capital standards for savings associations"; although three specific exceptions to this general rule are enumerated, no exception based on prior FHLB agreements is provided.

The court declined to consider Far West's contention that its rights under the agreement constitute property rights and if FIRREA is interpreted as abrogating those rights, Far West's property has been taken without just compensation. The court responded that any taking that may have occurred was authorized by Congress and a suit for compensation would be within the jurisdiction of the Court of Claims. The court vacated the district court's judgment on this issue so that it might be considered by the Court of Claims if a claim for compensation is filed.

On December 4, a Los Angeles County Superior Court jury convicted financier Charles H. Keating on 17 of 18 state securities fraud counts stemming from the failure of Lincoln Savings and Loan. In ***People v. Keating***, the jury found Keating guilty of failing to tell bondholders and new bond buyers that regulators had indicated the institution could be seriously overextended. Following a nine-week trial, the jury spent eleven days deliberating and reviewing exhibits and testimony. Keating faces a maximum penalty of ten years in prison and $250,000 in fines; sentencing was scheduled for February 7. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 144; Vol. 11, No. 2 (Spring 1991) pp. 129–30; and Vol. 11, No. 1 (Winter 1991) p. 105 for extensive background information.)

On December 12, federal authorities presented Keating and four co-defendants with a 77-count indictment charging them with bank and securities fraud, conspiracy, misapplication of funds, and transporting stolen property. If convicted of these racketeering charges, Keating could be sentenced to up to 510 years in prison. In addition to these charges, Keating is also the defendant in a number of pending civil trials.

DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

Executive Director: Steven Jablonsky (916) 322-3640

California's Occupational Safety and Health Administration (Cal- OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers California's programs ensuring the safety and health of California workers.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140–49. It is approved and monitored by, and receives some funding from, the federal OSHA. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety orders which affect California employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of two members from management, two from labor, one from the field of occupational health, one from occupational safety, and one from the general public. OSB is currently functioning with two vacancies—an occupational safety representative and a labor member. Additionally, OSB Chair Mary-Lou Smith's term of office has expired, but she will continue to serve on the Board until Governor Wilson appoints her replacement.

The duty to investigate and enforce the safety and health orders rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil and criminal penalties for serious, willful, and repeated violations. In addition to making routine investigations, DOSH is required by law to investigate employee complaints and any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.

The Cal-OSHA Consultation Service provides on-site health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

The Appeals Board adjudicates disputes arising out of the enforcement of Cal-OSHA's standards.

MAJOR PROJECTS:

Standards for Use of Plastic Pipe in Compressed Air Systems. During a November 21 public hearing, OSB heard testimony on proposed revisions to sections 453 and 462, Title 8 of the CCR (Unfired Pressure Vessel Safety Orders), which will establish minimum safety standards pertaining to the design and performance of plastic pipe used in compressed air service. Currently, section 462 allows the use of plastic air piping in compressed air systems only if five specific requirements are met. One of the requirements is that the pipe meet American Society for Testing and Materials (ASTM) Designation No. D2513-86a; however, this specification for polyvinyl chloride (PVC) plastic pipe was written specifically for pipe used in the distribution of natural gas or petroleum fuels, and not for pipe used in compressed air systems. According to OSB, although plastic pipe has been known to explode in compressed air service, it can be used as a safe conveyance for compressed air provided specific measures are taken to ensure protection from physical and environmental damage. Since 1974, OSB has received numerous applications for permanent variances to permit the use of PVC pipe for compressed air service. The proposed amendments to sections 453 and 462 would moot many of these applications by establishing standards for the safe and effective use of plastic pipe in compressed air service.

Proposed amendments to section 453 would define the terms "brittle failure," "ductile failure," and "ductile plastic materials," to clearly describe the types of failures of plastic pipe; and "standard dimension ratios," which pertains to the manufacture and testing of plastic pipe to be used in compressed air service.

Proposed amendments to section 462(m)(3) would allow the use of plastic pipe above and below ground to carry compressed air, subject to compliance with a number of requirements; require the plastic pipe to be manufactured only from ductile plastic materials which do not allow shrapnel-like pieces to fly in all directions in the event of explosion; require employers to ensure that plastic pipe and fittings used in compressed air service are specifically recommended for such use by the manufacturer; limit the pressure and temperature of the plastic compressed air system to a range at which plastic is usually a stable material; require the employer to design, install, maintain, and operate plastic piping systems in accordance with the manufacturer's specifications and instructions to prevent misuse; require that plastic pipe used to convey compressed air be permanently marked at least every five feet with six items of information so the user can be sure the correct plastic pipe is being used in compressed air service; require all plastic valves and fittings to be marked with four items of information that will allow the user to identify the valves and fittings as compatible parts of a compressed air system; require the plastic valves and fittings used in a compressed air system to be of the same manufacturer and materials as the pipe; require the employer/installer to ensure the joining compound is formulated to be used with the pipe and fittings to be installed; require the employer to supply, upon request from DOSH, certification from the manufacturer that the pipe meets or exceeds all test requirements listed in proposed Appendix C of the Unfired Pressure Vessel Safety Orders; and require the employer to design any compressed air piping system for the full working pressure of the system, to ensure the system will sustain all anticipated working pressures to preclude unintended system failures.

Proposed amendments to section 462(m)(4) would allow plastic pipe and fittings that do not meet the requirements of section 462(m)(3) to be used provided all requirements of section 462(m)(4) are met; limit the plastic pipe pressure to 150 pounds per square inch, temperature to 120 degrees Fahrenheit, size up to two inches, and wall thickness to schedule 40 or heavier; require the piping to be protected from mechanical damage along its entire length by either a location that would preclude employee injury if the piping system failed (exploded), or actual guarding; and require the piping system to be adequately supported and secured to prevent pipe sagging and other sources of potential pipe failure.

The final proposed amendment would repeal existing Appendix C, Chapter 3.2, Group 2, Title 8, and replace it with a new Appendix C, establishing acceptance tests for plastic piping, five manufacturing performance tests that plastic pipe must pass to be accepted for conveyance of compressed air. The effect of these tests would be to ensure that the end user will have a product that meets or exceeds the minimum requirements of this regulation. The first three tests measure impact resistance, the fourth determines minimum burst pressure, and the fifth elevates stress levels to ascertain pipe life span.

At the hearing, DOSH representative John Lemire testified that at least two manufacturers of plastic pipe have indicated they are interested in supplying materials as called for in the proposed regulations. According to Lemire, Duraplus Thermoplastic Piping's product is available and would meet the proposed specifications for compressed air piping. Richard Birch of Chemtrol stated that his company manufactures plastic piping products for compressed air systems and indicated that at least two manufacturers would be able to meet the specifications of the proposed regulations.

At this writing, the proposed regulatory action awaits adoption by OSB and review and approval by the Office of Administrative Law (OAL).

Elevator Safety Orders and Wheelchair Access Lifts. At OSB's October and November meetings, the Board accepted comments on its proposal to amend section 3000, Title 8, and section 7-3000, Title 24 of the CCR. Existing elevator regulations explicitly do not apply to wheelchair lifts with a rise of less than five feet designed and installed for the exclusive use of the handicapped. Among other things, the proposed regulatory changes would expand the rise limit to not more than twelve feet for vertical wheelchair lifts. According to OSB, the revision would permit the public to install vertical wheelchair lifts with rises up to twelve feet, inclined wheelchair lifts, and inclined stairway chairlifts as required by local entities for the purpose of providing barrier-free access for the physically disabled without applying to OSB for a permanent variance.

At OSB's October meeting, Marie McDonald of McDonald Elevator Company stated that she currently operates an inspection service that deals with wheelchair lifts, and opined that if the exemption were increased from five to twelve feet, many lifts would receive no inspections. She also noted that the recently-enacted federal Americans with Disabilities Act (ADA) will result in an increased number of lifts in use, further compounding the inspection problem. For these reasons, McDonald stated that the elevator industry is opposed to the proposed amendment. Kathy Uhl of Independent Living Resource Center echoed McDonald's concerns, remarking that at the same time ADA will increase the number of wheelchair lifts, the Board may substantially cut back on inspections.

On November 21, OSB held a public hearing on the proposed amendments to sections 3000 and 7-3000(c). At the hearing, Artis Norton of Access Elevator expressed concern that chairlifts would not be adequately regulated under the proposed regulations, and stated that it is unreasonable to expect building inspectors to have the knowledge and experience necessary to judge the safety of wheelchair lifts. Norton added that by expanding the number of lifts that would be exempt from safety regulations, the state is shirking its duties.

Raymond Zanella from the Community Service Center for the Disabled, a nonprofit social service organization in San Diego, stated that he is opposed to the proposed revisions. Zanella told the Board that he had been on an apparently unsafe wheelchair lift with a rise of less than five feet. Zanella noted that if the lift had failed, he possibly could have handled a fall of a few feet, but that he would not want to be faced with a ten- or twelve-foot fall. Zanella argued that the state is proposing to deregulate a service that protected his life and safety and that, as a taxpayer, he should be afforded adequate protection to access public buildings and facilities safely.

At this writing, the proposed amendments await adoption by OSB and review and approval by OAL.

Cranes and Other Hoisting Equipment. On December 19, OSB held a public hearing on proposed amendments to sections 4884, 4885, 4924, 4929, 4965, and 4966, and the adoption of new section 5029, Title 8 of the CCR, regarding cranes and other hoisting equipment. According to OSB, existing regulations do not address the design, construction, installation, and safe use of newly-developed articulating boom cranes. In addition, DOSH believes that existing regulations are inadequate regarding luffing boom tower cranes, the type involved in the tower crane collapse in San Francisco on November

28, 1989. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 151 for background information.)

Proposed amendments to section 4884(b) would require that articulating boom cranes manufactured and placed in service after July 31, 1992, be labeled as complying with either the current national consensus standard, ASME/ANSI B30.22-1987, Articulating Boom Cranes, or with the provisions of section 3206 of the General Industry Safety Orders.

Section 4885 contains definitions that apply specifically to cranes and other hoisting equipment. OSB proposes to amend section 4885 to add the definition for "articulating boom crane."

Sections 4924(c)–(d) require load safety devices (boom angle or boom radius indicators) to be installed on cranes having a maximum rated capacity exceeding 15 tons or having a boom length exceeding 60 feet. Proposed amendments to section 4924(a) would create an exception for articulating boom cranes; according to OSB, such an exception would be consistent with the national consensus standards.

Section 4929 requires a load drum rotation indicator (device) to be provided on all cranes except clamshell cranes or draglines which are used exclusively in excavation. OSB proposes to add the word "approved" to the existing regulation for clarification and to assist owners, users, and crane certifiers in identifying an acceptable device which could be installed and tested. OSB is also proposing to adopt part of an existing national consensus standard that has historically been used by DOSH to identify and approve load drum rotation indicators.

Proposed amendments to section 4965(i) would increase the inspection, maintenance, and recordkeeping requirements for specified tower crane owners and users who employ luffing boom tower cranes on construction projects in accordance with ASME B30.3-1190. Proposed new subsection (j) would require annual nondestructive testing (NDT) of load hooks and structural welds of tower cranes; proposed new subsection (k)(1) would specify testing intervals for cranes installed and operating under jobsite conditions; and proposed new subsection (k)(2) would require that test records and test procedures be maintained by the owner of the crane and available to DOSH upon request.

Section 4966 permits the erection and dismantling of tower cranes as recommended by a certified agent and under the supervision of a qualified person. Among other things, OSB's amendments would designate the certified agent as the sole responsible person in charge of the erection, climbing, and dismantling of the tower crane. The revisions would also require the crane owner to obtain the services of a crane certifier for an operation which is presently administered by a qualified person; the certified agent would assume the full responsibility for the safety of the crane during these operations.

Among other things, proposed new section 5029 would establish requirements for the design of test weights; require test weight lifting attachments to have a safety factor of four; and require all test weights, including attachment points and internal reinforcements, to be designed or approved by an engineer currently registered in California.

At the December 19 public hearing, many of the comments received focused on the annual NDT requirement; NDT techniques avoid invasive examination and testing techniques, to minimize costs and extend the lifespan of expensive crane equipment. Peter Jehle of American Pecco Corporation asked why tower cranes, including boom or articulating tower cranes, are being singled out for the annual NDT requirement, when other conventional crane types are excluded; Jehle stated that this appears discriminatory against the tower crane industry. Jehle also stated that conventional cranes have a greater probability of being overloaded, with failure and injury to people, than tower cranes. Ben Hoiland of the Crane Certification Association of America responded that tower cranes are singled out as opposed to other types of cranes because they are inherently in a position to cause more damage than other types of cranes, as tower cranes are frequently operated in downtown metropolitan areas.

At this writing, the proposed regulatory amendments await adoption by OSB and review and approval by OAL.

Implementation of Proposition 65. At its November 21 meeting, OSB adopted proposed amendments to section 5194, Title 8 of the CCR, Cal-OSHA's revised "hazard communication" regulation as mandated by Proposition 65, the Safe Drinking Water and Toxics Enforcement Act of 1986; the Office of Administrative Law (OAL) approved the amendments on December 17. The amendments were previously adopted by OSB and approved by OAL on an emergency basis on September 30. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 145; Vol. 11, No. 3 (Summer 1991) pp. 139–40; and Vol. 11, No. 1 (Winter 1991) p. 109 for background information.)

Emergency Fee Increases for Boiler and Tank Permit Inspections. On November 22, OAL approved DOSH's emergency adoption of amendments to several sections in Title 8 of the CCR relating to its inspection fee schedule for boiler and tank permits. DOSH amended section 344(a) to increase the fee for inspections from $85 to $105 per hour to enable it to recover its costs of performing these inspections. The Division also amended section 344(c) to increase the per diem charge from $82 to $84 for overnight expenses; this increase reflects the current per diem rate allowable under state administrative rules regarding per diem charges.

DOSH also amended section 344.1, increasing its fee for field permit inspections of air tanks, liquefied petroleum gas vessels, and boilers from $85 to $105 per hour. Section 344.1(a) was added to authorize DOSH to recoup travel time associated with providing these inspection services. The Division also amended section 344.2 to clarify its application to all permits issued by DOSH pursuant to Labor Code section 7721, including resale inspections and permits.

The Division was scheduled to hold a public hearing on February 19 on its permanent adoption of these regulatory changes.

Update on Other Proposed Regulatory Changes. The following is a status update on other proposed rulemaking packages reported in detail in previous issues of the *Reporter*:

-On October 24, OSB conducted a public hearing on its proposed amendments to section 1713, Title 8 of the CCR, which addresses safeguards to be used during the erection of framing and concrete forms. The proposed amendments would require employers to comply with section 1713 during all phases of operations, including dismantling or removal of the framing and concrete forms. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 146 for background information.) At the hearing, no public testimony was offered. At its December 19 business meeting, the Board adopted the proposed revisions to section 1713. OSB submitted the rulemaking file on this proposal to OAL in late December and is awaiting OAL's response at this writing.

-On October 24, OSB also conducted a public hearing on its proposed adoption of new section 5189, Title 8 of the CCR, which would establish process safety management standards for refineries, chemical plants, and other speci-

fied manufacturing facilities. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 146–47 for background information.) At the hearing, OSB heard extensive testimony from numerous petroleum industry representatives who commented on, among other things, the procedure for disposing of explosives; definitions of the terms "flammable," "boiling point," "major accident," and "remote facility"; retaining trade secrets while providing product safety information; and the manner in which incident investigation reports are to be used. At this writing, the new section awaits adoption by OSB and review and approval by OAL.

-On November 21, OSB adopted proposed amendments to section 3314, Title 8 of the CCR (Cleaning, Repairing, Servicing and Adjusting Prime Movers, Machinery and Equipment). The amendments incorporate federal regulations contained in 29 C.F.R. Part 1910.147, which specify requirements for the maintenance of machines or equipment in which the unexpected energization, start-up, or release of stored energy could cause injury to employees. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 146 for background information.) At this writing, the proposed amendments await review and approval by OAL.

-On November 21, OSB also adopted amendments to sections 1504 and 1722.1, Title 8 of the CCR, regarding the use of lift-slab construction. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 146 for background information.) At this writing, the proposed amendments await review and approval by OAL.

-On December 19, OSB adopted amendments to section 1529, Title 8 of the CCR, which establishes minimum safety and health standards for exposure to asbestos in construction. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 146 for background information.) OSB submitted the rulemaking file on this proposal to OAL in late December and is awaiting OAL's response at this writing.

-OSB is still reviewing testimony received at a September 26 public hearing on proposed amendments to section 5155, Title 8 of the CCR, which establishes requirements for controlling employee exposure to airborne contaminants; the Board has not yet scheduled a date for the consideration of adoption of the amendments. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 146 for background information.)

-On October 28, OAL approved OSB's proposed revisions to sections 3637 and 3641, Article 24, Title 8 of the CCR (Elevating Work Platforms and Aerial Devices), establishing guidelines for the design, manufacture, and use of orchard man-lifts, aerial devices designed to elevate and position workers alongside trees to facilitate harvesting and pruning. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 145–46 for background information.)

-At its November 21 meeting, OSB adopted proposed amendments to sections 3364 (sanitary facilities) and 3366 (washing facilities), Article 9, Title 8 of the CCR, and proposed new section 3457, Article 13, Title 8 of the CCR. The proposed regulatory revisions regulate the use, maintenance, and availability of sanitary facilities (including drinking water, toilet, and handwashing facilities) in all agricultural operations, including non-permanent places of employment. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 145 for background information.) OAL approved the rulemaking package on December 23.

-At its December 19 meeting, OSB adopted proposed revisions to section 1716.1 (originally misnumbered as section 1721), Title 8 of the CCR (Construction Safety Orders), addressing hazards involved with the installation of structural wood framing. Minor modifications, which included correcting the section's number, necessitated an additional fifteen-day public comment period. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 148 and Vol. 11, No. 3 (Summer 1991) p. 141 for background information.) OSB submitted the rulemaking package to OAL on December 20 and, at this writing, is awaiting OAL's response.

-On October 22, DOSH conducted a public hearing on its proposal to adopt new Articles 1.5, 11, 12, and 13, and amend sections 341.1 and 341.3, Title 8 of the CCR. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 147 for background information.) At this writing, it is unclear whether DOSH will pursue this regulatory package in light of recent OSB rulemaking which addresses many of the same topics involved in the DOSH package.

Regulation of Bungee Jumping. Following a fatal October 27 bungee jump, DOSH began inspecting the bungee jumping industry. Throughout California, an estimated 40 commercial bungee jump enterprises operate from hot-air balloons, cranes, platforms, special towers, and bridges. DOSH spokesperson John Duncan stated that the inspections are being conducted under the authority of section 3900, Title 8 of the CCR (General Industry Safety Orders), which establishes minimum standards for the design, maintenance, construction, alteration, operation, repair, inspection, assembly, disassembly, and use of amusement rides—a category into which DOSH contends bungee jumping falls. Duncan stated that DOSH has received 25–30 applications for the formal inspection, which costs $96. Those who pass inspection are given an annual operators permit; to date, DOSH has issued two permits. Duncan stated that he expects most, if not all, of the bungee operators to willingly comply with the inspection requirement.

Use of a Consent Calendar for Adopting Proposed Variance Decisions. During its December 19 meeting, OSB agreed that it would use a consent calendar system when considering the adoption of proposed variance decisions. Staff advised the Board that neither the Bagley-Keene Open Meeting Act nor the Administrative Procedure Act prohibits the use of a consent calendar; staff also reported that other agencies use consent calendars effectively. OSB agreed that as long as any Board member may ask to remove an item from the consent calendar for independent discussion, the system would likely expedite monthly meetings. The Board agreed to use the consent calendar on a trial basis at its January 19 meeting.

LEGISLATION:

SB 520 (Petris), as amended May 20, would prohibit any employer from engaging in, or causing any employee to engage in, the dispersed use of extremely toxic poisons, except as authorized by the DIR Director, where the Director finds that certain conditions of economic hardship are met. This two-year bill is pending in the Assembly Committee on Labor and Employment.

SB 509 (Mello), as amended August 20, would require OSB to promulgate revised regulations with respect to hospital elevator safety, consistent with specified standards. This two-year bill is pending in the Senate Appropriations Committee.

AB 1674 (Margolin), as amended May 9, would require OSB, within a specified period of time, to revise the CCR to include certain carcinogens and industrial processes listed by the International Agency for Research on Cancer, and substances for which the state Department of Health Services has issued a hazard alert regarding carcinogenicity, unless a carcinogen or industrial process is covered by a separate comparable standard, or the Board exempts a carcinogen which presents no substantial threat to employee health pursuant to a specified statute. This two-

year bill is pending in the Assembly Ways and Means Committee.

AB 1313 (Friedman), as amended May 30, is currently a spot bill which its sponsors intend to amend in order to prevent an anticipated effort to repeal the Corporate Criminal Liability Act of 1990 (Act) (Chapter 1616, Statutes of 1990). (See CRLR Vol. 11, No. 3 (Summer 1991) p. 142 and Vol. 10, No. 4 (Fall 1990) p. 132 for background information on the Act.) AB 1313 is pending in the Senate Judiciary Committee.

AB 2110 (Friedman) would, among other things, declare that it is the public policy of this state to provide employees who work on VDTs with a safe and healthy work environment; require employers to implement certain minimum VDT equipment safeguards, and to modify existing employee workstations so as to protect the safety and health of employees who operate VDTs; and require OSB to adopt regulations requiring employers to maintain certain records and to furnish VDT operators and their supervisors, on an annual basis, with certain information and training regarding the health effects of VDTs, and precautions with respect to the safe use of VDTs. This two-year bill is pending in the Assembly Committee on Labor and Employment.

AB 644 (Hayden), as amended September 6, would require that every computer VDT and peripheral equipment acquired or placed into service in any place of employment, on or after January 1, 1993, be in conformance with all applicable design standards adopted by the American National Standards Institute. This two-year bill is pending in the Senate inactive file.

AB 1723 (Bane) would provide that any contractor not required to take a specified asbestos certification examination shall not be required to register with DOSH with respect to any operation which is not anticipated to result in asbestos exposures for the contractor's employees in excess of the permissible exposure limits established by specified state regulations. This two-year bill is pending in the Assembly Committee on Labor and Employment.

AB 147 (Floyd), as amended July 2, would amend existing law to provide that nothing in the California Occupational Health and Safety Act shall have any application to, be considered in, or be admissible into evidence in any personal injury or wrongful death action against the state, and would provide that evidence pertaining to inspections or investigations by DOSH and citations for violations of any provision of the California Occupational Safety and Health Act shall not be admissible in any wrongful death or personal injury action, except as between an employee, as specified, and his/her own employer. This two-year bill is pending in the Senate Judiciary Committee.

AB 198 (Elder) would require DIR's Division of Labor Statistics to include in its 1992 annual report an analysis of the rate and frequency of injuries to oil refinery and chemical plant workers as compared to other industrial occupational categories. This two-year bill is pending in the Assembly Committee on Labor and Employment.

AB 383 (Tucker), as amended April 2, would make specified criminal penalties applicable to every employer having direction, management, control, or custody of any employment, place of employment, or other employee who violates or fails or refuses to comply with specified standards. This two-year bill is pending in the Assembly Ways and Means Committee.

LITIGATION:

In ***Lusardi Construction Co. v. California Occupational Safety and Health Appeals Board***, No. C008399 (Dec. 5, 1991), the Third District Court of Appeal upheld a $700 citation issued to Lusardi Construction Company for a violation of section 1670, Title 8 of the CCR. DOSH imposed the citation after the September 11, 1986 death of a construction worker employed by Lusardi. The worker, who was not wearing a safety belt, was setting wooden trusses on the second story of a steel structure. When he stood up to get another truss, the worker fell 24 feet to his death. At that time, section 1670 required workers to wear safety belts and lifelines if their work exposed them to falling in excess of 15 feet from the perimeter of a structure or through shaftways and openings.

Lusardi appealed the citation and fine to OSB, arguing that section 1710, Title 8 of the CCR, applied in these circumstances, not section 1670. At that time, section 1710 set forth safety tie-off requirements for workers while on skeleton steel structures, and generally required that steelworkers be tied-off by approved safety lines when working at heights of 15 feet or more. However, the section also contained exceptions to the safety line requirement, including one for workers who are traveling from point to point. Lusardi contended that the worker was traveling when he fell; thus, there was no violation. OSB found that section 1710 applied only to ironworkers and affirmed the citation. Additionally, OSB noted that employees setting trusses are not "traveling," and that an employee does not "travel" while performing work even if some motion is required. The Board rejected Lusardi's claim that work performed while moving on a beam falls within the traveling exception, noting that expanding the exception would involve increased exposure to hazards.

Lusardi then petitioned the Sacramento County Superior Court for a writ of mandamus to overturn the decision. The court denied the writ, finding that section 1710 did apply as the more specific safety order, but holding that the traveling exception did not apply. The court found that the recitation of section 1670 rather than section 1710 in the citation did not prejudice Lusardi.

The Third District Court of Appeal affirmed, finding that OSB's interpretation of "traveling" is logical and consistent with the purpose of promoting safety. Having found that the worker was not traveling when he fell, the Third District noted that both sections 1670 and 1710 required the same thing: that the worker be tied-off, as he was performing work above 15 feet.

While affirming the citation, the Third District also rejected OSB's claim that section 1710 applies only to ironworkers, noting that the plain language of the section refers to "employees" working on skeletal steel structures. According to the court, "[t]here is nothing in the language to suggest it is limited to certain types of workers. . . . The clear language of section 1710 . . . indicates the tie-off requirements apply to any worker on the skeleton steel of a multistory building, with special rules for those performing connecting work and those traveling from work point to work point."

RECENT MEETINGS:

At OSB's October 24 meeting, Terry McHugh of the Retail Delivery Drivers Local 278 stated his concern over the safety of delivery drivers. He argued that current regulations fail to provide sufficient protection to delivery drivers when they make deliveries to a customer's business premises, since they may be exposed to business hazards there but are not employees of the receiving business. McHugh intends to submit a petition to the Board for amendment to the relevant regulatory sections.

At its October 24 business meeting, OSB considered a petition submitted by Peter K. Smyth requesting amendments to section 6283(a) of the Logging and Sawmill Safety Orders to make the use of protective chaps optional rather than required for operators of chain saws.

According to Smyth, protective chaps are more of a hazard than a help to timber fallers in that they are bulky and inhibit one's ability to run, jump, or dodge dangerous situations. OSB unanimously agreed to grant the petition to the extent that Board staff will convene a representative advisory committee to review the clarity and effectiveness of the existing regulations and, if needed, develop new language to be presented to the Board for public comment, and address the issues concerning the design and application of leg protection devices used in the logging industry.

Also on October 24, the Board considered a petition submitted by Hal Lindsey of Southern California Edison Company, seeking to revise section 2940.6(c)(1) of the High Voltage Electrical Safety Orders, which requires that linemen's body belts, safety straps, and lanyards be labeled as meeting the requirements of the American National Standards Institute (ANSI) A10.14-1975. Lindsey contended that the reference to ANSI A10.14-1975 should be changed to that of American Society for Testing Materials (ASTM) F 887-88 (later changed to ASTM F 887-91), noting that the cited ANSI standard is expressly not applicable to "linemen's belts and pole straps, window washers' belts, or safety ladder belts." OSB unanimously agreed to adopt the petition to the extent that the reference be changed to ASTM F 887-91, the most current national consensus standard concerning the design, testing, and labeling of linemen's body belts and pole straps. The Board also directed staff to convene an advisory committee to review existing state and federal safety belt, harness, and related regulations, along with the national consensus standards, for the purpose of updating California's fall protection regulations.

At its November 21 meeting, OSB considered Petitions 296 and 297, requesting lower guardrail height requirements on metal scaffolds. Section 1644(a)(6), Title 8 of the CCR (Construction Safety Orders), currently requires that guardrails for metal scaffolds be installed at a height of 42 to 45 inches. Fed-OSHA requires that guardrails be "approximately 42 inches" high, but permits them to be located anywhere from 36 to 42 inches. The petitioners contended that California's requirement forces scaffold manufacturers to produce special guardrail posts for California, and virtually precludes the interchange of equipment with other states. Following discussion of the matter, OSB directed staff to convene a representative advisory committee to review all sections in the Construction Safety Orders that address guardrail heights to identify whether amendments are warranted to accommodate manufactured system scaffolds. The Board will consider the committee's recommendations at a future meeting.

During its December 19 public meeting, OSB heard a proposal organized by Kim Mueller, representing the California Firefighters, requesting the Board to enact safety and inspection regulations regarding aerial ladders used by firefighters. Various firefighter, union, city, and AFL-CIO representatives spoke in support of Mueller's request; numerous speakers related anecdotal evidence on the infrequency of fire departments' voluntary inspections of their aerial ladders, and the high failure rate of ladders that are inspected.

After considerable public testimony, Board members explained OSB's position regarding the adoption of such regulations. The problem is one of state reimbursement of local costs: Currently, if a local fire department decides to have its aerial ladder inspected, it disburses funds to pay for the inspection ($350 to $700 per ladder) by private-sector inspectors, and seeks reimbursement from the relevant municipal budget. If OSB adopts state regulations requiring the inspections, the state will have to reimburse cities for these costs. OSB Executive Director Steve Jablonsky stated that the Department of Finance (DOF) refused to approve OSB's past efforts to adopt safety regulations in this area, as such regulations would require reimbursement from the state for the costs of such inspections. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 144 for background information.) OSB Chair Mary-Lou Smith instructed staff to investigate safety regulations that may already encompass aerial ladders and any other available remedies. In the absence of DOF approval, however, OSB members stated that the Administrative Procedure Act prohibits it from even noticing a 45-day public comment period on any proposed regulations.

During its December 19 business meeting, OSB considered a petition submitted by Fred Dunn, Safety Director of Hoffman Electric, Inc., which requested amendments to section 1526, Title 8 of the CCR (Construction Safety Orders), to require all construction site portable toilet units to have lockable doors. Currently, section 1526 does not require an inside lock on a portable toilet unit door; Dunn noted that some toilet facilities do not even have doors. OSB unanimously granted Dunn's petition and directed staff to commence the regulatory process to effect such a change.

FUTURE MEETINGS:

April 16 in Sacramento.
May 28 in Los Angeles.
June 25 in San Francisco.

DEPARTMENT OF FOOD AND AGRICULTURE

DEPARTMENT OF FOOD AND AGRICULTURE
Director: Henry Voss
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The California Department of Food and Agriculture (CDFA) promotes and protects California's agriculture and executes the provisions of Food and Agricultural Code section 101 *et seq.*, which provides for CDFA's organization, authorizes it to expend available monies, and prescribes various powers and duties. The legislature initially created the Department in 1880 to study "diseases of the vine." Today the Department's functions are numerous and complex. Among other things, CDFA is authorized to adopt regulations to implement its enabling legislation; these regulations are codified in Chapters 1–7, Title 3, Chapters 8–9, Title 4, and Division 2, Title 26 of the California Code of Regulations (CCR).

The Department works to improve the quality of the environment and farm community through the exclusion, control, and eradication of pests harmful to the state's farms, forests, parks, and gardens. The Department also works to prevent fraud and deception in the marketing of agricultural products and commodities by assuring that everyone receives the true weight and measure of goods and services.

CDFA collects information regarding agriculture and issues, broadcasts, and exhibits that information. This includes the conducting of surveys and investigations, and the maintenance of