to ensure reductions in emissions as required by federal law; revises the specification of vehicles subject to the program; requires Smog Check stations to test the fuel evaporative system and crankcase ventilation system and perform other specified tests; revises the membership and duties of BAR's Inspection and Maintenance Review Committee; requires BAR to establish a centralized computer database to perform specified functions relative to the transmission of data from Smog Check stations; revises provisions relating to the use of remote sensors to identify gross polluters to, among other things, provide for roadside audits, the issuance of citations, and the imposition and disposition of specified penalties; revises the repair cost limits under the program; requires BAR to implement prescribed measures, including the operation of test-only stations, if it is determined by June 30, 1995, that California will not meet federal emission reduction standards; and prohibits any person from operating or leaving standing on a highway any vehicle which is a gross polluter. In August 1993, EPA announced that SB 629 fails to satisfy federal law, and that its passage would result in immediate sanctions. The Governor signed SB 629 on January 27 (Chapter 1, Statutes of 1994), but continued the negotiations with EPA which eventually resulted in passage of the three bills below.

• ***SB 521 (Presley)***, as amended March 9, requires BAR and DCA, by January 1, 1995, to implement a program whereby 15% of the vehicles registered in urban areas which have not complied with federal ambient air quality standards ("enhanced areas") will be tested at test-only stations which are privately operated pur-

suant to DCA contract, as specified. The following types of vehicles in enhanced areas must be tested at test-only stations: gross polluters identified either by remote sensing devices (*see* AB 2018 below) or through a regular smog check, tampered vehicles, high-mileage fleet vehicles, a 2% random sample of vehicles selected by DMV, and other vehicles designated by BAR. If necessary to meet EPA requirements, this bill commits California to expanding the test-only network in enhanced areas in 1996. This bill was signed by the Governor on March 30 (Chapter 29, Statutes of 1994).

• ***AB 2018 (Katz)***, as amended March 9, primarily obligates DCA, BAR, and ARB to jointly undertake a pilot demonstration program with EPA, under specified oversight by BAR's Inspection and Maintenance Review Committee, to determine the effectiveness of alternative loaded mode dynamometers as compared to the equipment required under BAR's existing Smog Check Program; quantify emissions reductions from a remote sensing program designed to identify gross polluters beyond what is otherwise required by EPA; determine if gross polluters can be successfully identified and directed to test-only stations by targeting methods other than remote sensing; and determine the extent of expansion of the test-only network in enhanced areas (*see* SB 521 above) in order to meet EPA's emission reduction performance standards. This bill was signed by the Governor on March 30 (Chapter 27, Statutes of 1994).

• ***SB 198 (Kopp)***, as amended March 14, primarily contains the vehicle repair assistance and buy-back program components of the compromise. This bill permits new car buyers to skip Smog Check compliance upon the first biennial registration of their car if they make a donation at time of initial registration in an amount determined by DCA not to exceed $50; DMV is required to transmit those donations to the Treasurer for deposit in the High Polluter Repair or Removal Account; and DCA may use funds from the Account to establish and implement a program for the repair or replacement of high polluters, as defined. This program provides for payment to the owner of a high polluter for up to 80% of the total costs of repair, not to exceed $450, or for the market value of a high polluter being removed, not to exceed $800. DCA is authorized to increase these amount limits to reflect changes in the Consumer Price Index. This bill was signed by the Governor on March 30 (Chapter 28, Statutes of 1994).

AB 2852 (Escutia). Existing law establishes the Smog Check Program implemented by DCA, and authorizes ARB to certify new motor vehicles and new motor vehicle engines. As amended April 14, this bill would require motor vehicle manufacturers to provide certain emission control service information to ARB, and require ARB to provide the information to DCA; require DCA to ensure that Smog Check stations and technicians have access to the information, and to act as a clearinghouse; and make the provision of that information by those manufacturers a condition of certification of any new motor vehicle by ARB on and after January 1, 1995. *[A. Floor]*

SB 2050 (Presley), as amended May 18, would (among many other things) establish a new vehicle emission control program in nonattainment areas based on individual vehicles' emissions characteristics and the number of vehicle miles driven. Specifically, the bill would require the development of a vehicle smog index system under which each 1967 and newer vehicle would be assigned a smog index number by ARB, based upon its tailpipe and evaporative emissions; the vehicle's smog index number would be displayed on the vehicle itself through a new decal. Each APCD in an ozone nonattainment area would determine "target pollution miles" for each vehicle in the district; this calculation would determine the number of miles a vehicle could be driven in a given year without becoming subject to more restrictive Smog Check requirements. The allowable vehicle mileage in each individual air district then would be reduced by 5% annually until ozone air quality standards are achieved in that district.

Under the bill, Smog Check stations would be required to inspect vehicle odometers during regular biennial Smog Checks to determine whether the odometer is properly functioning, record the mileage, and issue a compliance certificate for odometers which are functional and do not indicate evidence of tampering. Individuals who exceed their allowable target pollution miles, as determined during a Smog Check, would be subject to annual (rather than biennial) Smog Checks; also, existing vehicle cost repair limits under the Smog Check Program would become inapplicable.

SB 2050 would also establish a high-emission vehicle retirement and replacement program administered by ARB and the local districts. High-emitting vehicles would be purchased at a premium of at least 50%, as specified, and then resold and registered wherever practicable, but not in California. When not resold, they could be scrapped. ARB could used the funds generated from the resale of high-emitting vehicles for specified purposes. *[S. Appr]*

SB 1336 (Leonard). Existing law authorizes APCDs and AQMDs to establish programs using remote sensors or other methods to identify gross polluters and other high-emitting vehicles and to provide financial incentives to encourage the repair or scrapping of those vehicles as a method of reducing mobile source emissions. The districts are authorized to establish procedures to generate marketable emission reduction credits from the program. As amended March 23, this bill would require the districts to approve, within 90 days from the date of submittal of a complete application from an employer, any employer-established program that is designed to produce mobile source emission reduction credits by the identifying gross polluters and other high-emitting vehicles whose emissions could be reduced by repair. The bill would require the districts, using ARB guidelines, to establish procedures to generate marketable credits from those employer-established programs. *[A. NatRes]*

AB 3290 (Cannella) is a direct response to the problems which resulted from the October 1, 1993 implementation of ARB's regulations which restricted the permissible sulfur and aromatic hydrocarbon content of diesel motor fuel sold in California, and the trucking industry's claim that the new fuel is causing mechanical damage to diesel engines. *[14:1 CRLR 119]* As amended May 10, this bill would require any revenues received by ARB from fines or penalties levied against manufacturers who violate standards for the content of diesel fuel adopted by ARB, which apply on and after October 1, 1993, to be deposited in the Diesel Fuel Trust Fund, which the bill would create. The bill would authorize the expenditure of the money in the trust fund only upon appropriation by the legislature to reimburse owners of diesel fuel-powered vehicles and diesel fuel-powered equipment for damage to the diesel fuel engines associated with the vehicles or equipment caused by the diesel fuel required or authorized by ARB.

AB 3290 would also prohibit ARB, for a specified period, from enforcing its new regulations until the fuel is tested by an independent testing laboratory designated jointly by ARB, affected oil refiners, the Diesel Users Coalition, BAR, and the California Department of Food and Agriculture, and ARB finds that the tests show that the fuel will reduce emissions economically and effectively without disabling or damaging existing engines. *[A. Trans]*

AB 3264 (Campbell). Existing law imposes criminal and civil penalties on persons who violate nonvehicular air pollution control laws, or any rule, regulation, permit, or order of ARB or of an APCD or AQMD pertaining to emission regulations or limitations. As amended April 21, this bill would impose additional fines or civil penalties upon the discharge of specified quantities of any acutely hazardous material that causes actual injury to the health or safety of the public. *[A. W&M]*

AB 3817 (Sher), as amended April 25, would authorize an APCD or AQMD, with ARB's approval, to adopt a rule or regulation that EPA has proposed or is required to adopt by a court decision, but which has not been adopted by EPA, the implementation of which would result in the receipt of revenues in excess of $1 million by the federal government. The bill would require any revenues collected by a district as a result of the implementation of that district rule or regulation, less reasonable administrative costs, to be expended by the district to offset the cost of other district rules and regulations. This bill is aimed at redirecting monies that would otherwise go to the federal government to the air districts to offset the costs of other district regulations. *[A. Floor]*

AB 717 (Ferguson), as amended April 17, would authorize an APCD or AQMD to establish a program to increase public awareness of the existence of new products and services that may assist in the compliance by regulated persons with district regulations, by issuing a public notice identifying the product or service and stating that it may have benefits relative to assisting regulated persons in complying with district regulations and should be considered for use by the regulated community. Upon the application of a person to have a product or service reviewed and a letter of authenticity issued by a district, the bill would authorize the district to charge a fee to the person, as specified. *[S. GO]*

AB 3215 (Pringle). Under existing law, APCDs and AQMDs may establish a permit system for stationary sources; existing law requires ARB to adopt and implement a program to assist districts to improve efficiencies in the issuance of permits. As amended May 10, this bill would require ARB to include in that program a process to precertify simple, commonly used equipment and processes as being in compliance with air quality rules and regulations, to expedite permitting of air pollution sources. The bill would also require Cal-EPA to evaluate the feasibility of expanding the precertification program. *[A. W&M]*

AB 3242 (Aguiar). Existing law requires APCDs and AQMDs with moderate, serious, severe, or extreme air pollution to include specified measures in an attainment plan to achieve state ambient air quality standards, including transportation control measures (TCMs) to substantially reduce the rate of increase in passenger vehicle trips and miles traveled per trip. Existing law requires districts with serious, severe, or extreme air pollution, in implementing those provisions, to endeavor to provide employers and businesses with the opportunity to develop and demonstrate alternative strategies to achieve equivalent emission reductions. As amended May 17, this bill would require ARB to develop and periodically update guidelines to be used by districts to establish equivalent emission reductions reduction targets for those alternative strategies. *[A. W&M]*

SB 1403 (Lewis), as amended May 5, would prohibit SCAQMD from requiring any local agency to implement any TCM that the South Coast District itself is not authorized to implement. The bill would also prohibit SCAQMD from regulating the parking of motor vehicles or requiring any employer to charge its employees for parking, except as specified. *[A. NatRes]*

SB 1134 (Russell), as amended April 12, would specify the TCMs which SCAQMD or an agency in the South Coast District may or may not require an employer to provide; require employers to give employees notice of proposed transportation control plans and the opportunity to comment prior to submittal of the plan to the agency or SCAQMD; and require the agencies to modify existing programs, and SCAQMD to modify existing regulations, by June 30, 1995, to conform to its provisions. *[A. NatRes]*

AB 2581 (Pringle), as amended May 12, would prohibit a district, regional, or local agency from imposing specified TCMs upon an "event center" (such as a stadium, arena, theme part, or auditorium) which achieves an average vehicle ridership (AVR) greater than 2.2 persons; but would allow these agencies to implement alternative strategies, such as traffic management, parking management and vehicle flow within areas controlled by the event center, or reductions in vehicle idling. *[A. W&M]*

AB 2910 (Baca), as amended April 28, would require the state to promote the development and use of alternative fuels and alternative fueled vehicles, as defined, and to purchase alternative fueled vehicles. The bill would, in that connection, require the state to adhere to the goal of purchasing and using advanced modes of transportation. The bill would declare the intent of the legislature in enacting these provisions. *[A. W&M]*

AB 2913 (Sher), as amended May 9, would repeal the Atmospheric Acidity Protection Act of 1988 and enact the Particulate Matter Research Act of 1994, which would require ARB to implement a program for the control of PM-10, as specified. The bill would establish an advisory committee to make recommendations to ARB; authorize ARB to require APCDs and AQMDs to impose additional variance and permit fees on nonvehicular sources to fund the activities under the Act; and require ARB to report annually to the Governor and the legislature on the program. The bill would repeal the act on January 1, 1999, unless a later enacted statute deletes or extends that date. *[A. W&M]*

AB 2680 (Bowen). Existing law authorizes any person to petition the hearing board of an APCD or AQMD for a variance from the rules, regulations, or orders of the district. As amended April 13, this bill would prescribe criteria and conditions for the granting of product variances from district rules and regulations to persons who manufacture products. *[A. Floor]*

AB 2751 (Honeycutt), as amended March 22, would require ARB, by December 31, 1995, to prepare and submit a report to the Governor and the legislature on the requirements in state law for the preparation and submittal of APCD and AQMD attainment plans to achieve state ambient air quality standards and similar requirements established under federal law for the achievement of federal standards. The bill would require the report to identify inconsistencies in state and federal deadlines for the preparation and submittal of plans, any duplication or overlap in the state and federal planning processes, and related data collection and inventory requirements, and to make recommendations as specified. *[S. Appr]*

AB 2757 (Woodruff). Existing law requires ARB to identify air basins, or subregions of air basins, in which transported air pollutants from upwind areas cause or contribute to a violation of the state ambient air quality standard for ozone and to identify the district of origin of the transported air pollutants. ARB is required to assess, in cooperation with APCDs and AQMDs, the relative contribution of upwind emissions to downwind ozone ambient pollutant levels, and to establish mitigation requirements commensurate with the level of contribution. *[13:4 CRLR 139]* As amended April 12, this bill would require ARB, in assessing that relative contribution, to determine whether

the contribution level is overwhelming, significant, inconsequential, or some combination thereof. *[S. GO]*

SB 1416 (Rogers). Existing law provides that increases in stationary source air pollution emissions in an APCD or AQMD may be offset by reductions credited to a stationary source located in another district in the same air basin. As amended April 18, this bill would allow those offsets as to stationary sources in different air basins if emissions are transported from an upwind to a downwind district, as specified. The bill would further require that any offset credited pursuant to those provisions be approved by a resolution adopted by the governing board of each district, as specified. *[A. NatRes]*

SB 1883 (Campbell). Existing law, until January 1, 1995, exempts from sales and use taxes the incremental costs of new LEVs. As amended May 18, this bill would extend that exemption until January 1, 1998. *[S. Appr]*

SB 1455 (Rosenthal), as introduced February 10, would require the state to purchase ZEVs and ULEVs. The bill would require the Department of General Services to conduct a procurement solicitation for those vehicles that includes the participation of local agencies, federal agencies, universities and colleges, and the private sector. *[S. Appr]*

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 121–24:

AB 1853 (Polanco). Existing law imposes various requirements on APCDs and AQMDs relative to the adoption of an annual budget by the districts, but does not require any of those districts to submit its budget to the legislature. Existing law requires ARB to prepare and submit to the Governor and the legislature a report, contemporaneous with the annual state budget, on the sources of funding for each district with an annual budget that exceeds $1 million, which report is required to include the budget of the district. As amended March 9, this bill would, until January 1, 1998, establish a Joint Legislative Committee on Air Quality to hold oversight hearings on the budget and operations of districts with an annual budget of $50 million or more, and on the operations of ARB and—as it relates to air quality—Cal-EPA. The bill would, until that date, require each of those districts to submit its proposed budget to ARB and to Cal-EPA; require ARB to review the budget and submit the budget, together with ARB's comments and recommendations, to the Joint Committee; and submit the comments and recommendations to the Governor and Cal-EPA.

The bill would authorize the districts to incorporate the formal recommendations of the Joint Committee into the proposed district budget which is presented at a public workshop or hearing. In the case of a Joint Committee recommendation for a budgetary reduction, the district would be authorized to take any action, within its statutory authority, to effect the reduction.

The bill would also limit any increase in the expenditures of the district and in the fees collected from stationary sources of emissions to increases in the California consumer price index, except pursuant to state or federal mandates, as specified. *[S. Appr]*

SB 381 (Hayden), as amended January 25, would require ARB to require the purchase of LEVs and ZEVs by state and local governmental agencies, and authorize those agencies to form a consortium to purchase electric vehicles. The bill would require ARB to also require the purchase of specified percentages of ZEVs by fleet operators, and exempt from that requirement certain authorized emergency vehicles.

Existing law authorizes APCDs and AQMDs to impose fees of $1, $2, or $4, as specified, on motor vehicles for purposes of reducing air pollution from motor vehicles. This bill would exempt ZEVs vehicles from those fees imposed by the districts.

Existing law exempts from sales and use taxes the incremental cost of the sale or use of a LEV, and the gross receipts from the sale or use of a LEV low-emission retrofit device, as specified, until January 1, 1995. This bill would extend that exemption to January 1, 2001.

The bill would also impose, commencing July 1, 1995, an additional $1 fee on the registration or renewal of registration of motor vehicles, other than ZEVs, to be collected by DMV and deposited in the Zero-Emission Vehicle Sales Tax Exemption Fund, which the bill would create, and thereafter transferred periodically to the general fund and allocated to cities, counties, and districts as reimbursement for lost revenues, as specified, until DMV receives a specified notification from the Controller. *[S. Floor]*

SB 455 (Presley). Existing law requires agencies responsible for the preparation of regional transportation improvement programs to develop and biennially update a congestion management program for every county that includes an urbanized area and to monitor implementation of the program. Existing law specifies the elements required to be contained in a congestion management program, including a trip reduction and travel demand element. As amended September 7, 1993, this bill would prohibit that element from requiring an employer to implement a trip reduction plan if the employer is already required to implement a trip reduction plan by an APCD or AQMD pursuant to other provisions.

Existing law authorizes APCDs and AQMDs to adopt and implement regulations to reduce or mitigate emissions from indirect and areawide sources of air pollution. This bill would limit the requirements that the districts may impose by regulation on indirect sources for that purpose to requirements that the districts determine are based on the extent of the contribution of the indirect sources to air pollution by generating vehicle trips that would not otherwise occur.

The bill would allow a district to adopt, implement, enforce, or include in any plan to attain state ambient air quality standards, regulations or transportation control measures to reduce vehicle trips or vehicle miles traveled if the district determines that the regulation or measure is not duplicative, as specified. The bill would allow a district to delegate to any local agency the responsibility to administer those district regulations, except as specified.

Under existing law, the provisions authorizing a district to adopt and implement regulations to reduce or mitigate emissions from indirect and areawide sources of air pollution and to encourage or require the use of measures to reduce the number or length of vehicle trips do not constitute an infringement on the authority of counties and cities to plan or control land use. This bill would also state that those provisions, as modified by the bill, do not constitute an infringement of the authority of counties and cities to condition land use, or on the ability of a public agency to impose trip reduction measures pursuant to a voter-mandated growth management program.

Existing law requires the SCAQMD Board to adopt a plan to achieve and maintain the state and federal ambient air quality standards for the South Coast Air Basin. Existing law imposes on the Southern California Association of Governments the responsibility for preparing and approving the portions of the plan relating to, among other things, transportation programs, measures, and strategies. This bill would require the governing board of both the Association and SCAQMD, prior to the inclusion in the plan of a transportation control measure, to make a specified finding.

Existing law does not require the budget of any air pollution control district or air quality management district to be submitted to Cal-EPA Secretary for inclusion

in Cal-EPA's budget. This bill would require each district having a budget in excess of $50 million (*e.g.*, SCAQMD) to submit its operating budget to the Secretary for inclusion in the budget of the Agency in the annual budget bill. The bill would prohibit any such district from increasing specified fees except pursuant to specific statutory authority. The bill would require any such district to transmit specified revenues to the state for deposit in the air quality operation fund, which the bill would create, and would require the legislature to appropriate, in the budget act, the money in the air quality operation fund to those districts for district operations. The bill would make those provisions inoperative on July 1, 1999, and would repeal the provisions as of January 1, 2000.

Existing law authorizes local authorities, under prescribed circumstances, to determine and declare prima facie speed limits different than the generally applicable speed limits. This bill would authorize, until January 1, 1997, a county or city that is wholly or partly within the Kern County Air Pollution Control District or SCAQMD to determine and declare a prima facie speed limit lower than that which the county or city is otherwise permitted to establish, for any unpaved road, if necessary to achieve or maintain state or federal ambient air quality standards for particulate matter.

Existing law authorizes the Los Angeles Metropolitan Transportation Authority to conduct a study of the congestion management program with the objective of recommending modifications that would reduce or eliminate any inconsistency with the requirements of specified state and federal air pollution control laws. This bill would make a statement of legislative intent with regard to that study and the avoidance of overlapping and duplicative requirements. *[A. NatRes]*

SB 668 (Hart), as amended June 9, 1993, would enact the Zero-Emission Vehicle Development Incentive Program, to be administered by ARB. The bill would, until January 1, 2001, exempt ZEVs from state (but not local) sales and use taxes, and establish a tax credit under the Personal Income Tax Law and the Bank and Corporation Tax Law for the development of ZEV technologies and industries. The bill would impose a $1 motor vehicle registration fee, beginning on January 1, 1995 and terminating on December 31, 2000, to be deposited in the Zero-Emission Vehicle Development Incentive Fund, which the bill would create, to fund the exemption and the credit. *[A. Rev&Tax]*

SB 1113 (Morgan). Existing law establishes the Bay Area Air Quality Management District and the San Joaquin Valley Air Pollution Control District and imposes various duties on the districts regarding the control of air pollution. As amended August 17, 1993, this bill would, except as specified, prohibit any emission standard, rule, regulation, or other requirement from taking effect or being implemented prior to July 1, 1997, in those 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, as described, to reduce NOx emissions. The bill would make related legislative findings and declarations. *[A. NatRes]*

The following bills died in committee: **SB 1195 (Russell)**, which purported to bring California's Smog Check Program into compliance with EPA's new standards; **AB 1119 (Ferguson)**, which would have designated Smog Check station mechanics as technicians, designated the existing Smog Check program as the basic program, and required an enhanced program of testing and retesting at test-only stations; **SB 1070 (Presley)**, which would have required DMV to collect a specified registration fee on motor vehicles to be used by ARB for specified programs related to reducing emissions, including retrofitting, sale, or disposal of high-emission vehicles, and reduction in their use; **SB 801 (Lewis)**, which would have renamed SCAQMD's Office of Public Advisor and Small Business Assistance as the Office of Small Business Assistance, and required every multi-county APCD and AQMD to establish an Office of Public Advisor, appointed by the Governor and independent of the district's executive officer, with specified powers and duties; **SB 334 (Rosenthal)**, which would have, until January 1, 2002, exempted from state sales and use taxes the gross receipts not exceeding $1,500 from the sale, storage, use, or other consumption in this state of ZEVs; and **SB 532 (Hayden)**, which would have required the Department of Health Services to determine if any adoption, amendment, revision, or extension of specified recommendations adequately protects human health, including the health of infants, children, elderly, and other population categories and, if not, to take more stringent action.

LITIGATION

In ***Hayden v. Browner, et al.***, No. CV-S-93-1977-EJG-GGH (U.S.D.C., E.D. Cal.) (filed Dec. 17, 1993), state Senator Tom Hayden filed suit against EPA under 42 U.S.C. section 7604(a)(2), claiming that EPA breached its nondiscretionary duty to sanction California for its failure to revise its Smog Check Program to comply with federal requirements by November 15, 1993. *[14:1 CRLR 121, 124]* On January 7, EPA commenced the process to sanction California by withholding $800 million in federal highway funds, and scheduled a hearing on the matter for March 3; however, EPA relented after the January 17 Northridge earthquake damaged many Los Angeles freeways and the need for the federal funds became undeniable. After the state finally enacted Smog Check Program legislation which is acceptable to the federal government on March 30 (*see* MAJOR PROJECTS and LEGISLATION), Hayden withdrew the lawsuit, but is pursuing his court costs and attorneys' fees at this writing.

RECENT MEETINGS

On April 19, ARB staff held the seventh in a series of workshops to receive public comments on its development of a market-based "alternative control plan" (ACP) for use with ARB's existing statewide consumer product regulations. ARB has adopted a series of regulations to reduce the emissions of volatile organic compounds (VOCs) from the use of consumer products; these regulations employ traditional command-and-control type VOC limits on 27 product categories. To help maximize emission reductions, staff is developing a market-based ACP regulation for use with the consumer product regulations. The ACP regulation would allow manufacturers of consumer products to voluntarily enter into an emissions averaging program called an alternative control plan. ARB would enter into ACPs with eligible manufacturers on a product-by-product basis. Products designated as ACP products would be assigned a cumulative maximum level of permissible emissions during a specified reporting period; manufacturers who reduce product emissions below the set ACP limit could sell emission credits to manufacturers whose products exceed the ACP limit. *[14:1 CRLR 125; 12:2&3 CRLR 197]* At this writing, ARB staff hopes to publish the proposed regulation for a 45-day comment period and schedule a hearing on it before ARB in July 1994.

FUTURE MEETINGS

June 9 in Sacramento.
July 28 in Sacramento.
September 22–23 (location undecided).
October 27–28 (location undecided).
November 17–18 (location undecided).
December 8–9 (location undecided).