-Rulemaking Under the Pesticide Contamination Prevention Act. On October 19, the Office of Administrative Law (OAL) approved CDFA's proposed amendments to section 6804, Titles 3 and 26 of the CCR, which establish specific numerical values (SNVs) for pesticide active ingredients. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 135 and Vol. 9, No. 3 (Summer 1989) p. 96 for background information.)

-Regulations for the Prevention of Injurious Plant Diseases. CDFA received a large number of public comments on its proposal to adopt sections 3008 and 3553 and amend section 3407, Title 3 of the CCR, pertaining to psorosis-free citrus seed sources, citrus moving and cutting permits, and citrus tristeza virus interior quarantine. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 135 for background information.) At this writing, CDFA is modifying the proposed language of the regulatory changes, and hopes to reopen the proposal for an additional 15-day comment period in January.

-Direct Marketing. At this writing, CDFA's proposal to amend section 1392 and several of its subsections in Title 3 of the CCR, pertaining to direct marketing, has not yet been submitted to OAL for approval. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 136 for detailed background information.)

-Increased Fines. CDFA's proposed amendments to section 6130, Titles 3 and 26 of the CCR, were submitted to OAL on November 27 and approved on December 27. These changes increase the range of civil penalty fines which may be imposed by county agricultural commissioners in lieu of civil prosecution by the CDFA Director. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 136 for background information.)

LEGISLATION:

AB 104 (Tanner). Existing law provides for the eradication and control of pests by various methods, including the use of pesticides or economic poisons. As introduced December 4, this bill would prohibit the CDFA Director, on and after July 1, 1992, from using specified pesticides and economic poisons in an aerial application in an urban area unless the state Department of Health Services (DHS) first finds that the use of the material in the manner proposed by the Director will not result in a significant risk to the public health, and a scientific review panel established by this bill determines that the health risk assessment has been carried out in a scientifically acceptable manner. If the proposed application of the material is by a method other than aerial application to eradicate designated pests, this bill would prohibit the use of the material in the manner proposed unless DHS finds that the use of the material will not result in a significant risk to the public health and those findings are evaluated by the panel. This bill would also require the CDFA Director to request DHS to begin health risk assessments on various pests according to a prescribed schedule. This bill is pending in the Assembly Committee on Environmental Safety and Toxic Materials.

SB 46 (Torres), as introduced December 4, would revise the definition of toxic air contaminant to delete an exclusion for pesticides. This bill is pending in the Senate Committee on Toxics and Public Safety Management.

Anticipated Legislation. Each year, 250 million pounds of pesticides are applied to the crops of California. Traditionally, the regulation of pesticide use has been handled by CDFA. Recently, much opposition to CDFA's regulation of pesticides has developed, and a vocal lobby advocating a shift of this authority to a different California agency (possibly the Department of Health Services) has emerged.

One of Pete Wilson's selling points in his successful campaign for Governor of California was his concern over this issue. He supports the creation of a new state agency—the California Environmental Protection Agency (CAL-EPA)—to take over regulation of pesticides.

The proposal has met with mixed reactions. CDFA supports such a change; it has been repeatedly criticized for its handling of pesticide issues, and seems eager to hand over the responsibility for such a politically controversial matter. Other supporters of the proposed CAL-EPA include California farmers, who believe that changes must be made in state pesticide policy to eliminate the future possibility of massive environmental initiatives such as "Big Green" (the unsuccessful Proposition 128 on the November 1990 ballot).

However, many of those who oppose CDFA's handling of the pesticide issue argue that no real change will come from Wilson's proposed reorganization. The proposed CAL-EPA would team current CDFA pesticide specialists with toxics experts from the Department of HealthServices. Some fear that a merger of personnel from the two agencies would eliminate the often beneficial tension that results when two separate agencies are involved in the resolution of an issue

LITIGATION:

Although the future of CDFA's medfly eradication program remains uncertain (*see supra* MAJOR PROJECTS), several local governments still have lawsuits pending against former Governor Deukmejian, CDFA, and the State of California for malathion-related incidents.

In the *Medfly Eradication Cases*, No. 2487 (Los Angeles County Superior Court), Judge John Zebrowski is handling several coordinated malathion cases, including *People v. Kizer*, No. BC005249 (Los Angeles County Superior Court); *City of San Bernardino v. Deukmejian*, No. 25663 (San Bernardino County Superior Court); *Natural Resources Defense Council v. Deukmejian*, No. C752978 (Los Angeles County Superior Court); *City of Los Angeles v. Deukmejian*, No. 753054 (Los Angeles County Superior Court); and *City ofPomona v. State of California*, No. EAC-078787 (Los Angeles County Superior Court). (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 137-38 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 160 for background information.) This coordinated action is presently on hold. The parties are seeking a six-week continuance to give the various city council members an opportunity to decide whether they want to continue with these causes of action.

FUTURE MEETINGS:

The State Board of Food and Agriculture usually meets on the first Thursday of each month in Sacramento.

RESOURCES AGENCY

AIR RESOURCES BOARD
Executive Officer: James D. Boyd
Chair: Jananne Sharpless
(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. 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.

MAJOR PROJECTS:

New Regulations Regarding Low-Emission Vehicles and Clean Fuels. On September 28, ARB adopted proposed regulatory changes which will coordinate the introduction of low-emission vehicles meeting extremely stringent exhaust emission standards and the availability of commensurate volumes of clean-burning fuels for those vehicles. The regulations also provide new specifications for "Phase 1 Reformulated Gasolines." The action drew considerable public and industry interest, with oral testimony from 43 parties presented over two days.

Four categories of vehicles will be created by the regulations: transitional low-emission vehicles (TLEVs), low-emission vehicles (LEVs), ultra-low-emission vehicles (ULEVs), and zero-emission vehicles (ZEVs). Progressively more stringent standards for ozone-reactive non-methane organic gases, carbon monoxide, nitrogen oxides, and formaldehyde would be established for each vehicle category. These new emission standards will be incorporated into amended sections 1900, 1904, 1956.8, 1960.1, 1960.1.5, 1960.5, 1965, 2061, 2111, 2112, 2125, and 2139, Title 13 of the CCR. These regulations are awaiting submittal to the Office of Administrative Law (OAL).

Beginning in 1994, passenger cars and light-duty trucks meeting one or more of these categories would be phased in under an emission averaging program. ARB will set fleet average standards to be met by manufacturers each year. Any mix of TLEVs, LEVs, ULEVs, ZEVs, or conventional vehicles could be produced, so long as fleet averages are met. In addition, production of a small number of ZEVs, expected to be electric vehicles, would be required of major vehicle manufacturers. Phase-in of low-emission medium-duty vehicles would begin in 1998.

If cleaner, alternative fuels are used to certify low-emission vehicles, these fuels must be made available to the consumer at a substantial number of retail outlets. Under the new rules, gasoline suppliers will be required to distribute specific volumes of each clean fuel needed by low-emission vehicles, and specified numbers of retail gasoline stations will be required to install clean fuel dispensing equipment and make a proportionate amount of clean fuels available for purchase by the public.

The new specifications for commercial "Phase 1 Reformulated Gasoline" cover Reid vapor pressure (RVP), deposit control additives, and lead content. An existing regulation (section 2551, Title 13 of the CCR) establishes an RVP standard for reformulated gasolines at nine pounds per square inch (psi) and applies in most of the state at varying times of the year. Another regulation (section 2253.2, Title 13 of the CCR) requires that gasoline represented as unleaded meet the lead content standard of unleaded gasoline, limits the lead content of leaded gasolines to 0.8 gram per gallon (gm/gal) on a quarterly basis, and limits the sulfur and manganese content of all gasolines.

In addition to ARB, the U.S. Environmental Protection Agency (EPA) also administers regulations on RVP and gasoline lead content. EPA has established a 9.5 psi general standard for gasoline RVP in California, with seasonal and geographic variations. EPA recently amended its RVP regulation to establish a 7.8 psi limit commencing in January 1992, with gasoline having an ethanol content of at least 9% receiving a 1 psi allowance. The seasonal and geographic variations remain proportional to the new standard. EPA currently limits the lead content of leaded gasoline to 0.1 gm/gal on a quarterly average and regulates unleaded gasolines similarly to the ARB.

Because both the ARB and EPA regulations apply in California, the amended ARB regulations will bring the state standards into compliance with EPA regulations. The RVP limits of gasolines would be lowered to 7.8 psi beginning January 1, 1992, and the control period for San Diego County and the South Coast Air Basin would be increased to extend from May 1 through October 31, during which time no gasolines exceeding the limit may be sold. Blends of gasoline with at least 10% ethanol will be exempt from the 7.8 psi RVP limits so long as the gasoline used in the blend meets the standard. Gasolines with detergents and additives sold after January 1, 1992 will be required to be certified at the production, importation, or distribution levels where they claim to effectively control carburetor, port fuel injector system, and intake valve deposits. Finally, a new lead content regulation requires that after January 1, 1992, no person may sell or offer to sell, or supply or offer to supply, motor gasoline in California which has a lead content exceeding 0.05 gm/gal or to which lead has been purposefully added. No gasoline represented as unleaded could have more than 0.005 gm/gal of phosphorous. After January 1, 1994, all motor gasolines in the state will be required to meet the current unleaded gasoline standards, eliminating the availability of leaded gasoline in California.

The new clean fuel rules include new sections 2251.5, 2253.4, and 2257, and amendments to sections 2251, 2252, 2253.2, and 2254, Title 13 of the CCR. Test procedures for the emission impacts of using new cleaner fuels are incorporated into an amendment to section 1960.1, and in new sections 2300-2345, Title 13 of the CCR. These rules have not yet been submitted to OAL for approval. The Board plans to consider revised specifications for even cleaner fuels and alternative fuels in September 1991.

Restrictions on Volatile Organic Compound (VOC) Emissions from Consumer Products. On October 11, the Board adopted new Article 2, Consumer Products, sections 94507-94516; new section 94503.5; and amended section 94505, Title 17 of the CCR. The Board also repealed Article 3, sections 94520-94526, Title 17 of the CCR. This regulatory package will reduce VOC emissions from consumer products by establishing limits on VOC content, effective January 1993, for the following six product categories: air fresheners, automotive windshield washer fluids, engine degreasers,

glass cleaners, hairsprays, and oven cleaners. New standards become effective in January 1994 for ten other categories: floor polishes (waxes), furniture maintenance products, general purpose cleaners, glass cleaners, hair styling gels and mousses, laundry prewashes, insect repellents, nail polish removers, and shaving cream. The statewide regulations apply to any person who sells, supplies, offers for sale, or manufactures consumer products in California. The regulations do not affect consumer products produced in California for shipment and use outside the state.

VOCs are used as solvents and propellants in consumer products and are emitted during their use, contributing to air pollution. Once implemented, the regulatory changes will reduce VOC emission by 45 tons per day by 1998. The regulatory package should not result in the elimination of any product categories, and complying products are currently available. An "innovative product provision" is included as an alternative means by which industry can comply with the regulations. An innovative product is defined as a product that may have a VOC content greater than the established limit, but has fewer emissions by virtue of some characteristic of the product formulation, design, or delivery system than a representative product which meets the standard. In addition, another provision prohibits the new uses of ozone-depleting compounds in consumer products. Manufacturers are also required to display the date of manufacture on each product container. The regulations contain several exemptions, including one for organic compounds with very low vapor pressure and for air fresheners comprised of 100% fragrance. Finally, each manufacturer of consumer products sold in California must register selected products with ARB no later than March 1, 1991, and no later than March 1 of every third year thereafter.

On October 11, the Board adopted the regulatory package with some modifications to the originally proposed language. Thus, the Board released the modified language for a 15-day comment period on December 13; at this writing, ARB staff are still reviewing those comments and have not yet submitted the rulemaking file to OAL for review.

Trichloroethylene (TCE) Identified as a Toxic Air Contaminant (TAC). Pursuant to staff recommendation, at its October 12 meeting, ARB amended section 93000, Titles 17 and 26 of the CCR, to identify TCE as a TAC without a specified threshold exposure level. The EPA lists TCE as a probable human carcinogen, and it is emitted from a wide variety of sources in California, including degreasing operations, paints and coatings, adhesive formulations, and polyvinyl chloride productions. TCE is mobile in the environment and is not naturally removed or detoxified at a rate that would significantly reduce public exposure. At this writing, ARB has not submitted the regulatory change to OAL for approval.

Roadside Smoke and Emission Control System Inspection Program. On November 8, ARB adopted test procedures to detect excessive smoke emissions from heavy-duty diesel-powered vehicles and inspection procedures to detect tampered or defective emission control systems components on gasoline- and diesel-powered vehicles. ARB staff estimate that heavy-duty diesel vehicles, which comprise 2% of the vehicles on the road, account for 30% of the nitrogen oxides and 75% of the particulate matter from the entire statewide on-road vehicle emissions inventory. In addition, these vehicles are the target of numerous citizen complaints—about 10,000 per month in the South Coast Air Quality Management District alone. The new test procedures are directed by section 44011.6 of the Health and Safety Code, which was enacted in 1988 in response to these concerns. The regulations adopted are new sections 2180-2187, Title 13 of the CCR.

The inspections will occur at California Highway Patrol (CHP) highway weigh stations, at fleet maintenance facilities, and at other random roadside locations throughout the state. Nine teams will be formed initially, with an increase to at least twelve after the first year. All heavy-duty vehicles over 6,000 pounds gross vehicle weight operating in California, including trucks, transit buses, and schoolbuses, will be subject to inspections and possible penalties. Vehicles need not be registered in California. Inspections will be carried out by teams consisting of one CHP officer and two ARB inspectors. The officer will select vehicles which appear to be emitting excessive visible smoke and direct them to the inspection area where tests will be run and information on the vehicle and engine model and year registered. The test method will be a "snap-idle smoke test" which requires the driver to rapidly press the accelerator to the floor several times while an inspector operates an opacity meter at the exhaust pipe. The test is repeated to ensure accuracy. Total inspection time, including the issuance of a citation if necessary, is expected to take about 15-20 minutes.

The smoke opacity standards vary with the model and year of the vehicle. Generally, all pre-1974 vehicles and a few select models built from 1974-1990 will be subject to a 55% opacity standard. All other post-1974 models will be subject to a 40% opacity standard. However, during a one-year phase-in period, all pre-1991 vehicles will be tested at the 55% standard to allow ARB staff to investigate the effectiveness of the heavy-duty diesel repair industry in performing emissions control repairs. The extent to which the 40% standard is implemented will depend in part on the results of this investigation. In addition, exemptions will be provided for certain pre-1991 vehicles that are adjusted to manufacturers' specifications but fail the specified opacity standard, and pre-1992 vehicles equipped with ARB-approved turbo charger kits. Separate higher standards will be used for such vehicles.

Vehicles cited in violation of the regulations will be subject to penalties ranging from $300 (mandatory) to $1,800, depending on the previous number of citations. The vehicle owner then has 45 days to demonstrate repair either by submission of repair receipts (first citation only) or by submitting to a post-repair test at the inspection site. If a cited vehicle owner fails to take corrective action or pay a civil penalty in a timely manner, the Board will notify CHP that the vehicle may be removed from service until the penalty is paid and corrective action is taken. Refusal to submit to the test procedure is a violation of the regulations.

The Board has operated the program on a trial basis by randomly testing vehicles at several locations to test equipment and methods, and to educate the heavy-duty diesel vehicle industry on the impending regulations. During these trial runs, 44% of the vehicles tested failed the 40% opacity standard, and 34% failed the 55% opacity standard. No citations were issued; however, the need for the regulations was clearly demonstrated.

Several other issues are to be addressed in the one-year phase-in period:

-Test results have indicated that the opacity measurement may vary slightly with elevation and other factors. In order to avoid a situation where the same vehicle may pass inspection at a high elevation and fail at a lower elevation, further tests are being conducted to ascertain a correction factor for readings at high altitude test sites so that standards will be comparable at all test sites. Once this correction factor is calculated, teams will be added at higher elevation inspection stations.

-A toll-free number will be provided for information regarding repair specifications and procedures. This number will probably also be used by citizens to report excessively smoking vehicles until a citizen-reporting system is enacted (currently in the planning stage).

-Interfacing ARB databanks with CHP computers is also planned for the first year to facilitate enforcement and to deter out-of-state violators. Computer-linking is also planned with Immigration and Naturalization Service databanks on the U.S.-Mexico border.

ARB slightly modified the language of its proposed regulatory changes at the November 8 hearing; staff expected to release the modified version for a 15-day comment period in late January.

Amendments to Abrasive Blasting Regulations. On November 8, the Board voted unanimously to amend its sandblasting regulations to require the use of a certified abrasive in all dry blasting not conducted in a permanent building or structure and to eliminate the obsolete opacity standard applied to the use of uncertified abrasives. The amendments also impose a 40% opacity standard for all permissible outdoor blasting. These amendments replace rules allowing the use of certified abrasives with a 40% opacity rating or uncertified abrasives with a 20% standard in outdoor blasting. Indoor blasting standards, regardless of the blasting method used, are now changed to a 20% opacity standard. This regulatory package amends sections 92000, 92200, 92220, 92400, 92500, 92510, 92520, 92530, and 92540, Title 17 of the CCR. At this writing, ARB has not yet submitted the rulemaking file on these changes to OAL.

Revisions to the Designation of Areas as Attainment, Nonattainment or Unclassified for State Ambient Air Quality Standards. On November 8, the Board unanimously approved revisions to the area designation regulations contained in sections 60200 through 60209, Title 17 of the CCR. The proposed revisions to the designation regulations are necessary for specific geographical areas in light of additional air quality data collected in 1989 and presented in the Board's annual review of designations. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 139 and Vol. 9, No. 4 (Fall 1989) p. 108 for extensive background information on this issue.) The revisions will affect only selected pollutants, including ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, and hydrogen sulfide. At this writing, ARB has not yet submitted these regulatory changes to OAL.

Board Approves Proposed Plan for Approving Air Quality-Related Indicators. The California Clean Air Act of 1988 (Chapter 1658, Statutes of 1988) requires ARB to evaluate air quality-related indicators that may be used to measure or estimate progress in the attainment of air pollution standards (Health and Safety Code section 39607(f)). The Board must also establish a list of approved indicators. Until these indicators are approved, progress in attainment is determined by tracking area-wide emission reductions. At its November 8 meeting, the Board approved a plan to develop indicators in consultation with the districts and for listing the indicators found suitable and reliable for estimating progress. The plan includes criteria for determining whether an indicator is suitable for approval.

Exhaust Emissions Standards for 1994 and Subsequent Models of Utility and Lawn and Garden Equipment Engines. At its December 13 meeting, ARB unanimously approved emission standards for gasoline-powered lawnmowers, leaf blowers, and other home and garden tools. The regulations, which were hailed by environmental groups, mark the first time that the emissions from such utility engines will be regulated in the United States. ARB staff estimate that many of these tools produce up to 50 times more pollution per horsepower than the average truck. Statewide, they contribute emissions approximately equivalent to those from 3.5 million 1991 cars driven 16,000 miles. The standards will require substantial modifications in utility engines, possibly including catalytic converters, to reduce emissions by 46% by 1994 and 55% by 1999.

The regulatory changes will impact only 1994 and subsequent model-year engines and are expected to increase the cost of small engines by about $30 in 1994. Industry representatives warned that the regulations could cripple the $4.6 billion lawn and garden business. However, ARB staff disputed this claim, noting that similar claims were made when the state first imposed stringent emission regulations on the automotive industry.

The impact of the regulations will undoubtedly be felt out-of-state. At least initially, California will be the only state to regulate these engines, and manufacturers will be forced to choose between making two models of engines, or making all of their engines to meet the California standards. Some manufacturers have threatened to withdraw their products from the state's lucrative market in light of the regulations.

Sections 43013 and 43018 of the Health and Safety Code authorize the Board to regulate the emissions from off-road vehicles and other mobile sources to achieve a 55% reduction in hydrocarbons, a 15% reduction in nitrogen oxides, and maximum feasible reductions in carbon monoxide, particulate matter, and TACs. Utility engines are the first engines in this category to be regulated by the ARB. The Board was mandated to adopt such regulations before January 7, 1991 by a court order issued February 6, 1990 in *Citizens for a Better Environment v. Deukmejian et al.*, 731 F.Supp. 1148 (N.D. Cal. 1990). (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 144-45 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 167 for background information on this case.) The order also requires full implementation of the standards by January 7, 1994. If approved by OAL, the regulations will be codified in sections 2400-2407, Title 13 of the CCR.

Aromatic Hydrocarbon Content of Motor Vehicle Diesel Fuel. At its December 13 meeting, the Board approved amendments to section 2256, Title 13 of the CCR, to modify the procedure for certifying alternative diesel fuel formulations.

By way of background information, in November 1988, ARB adopted a regulation establishing a statewide aromatic hydrocarbon content limit for motor vehicle fuel of 10% for large refiners and 20% for small refiners, beginning October 1, 1993. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 86 for background information.) In addition, ARB approved the concept of allowing flexibility for certifying the sale and use of an alternative diesel fuel formulation, provided that equivalent emission benefits are achieved when compared to a 10% aromatic hydrocarbon reference fuel. On May 11, 1989, ARB adopted the regulatory language for certifying alternative fuel formulations.

The amendments adopted in December are necessary to improve the clarity and specificity of the approval process and to ensure that the alternative diesel fuel will have equivalent benefits. Staff proposed to clarify the requirements to submit a preapplication to evaluate the fuel specifications and test protocol on a case-by-case basis; to change the minimum number of test runs from three to five; and to require applicants to perform their exhaust emission testing with no significant delays. Staff further proposed that any diesel fuel formulations certified before the amendments are effective will no longer be deemed certified,

unless the fuel satisfies the amended criteria.

To ensure equivalent emission benefits, staff proposed to modify the statistical analysis approach presently used. The current regulation would allow the approval of a fuel which could result in a significantly higher emission than the reference fuel. The proposed approach minimizes the likelihood of this occurrence. Finally, a candidate fuel must demonstrate equivalent polyaromatic hydrocarbon exhaust emission to further provide assurances that emission of TACs will not increase when using alternative fuel.

Although the proposed regulatory changes met with a considerable amount of opposition during the public comment period, the Board approved the revisions. At this writing, ARB has not yet submitted the regulation for OAL approval.

Vinyl Chloride Identified as a TAC. In concurrence with DHS, on December 13 the Board amended section 93000, Titles 17 and 26 of the CCR, to identify vinyl chloride as a TAC without a specified threshold exposure level. Vinyl chloride is a readily flammable, sweet-smelling, colorless gas used in the production of polyvinyl chlorides. The EPA lists it as a hazardous air pollutant; therefore, it must be identified as a TAC under state law. Additionally, the EPA and the International Agency for Research on Cancer (IARC) both list vinyl chloride as a possible human carcinogen. Major sources of emission within California include landfills, publicly-owned treatment works, and polyvinyl chloride production and fabrication facilities. Exposure to vinylchloride is associated with increased incidence of cancer in both humans and experimental animals. At this writing, ARB has not yet submitted this regulatory change to OAL for approval.

Chloroform Identified as a TAC. Pursuant to staff recommendation, on December 13 the Board adopted another amendment to section 93000, Titles 17 and 26 of the CCR, to identify chloroform as a TAC without a specified threshold level of exposure. Also known as trichloromethane, it is a clear, colorless, volatile liquid with an ethereal scent. To many people, chloroform is probably most remembered as the agent used to induce unconsciousness before an operation. Both the EPA and the IARC list chloroform as a possible human carcinogen. In California, major sources include chlorinated water, pulp and paper mills, pharmaceutical manufacturing, and publicly-owned treatment works. It is mobile in the environment and is not naturally removed or detoxified at a rate that would significantly reduce public exposure. Exposure to chloroform is associated with an increased incidence of kidney and liver tumors in rodents. ARB has not yet submitted the regulation for OAL approval at this writing.

Conflict of Interest Code. Also on December 13, the Board amended its conflict of interest code to cover newly-created positions and to delete coverage for obsolete positions. The code designates the Board and staff positions involved in making or participation in the making of decisions which may foreseeably have a material effect on financial interests, and requires holders of these positions to make specified disclosures. Under amendments to section 95001, Title 17 of the CCR, the following positions would be subject to conflict of interest disclosure requirements: Toxicologist, Statistical Methods Analyst, Vehicle Pollution Advisor, Auto Emission Test Supervisor, and Public Health Medical Officer. Amendments to sections 95002-95006, Title 17 of the CCR, add the Assistant Executive Officer, all special office chiefs, Contracts Manager, Procurement Officer, and Regional Administrative Officer in the Administrative Services Division to those subject to Category I disclosure requirements. Employees in Category I must report all investments, all interests in real property, all sources of income, and his/her status as a director, officer, partner, trustee, employee, or holder of any position of management in any business.

The Model Advisory Committee is a panel of outside experts which provides scientific advice and guidance to ARB's Modeling Center on the development of atmospheric chemistry modeling, which may relate to some contracts let by the Board; thus, Advisory Committee members were added to those subject to Category IV disclosure requirements. Those who fall under Category IV must report all investments in, income from, and his/her status as a director, officer, partner, trustee, employee, or holder of any position of management, in any business entity which is subject to any laws of California relating to the control of air pollution from vehicular or nonvehicular sources, or which is subject to any rules or regulations promulgated either by ARB or by any local air pollution control district. At this writing, ARB has not yet submitted these proposed regulatory changes to OAL for approval.

Update on Other ARB Regulatory Changes. The following is a status update on regulatory changes approved by ARB and discussed in detail in previous issues of the *Reporter:*

-ARB's September 1990 amendments to sections 90700-90704, Titles 17 and 26 of the CCR, which include both a list of substances that present a chronic or acute threat to public health determined by reference to Health and Safety Code section 44321 and a fee schedule, have not yet been submitted to OAL for approval. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 140 for background information.)

-ARB's August 1990 adoption of new sections 70600 and 70601, Title 17 of the CCR, which require specific districts to adopt and implement emission control measures to abate the impact of transported pollutants on downwind receptor areas, was approved by OAL on December 21. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 142 for background information.)

-ARB's August 1990 amendments to section 1976, Title 13 of the CCR, which specify standards for running losses and extend the durability requirements for evaporative emission control systems to be the same as those for exhaust hydrocarbon systems, have not yet been submitted to OAL at this writing. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 142 for background information.)

-New section 93104, Titles 17 and 26 of the CCR, which provides airborne toxic controls for dioxin emissions from medical waste incinerators and was adopted by ARB in July 1990, is still awaiting submittal to OAL at this writing. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 141 for background information.)

-ARB's July 1990 amendment to section 93000, Title 17 and 26 of the CCR, which adds inorganic arsenic to the list of TACs with no identified threshold exposure level below which no significant adverse health effects are anticipated, is awaiting completion of the rulemaking file by DHS prior to submission to OAL. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 141 for background information.)

-Following a second comment period ending September 24, 1990, ARB submitted proposed new sections 70700-70704, Title 17 of the CCR, to OAL in early January. These regulations, which were approved with modifications at the Board's July 1990 meeting, set forth emission accounting procedures to be employed by nonattainment districts in demonstrating adherence to state ambient air quality standards. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 141 for background information.)

-ARB's June 1990 amendments to sections 93300-93347, Titles 17 and 26 of the CCR, which identify two classes of facilities which make, use, or release toxic emissions subject to the Air Toxics "Hot Spots" Information and Assessment Act of 1987, were submitted to OAL on December 22. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 139-40 for background information.)

-ARB's June 1990 adoption of amendments to sections 1956.8 and 1960.1, Title 13 of the CCR, regarding hydrocarbon, carbon monoxide, and nitrogen oxides exhaust emission standards for light-duty trucks, medium-duty vehicles, and light heavy-duty vehicles, has not yet been submitted to OAL for approval. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 140 for background information.)

-ARB's June 1990 adoption of amendments to section 1900, Title 13 of the CCR, regarding the definition of medium-duty vehicles and the test procedures for current medium-duty vehicles and light heavy-duty vehicles, has not yet been submitted to OAL for approval. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 140 for background information.)

-ARB's June 1990 adoption of amendments to sections 1968.1, 2061, 2112, and 2139, Title 13 of the CCR, regarding revisions to the in-use enforcement and on-board diagnostic regulations to make emission regulations applicable and more practical for medium-duty vehicles and light heavy-duty vehicles, has not yet been submitted to OAL for approval. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 140 for background information.)

-ARB's June 1990 adoption of three amendments to sections 70303-70304, Title 17 of the CCR, which define the conditions which an area must meet to be classified as "nonattainment-transitional," set forth conditions under which a nonattainment area may be redesignated as attainment when monitoring at the site with the highest concentration is discontinued, and provide methods for identifying extreme concentration events as highly irregular or infrequent violations that should not be considered in the designations, was submitted to OAL on January 2 and is awaiting approval. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 139 for background information.)

-The Board's June 1990 amendment to section 2255, Title 13 of the CCR, which deletes the less stringent sulfur content standard for higher altitude wintertime diesel fuel, was approved by OAL on October 9. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 140-41 for background information.)

-ARB's May 1990 adoption of new section 90800.1 and amendments to sections 90800, 90802, and 90803, Title 17 of the CCR, which require the collection of permit fees from specified nonvehicular source facilities, was released for a second public comment period on December 10, and has not been submitted to OAL for approval at this writing. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 163-64 for background information.)

-The Board's May 1990 adoption of new section 90621.1 and amendments to section 90620-90623, Title 17 of the CCR, which requires local air pollution control and air quality management districts to collect permit fees from major nonvehicular sources of sulfur oxides and nitrogen oxides to fund ARB's Atmospheric Acidity Protection Program for fiscal year 1990-91, was released for a second public comment period and has not been submitted to OAL at this writing. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 164 for background information.)

-The Board's April 1990 adoption of new section 93106, Titles 17 and 26 of the CCR, which sets forth an airborne toxic control measure regulating permissible levels of asbestos-content serpentine rock used in surfacing applications, was released for another 15-day public comment period on December 10, and has not yet been submitted to OAL for review. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 163 for background information.)

-ARB's January 1990 adoption of new sections 94146-94149, Title 17 of the CCR, which establishes a new test for methods for determining emission from nonvehicular sources, was approved by OAL on October 17. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 167 for background information.)

-The Board's December 1989 adoption of amendments to sections 2035-2041, Title 13 of the CCR, concerning emission control systems warranty requirements, was approved by OAL on November 26. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 124 for background information.)

-On December 21, ARB refiled with OAL its November 1989 adoption of new sections 94500-94506, Title 17 of the CCR, which will reduce volatile organic compounds from aerosol antiperspirants and deodorants. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 143 and Vol. 10, No. 1 (Winter 1990) p. 124 for background information.)

LEGISLATION:

SB 46 (Torres), as introduced December 4, would revise the definition of a toxic air contaminant to delete an exclusion for pesticides, and to include a description of cancer-causing substances. This bill would redefine the threshold level below which no health effects are anticipated, and would impose new duties on the affected agencies, including air pollution control districts and air quality management districts, with respect to reducing or eliminating TAC emissions. This bill is pending in the Senate Committee on Toxics and Public Safety Management.

SB 51 (Torres) would create the Environmental Protection Agency, including within that agency ARB, the California Integrated Waste Management and Recycling Board, the state Water Resources Control Board, each California regional water quality control board, and the Toxics Substances Control Department (which this bill would create), and would limit the duties of the chairperson of ARB to serving as the Governor's chief air quality spokesperson. This bill is pending in the Senate Committee on Toxics and Public Safety Management.

SB 124 (McCorquodale), as introduced December 19, would create the San Joaquin Valley Air Quality Management District to include the counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare. The district would assume the functions of the county air pollution districts in those counties on July 1, 1992. This bill would provide for a district board with members appointed as specified, and would include a member of the board in the membership of ARB on a rotating basis. This bill is pending in the Senate Local Government Committee.

LITIGATION:

In a decision that may have far-reaching impacts on relations between federal and state agencies, a federal district court recently ruled that federal agencies are not exempt from fees charged by state/regional agencies under the Clean Air Act. On October 16, Judge William J. Rea of the U.S. District Court for the Central District of California granted defendant's motion for summary judgment in *U.S. v. South Coast Air Quality Management District*, No. CV89-0548WJR, finding that section 118 of the Clean Air Act clearly and unambiguously waives sovereign immunity for federal agencies. The immunity waiver means that Congress has consented to the imposition of state-assessed fees on federal

agencies to implement the Clean Air Act.

Federal military bases, which are major polluters in the southern California area, have previously rebelled against paying permit and clean-up fees dating back to 1986. The ruling requires at least ten military facilities to pay over $1 million in previously assessed fees, plus undetermined penalties. Fee revenues provide a substantial portion of the District's budget and are used for enforcement and development of new regulations. ARB intervened in support of the Air Quality Management District.

The Barbecue Industry Association recently filed a petition for injunctive relief in Los Angeles County Superior Court against the South Coast Air Quality Management District to overturn a District ban on lighter fluids (*Barbecue Industry Association v. South Coast Air Quality Management District,* No. BS004212). The complaint alleges that the rule is arbitrary and capricious and the District violated the California Environmental Quality Act (CEQA) by failing to conduct an adequate environmental assessment. The rule sets forth stringent emissions requirements for lighter fluids and pre-soaked charcoal briquettes and bans the sale of fluids exceeding these limits starting in 1992. It was adopted by the District on October 25, 1990, after a year of analysis and six months of public review. District officials estimate that up to four tons of ozone-depleting hydrocarbon emissions enter the atmosphere from summer afternoon barbecues, an amount exceeding emissions from a major oil refinery.

FUTURE MEETINGS:
April 11-12 in Sacramento.

CALIFORNIA INTEGRATED WASTE MANAGEMENT AND RECYCLING BOARD

Executive Officer: George H. Larson
Chair: Sam Egigian
(916) 322-3330

The California Integrated Waste Management and Recycling Board (CIWMB) was created by AB 939 (Sher) (Chapter 1095, Statutes of 1989), the California Integrated Waste Management Act of 1989. The Act is codified in Public Resources Code (PRC) section 40000 *et seq.* AB 939 repealed SB 5, thus abolishing CIWMB's predecessor, the California Waste Management Board (CWMB). (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 110-11 for extensive background information.)

CIWMB reviews and issues permits for landfill disposal sites and oversees the operation of all existing landfill disposal sites. The Board is authorized to require counties and cities to prepare Countywide Integrated Waste Management Plans (CoIWMPs), upon which the Board will review, permit, inspect, and regulate solid waste handling and disposal facilities. A CoIWMP submitted by a local government must outline the means by which its locality will meet AB 939's requirements of a 25% waste stream reduction by 1995 and a 50% waste stream reduction by 2000. Under AB 939, the primary components of waste stream reduction are recycling, source reduction, and composting.

The statutory duties of CIWMB also include conducting studies regarding new or improved methods of solid waste management, implementing public awareness programs, and rendering technical assistance to state and local agencies in planning and operating solid waste programs. Additionally, CIWMB staff is responsible for inspecting solid waste facilities such as landfills and transfer stations, and reporting its findings to the Board. The Board is authorized to adopt implementing regulations, which are codified in Division 7, Title 14 of the California Code of Regulations (CCR).

The new CIWMB is to be composed of six full-time salaried members: one member who has private sector experience in the solid waste industry (appointed by the Governor); one member who has served as an elected or appointed official of a nonprofit environmental protection organization whose principal purpose is to promote recycling and the protection of air and water quality (appointed by the Governor); two public members appointed by the Governor; one public member appointed by the Senate Rules Committee; and one public member appointed by the Speaker of the Assembly.

At its September 1990 meeting in Sacramento, the new CIWMB reached a quorum of four members and the old CWMB was abolished. The members present at the first CIWMB meeting were Sam Egigian, Wes Chesbro, Kathy Neal, and John Gallagher. Gallagher, former chair of CWMB, has since resigned rather than risk rejection by the Senate. Shortly before he left office, former Governor Deukmejian appointed his chief of staff, Michael R. Frost, and his Director of Finance, Jesse Huff, to the remaining two public member positions; these two positions are not subject to Senate confirmation.

The new Board begins its work under a new enabling statute, with a variety of recently enacted bills and many new regulations. The Board is operating on a $53 million budget during fiscal year 1990-91, and will deploy an enlarged staff of about 200 in meeting the solid waste management needs of the state.

MAJOR PROJECTS:

Regulatory Changes. In March 1990, the Office of Administrative Law (OAL) approved a number of emergency regulations designed to implement AB 939 (Sher). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 146; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 169; and Vol. 10, No. 1 (Winter 1990) p. 129 for extensive background information on AB 939 and these regulatory changes.) These emergency regulations are scheduled to remain in effect until March 14, 1991, under an extended deadline granted by OAL.

At a December 5 public hearing, the Board considered the adoption of permanent regulations to replace the previously approved emergency regulations. The proposed permanent regulations considered consist of Articles 3, 6.1, 6.2, 7, and 8, Chapter 9, Division 7, Title 14 of the CCR.

Proposed section 17820 of Article 3 contains definitions of 85 terms used in CIWMB's regulations regarding the preparation and revision of the CoIWMPs required under AB 939. According to CIWMB staff, precise definitions of these terms, many of which are intended to have very specific meanings in regard to solid waste management, will help to expedite the preparation and approval of the CoIWMPs submitted by the jurisdictions.

For example, the term "best readily available and applicable data or representative data"—which is required in CoIWMP preparation—is defined to mean information that is available to a jurisdiction from published sources, field sampling, the Board, or other identifiable entities which is the most current data and which addresses the situation being examined; the different classes of waste materials are categorized into "commercial solid waste," "industrial solid waste," "organic waste," etc.; and terms to assist jurisdictions and the Board in determining the base rate for measurement of progress toward the 1995 and 2000 waste diversion goals (such as "normally disposed of," "diversion alternatives," "disposal capacity," etc.) are also defined.

Most of the differences between the definitions contained in the emergency regulations and those of the proposed