



the forfeiture provisions. This two-year bill is pending in the Assembly Public Safety Committee.

## LITIGATION:

In *Karoutas v. HomeFed Bank*, No. A050085 (July 23, 1991), the First District Court of Appeal recognized a common law duty requiring lenders with actual knowledge of facts materially affecting the value of property to disclose those facts to prospective bidders at a trustee's sale. HomeFed was the beneficiary under a trust deed on real property; the owners of the property subsequently defaulted. At a trustee's sale, the Karoutases purchased the property for \$155,001. Prior to the sale, the Karoutases did not and could not inspect the property; after the sale, the Karoutases discovered that soil conditions and other defects in the residence would cost in excess of \$250,000 to repair. The Karoutases filed a complaint against HomeFed for rescission, declaratory relief, fraud, and negligent nondisclosure, claiming that HomeFed knew about the defects prior to the sale. The trial court sustained HomeFed's demurrer, finding that the absence of a disclosure duty defeated all of plaintiffs' claims.

On appeal, the principal issue was whether HomeFed, given its alleged knowledge of defects in the property and residence, had a duty to disclose the defects to the Karoutases. The court readily found that, based on precedent, the facts as stated by the Karoutases are "sufficient to raise . . . a common law duty to disclose." HomeFed did not contend that the allegations failed to establish a common law duty to disclose; rather, it argued that the comprehensive nature of the nonjudicial foreclosure statutes, which do not contain a duty to disclose, precludes the court from imposing such a duty on a beneficiary. The First District rejected HomeFed's contentions, finding, among other things, that caselaw interpreting the nonjudicial foreclosure statutes does not eliminate common law duties owed to prospective bidders over and above those required by the statutes. Additionally, the court noted that the "public interest in the prevention of fraud" overcomes the public interest in the speedy disposition of property under deeds of trust.

Jury selection in *People v. Keating*, the long overdue state criminal trial of financier Charles H. Keating, began on August 6. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 129-30; Vol. 11, No. 1 (Winter 1991) p. 105; and Vol. 10, No. 4 (Fall 1990) pp. 128-29 for background information.) On July 26, Los Angeles

County Superior Court Judge Lance A. Ito decided to sever Keating's trial from that of Judith J. Wischer, after prosecutors agreed with Wischer's attorney that a joint trial might be unfair to her. Wischer was president of Keating's American Continental Corp. (ACC), the Arizona development company that owned Lincoln Savings and Loan. Her trial is expected to follow at the conclusion of Keating's trial.

Keating and Wischer are each charged with 20 counts of securities fraud in the sale of ACC bonds to purchasers who, according to the indictment, were told by Lincoln salespersons that their investments would be insured up to \$100,000 by the federal government. In fact, no such guarantee existed and more than 20,000 purchas-

ers, including many senior citizens on fixed incomes, lost an estimated \$250 million when ACC declared bankruptcy in April 1989. Keating faces up to ten years in prison if convicted on six or more of the charges.

On August 21, Judge Ito ruled that jurors will be given an aiding-and-abetting instruction, which states that in order to convict Keating, they must find that he intended to help bond salespeople make untrue statements in efforts to sell the bonds, knew bond salespeople were making untrue statements in selling the bonds, and encouraged the bond salespeople to make the untrue statements.

Opening arguments commenced on August 29; the trial is expected to continue through the end of the year.



## DEPARTMENT OF INDUSTRIAL RELATIONS

### CAL-OSHA

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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.

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:

*Governor Appoints New DOSH Chief.* In August, Governor Wilson appointed Dr. John J. Howard of San Diego to replace Robert W. Stranberg as the chief of DOSH, Cal-OSHA's inves-



tigative and enforcement division; Howard assumed the position effective September 1. Although his appointment has yet to receive Senate approval, he may serve in the position for up to one year pending Senate action on his appointment. Since 1987, Dr. Howard has worked as an assistant professor at the Occupational Health Center for the University of California Department of Medicine at UC Irvine. According to Howard, the major issues facing Cal-OSHA include accumulative trauma disorders such as carpal tunnel syndrome, possible transmission of the AIDS virus in the workplace, indoor air pollution, and hazards of video display terminals.

#### **Implementation of Proposition 65.**

At its August 22 meeting, OSB staff again received public comment regarding its 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. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 139-40; Vol. 11, No. 1 (Winter 1991) p. 109; and Vol. 10, No. 4 (Fall 1990) p. 133 for background information.) The proposal discussed was the same as the emergency regulation adopted by the Board on May 16 and approved by the Office of Administrative Law (OAL) on May 31, which was in effect until September 30. Following the public hearing, OSB voted 4-1 to readopt the emergency regulation without amendment except to extend the effective date for another 120 days, in order to provide staff with additional time to finalize the permanent rulemaking package for OSB adoption. On September 30, OAL approved the readoption, which will be valid until January 28, 1992. The Board was scheduled to receive additional public comments at its November meeting.

**Proposed Regulations Regarding Sanitation Standards for Agricultural Workers.** The General Industry Safety Orders in Title 8 of the CCR currently do not contain a section dealing specifically with sanitary facilities for agricultural workers. Labor Code section 6712 requires that any proposed sanitation health standard be at least as effective as 29 C.F.R. Part 1928.110, California Health and Safety Code sections 3700-3704 and 5474.20-5474.31, and Labor Code section 2441. Moreover, such a standard shall apply to "all agricultural places of employment," pursuant to Labor Code section 6712(a)(3).

To implement and adhere to these existing statutory requirements, OSB held a public hearing at its June 20 meeting on proposed amendments to

existing sections 3364 (sanitary facilities) and 3366 (washing facilities), Article 9, Title 8 of the CCR, and the adoption of new section 3457, Article 13, Title 8 of the CCR. Existing section 3364(a)(Exception 3) and section 3366(c)(Exception 2) exempt employees engaged in food growing and harvesting subject to the sanitation provisions of Division 5, Part 3, Chapter 6.5 of the Health and Safety Code. The proposed revisions to sections 3364 and 3366 revise the exceptions to provide that "employees engaged in agricultural operations at non-permanent places of employment are subject to the sanitation provisions of section 3457."

Proposed section 3457 would regulate the use, maintenance, and availability of sanitary facilities (including drinking water, toilet, and handwashing facilities) in all agricultural operations, as defined in section 3437.

Proposed subsection 3457(a), which delineates the type of operations addressed in the standard, would bring under the purview of the standard any agricultural operation employing one or more employees. This differs from the federal standard which defines scope in terms of eleven or more employees engaged in hand-labor operations for more than three hours on a given day (29 C.F.R. Part 1928.110(a)).

Proposed subsection 3457(b) contains definitions for "agricultural employer," "agricultural establishment," "agricultural operation," "hand-labor operations," "handwashing facility," "potable water," and "toilet facility." The effect of this subsection would be to define certain terms used in this standard and to establish a common terminology for use in applicable California regulations. Some of the proposed definitions vary slightly from the federal definitions.

Proposed subsection 3457(c) would contain the requirements for potable drinking water, toilet and handwashing facilities, the maintenance of the facilities, and employee accessibility to the facilities. Subparts to subsection (c) would set forth highly specific implementation standards, such as establishing the physical specifications of the toilets and handwashing facilities, and the physical distance of the facilities to the workers. Some of these requirements vary slightly from the federal standards.

Proposed subsection 3457(d) would establish reporting requirements for employers who have been cited for violations of proposed section 3457. Finally, proposed subsection 3457(e) would establish an effective date of June 1, 1992 for implementation of this stan-

dard. Unlike the federal standard, which permits implementation of the requirements in stages, California employers would have to implement all the safety orders by a certain date.

The Board was scheduled to consider the adoption of these proposals at its November meeting.

#### **Orchard Man-Lift Requirements.**

During a June 20 public hearing, OSB heard testimony on proposed revisions to sections 3637 and 3641, Article 24, Title 8 of the CCR (Elevating Work Platforms and Aerial Devices), regarding the establishment of 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. Currently, no ANSI standards specifically encompass the design and construction of orchard man-lifts. In addition to establishing such guidelines, the proposed amendments would give the purchaser or end user of these devices specific guidelines for determining whether a device meets minimum California requirements. According to OSB staff, the amendments also include specific operating procedures to be followed to ensure the employee is provided a safe and healthful worksite.

Proposed amendments to section 3637 would define an "orchard man-lift (pruning tower)" as "[a]n aerial device designed to elevate and position personnel for the purpose of harvesting and/or pruning fruit and nut trees."

Proposed new subsection 3641(a) would require all orchard man-lifts manufactured after September 1, 1991, to have a legible plate or marking permanently affixed to the device to indicate, among other things, compliance with applicable ANSI requirements for stability and construction. Proposed subsection 3641(b) would require orchard man-lifts manufactured after September 1, 1991, to incorporate specific platform design features, operating controls, a means of controlled platform descent, guardrails, and safety belts.

Proposed subsection 3641(c) would require employers who operate orchard man-lifts manufactured before September 1, 1991, to ensure that the device (1) bears a plate or other marking as required in proposed subsection (a); and (2) meets specific requirements for structural safety, stability, and platform descent control. An informative "Note" to proposed subsection (c) explains how the employer may substantiate compliance with these requirements.

Proposed subsection 3641(d) would require all orchard man-lift operation and maintenance to be in accordance



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with the manufacturer's recommendations. Proposed subsection 3641(e) would require use and posting of warning signs on orchard man-lifts to be in accordance with the requirements of Article 37 of the High Voltage Electrical Safety Orders. Finally, proposed subsection 3641(f) would apply existing aerial device operating instructions contained in section 3648, Title 8 of the CCR, to orchard man-lifts with two additional instructions: (1) orchard man-lift users shall be trained in accordance with the manufacturer's recommended operating procedures; and (2) a written emergency procedure to move the device's base unit and lower the platform shall be developed and operators shall be trained in these emergency procedures.

Staff reviewed the public comments received and presented the unmodified regulatory proposal to OSB for adoption at its September 26 meeting. OSB adopted the proposed revisions and submitted its completed rulemaking package to OAL for approval on September 27.

**Elevating Work Platform Requirements.** On July 25, OSB held a public hearing on another proposed revision to section 3637, which currently defines the term "elevating work platform" as "[a]n aerial device designed to elevate a platform in a substantially vertical axis." The proposed revision would delete the term "aerial" from the definition, to indicate that an elevating work platform is not an aerial device and should not be subject to the aerial device requirements. According to OSB, an elevating work platform is a device designed to elevate primarily in a substantially vertical axis, with limited horizontal extension, usually restricted to the device base. At the hearing, OSB received no comments from the public on these proposed revisions. OSB adopted the proposed revisions on August 22, and OAL approved the package on September 10.

**Machinery Servicing/Maintenance Regulations.** On August 22, OSB conducted a public hearing on proposed amendments to section 3314, Title 8 of the CCR (Cleaning, Repairing, Servicing and Adjusting Prime Movers, Machinery and Equipment). Federal regulations specify employer requirements when servicing and performing maintenance on machines or equipment in which the unexpected energization, start-up, or release of stored energy within the machine or equipment could cause injuries to employees. OSB is proposing amendments to section 3314 which would incorporate provisions of 29 C.F.R. Part 1910.147, which became

effective on October 31, 1989. At this writing, OSB staff is reviewing the public comments received; OSB was scheduled to consider the adoption of the amendments at its November meeting.

**Lift-Slab Construction Operations.** On September 26, OSB held a public hearing on proposed amendments to sections 1504 and 1722.1, Title 8 of the CCR, regarding lift-slab construction operations; specifically, OSB proposed to adopt the federal regulation found at 29 C.F.R. Part 1926, Subpart Q. Lift-slab construction is a method of erecting structures whereby the building floors and roof concrete slabs are cast one on top of the other at ground level. The slabs are then lifted to their position by hydraulic jacks and secured to the columns.

Section 1504 currently contains terms and definitions applicable to the Construction Safety Orders and related activities. The proposed amendment would add the definition for "jacking operation," identifying for the employer the various phases of what constitutes the jacking operation in lift-slab construction.

Section 1722.1 provides requirements for lift-slab operations; specifies that lift-slab operations be designed and planned by a civil engineer currently registered in California; and specifies the working capacity of jacking equipment and associated hardware. Among other things, the proposed amendments would require that the civil engineer who designs and plans the lift-slab operation also be experienced in lift-slab construction, and that the plans and designs include provisions for ensuring lateral stability of the building/structure during construction; introduces the term "lifting unit"; requires that manual control leveling be attended by a competent person with experience in lifting operations in addition to meeting the definition of "competent person"; prohibits employees from being in the building while any jacking operation is taking place, except those essential to the jacking operation, unless the building/structure has been sufficiently reinforced to ensure its integrity during erection.

OSB was scheduled to consider the adoption of the proposed amendments at its November meeting.

**Asbestos Regulatory Amendment Proposed.** On September 26, OSB held a public hearing on its proposed amendments to section 1529, Title 8 of the CCR, which establishes minimum safety and health standards for exposure to asbestos in construction. OSB proposes to amend section 1529(b) to conform the definition of the term "certified as-

bestos consultant" with that found in Business and Professions Code section 7181, define the term "certified site surveillance technician," and modify the definitions of "certified supervisor" and "qualified person." Amendments to subsections 1529(o)(6) and (o)(7) set forth the criteria for certification of asbestos consultants and site surveillance technicians, respectively. Amended section 1529(o)(8) would prohibit employers from engaging the services of asbestos consultants or site surveillance technicians unless they are certified by DOSH. Proposed subsection 1529(t) establishes the effective date for subsection 1529(o)(8) as July 1, 1992.

OSB received substantial public comment in response to its proposed amendments; the Board will consider the adoption of the amendments at a future meeting.

**Airborne Contaminants Regulations.** On September 26, OSB held a public hearing on proposed amendments to section 5155, Title 8 of the CCR, which establishes requirements for controlling employee exposure to airborne contaminants. Labor Code section 144.6 requires that the development of the standards in section 5155 shall be based on the latest scientific data available to attain the highest degree of health and safety protection for employees. The proposed amendments would make section 5155 at least as effective as the established threshold limit values recommended by the American Conference of Industrial Hygienists. OSB will consider the adoption of the proposed amendments at a future meeting.

**Framing and Concrete Form Revisions Proposed.** In September, OSB published notice of its intent to amend section 1713, Title 8 of the CCR, which addresses safeguards to be used during the erection of framing and concrete forms. These safeguards include the requirements for guying, anchoring, or bracing of panels and a safety factor of four for lifting attachments when lifting panels weighing more than 500 pounds. OSB's proposed amendment would delete the words "erection of" from the title of section 1713, thereby requiring the employers to comply with section 1713 during all phases of operations including dismantling or removal of the framing and concrete forms. OSB was scheduled to hold a public hearing on this proposed amendment on October 24.

**Acutely Hazardous Material Regulation.** In September, OSB published notice of its intent to adopt new section 5189, Title 8 of the CCR. New Labor Code section 7856 requires OSB to



adopt process safety management standards for refineries, chemical plants, and other specified manufacturing facilities. Proposed section 5189 would establish such requirements, requiring the employer to develop and maintain written process safety information; perform a process hazard analysis; establish written operating procedures; and conduct employee training. In addition, proposed section 5189 would require the employer to develop and implement written procedures for the issuance of "hot work" permits; establish written procedures to manage process changes or modifications to process chemicals, technology, and equipment; and establish a written procedure for prompt reporting and investigation of incidents which could have resulted in a catastrophic acutely hazardous material release, including procedures for employee involvement and communication. OSB was scheduled to hold a public hearing on the proposed new section on October 24.

**DOSH Proposes Regulatory Revisions.** Labor Code section 6401.7(g), enacted on an urgency basis in SB 198 (Greene) (Chapter 1369, Statutes of 1989), requires every employer to establish, implement, and maintain an effective "Injury Prevention Program." (See CRLR Vol. 11, No. 2 (Spring 1991) p. 131; Vol. 11, No. 1 (Winter 1991) p. 107; and Vol. 10, No. 4 (Fall 1990) p. 131 for background information on SB 198.) Section 6401.7(f) provides for the inclusion of employer and employee occupational safety and health committees within an effective injury prevention program. Section 6401.7(g) requires DOSH to adopt regulations setting forth the "procedures for selecting employee representatives for employer-employee occupational safety and health committees when these procedures are not specified in an applicable collective bargaining agreement."

In September, DOSH noticed its intent to adopt new Article 1.5, Title 8 of the CCR, commencing at section 340.10, to be entitled "Occupational Safety and Health Committees." New section 340.10 would require every safety and health committee to be approved by the "Cal/OSHA Consultation Service" for DOSH; specific criteria must be provided to the Consultation Service for the evaluation process.

DOSH has also proposed amendments to sections 341.1 and 341.3, Article 2, Title 8 of the CCR (Permits—Excavations, Trenches, Construction and Demolition). Section 341.1 sets forth the criteria for the issuance of permits for certain designated hazardous places of employment. DOSH is pro-

posing to add "special provisions" applicable to the erection of fixed tower cranes to specifically require certain notification and work monitoring requirements. Section 341.3 sets forth the fees for the issuance of permits. DOSH proposes to impose a fee of \$350 for the issuance of a permit fee for the erection of a fixed tower crane.

DOSH is also proposing the addition of Article 11, Title 8 of the CCR (License Requirements—Crane and Derrick Certification). The article, which would consist of sections 344.60 through 344.67, would provide, among other things, specific application and examination requirements as well as criteria for the issuance of licenses to certify cranes and the approval of surveyors who will be working under the authority and supervision of a licensed certifier. Among the topics addressed in proposed Article 11 are licensing requirements; application form contents and applicant qualifications; processing times for license applications; license application, renewal, and examination fees; criteria for the denial of a license; and criteria for the revocation or suspension of a license.

DOSH has also proposed the addition of Article 12, Title 8 of the CCR (Tower Cranes—Operating Permit and Certification Requirements), commencing with section 344.70. Among other things, Article 12 would set forth the scope and requirements for a tower crane operating permit; the procedure for the application for and issuance of an operating permit; issuance and processing times relating to a tower crane operating permit application; tower crane permit and inspection fee schedule; and criteria for the denial, revocation, or suspension of a permit.

Finally, DOSH has proposed the addition of Article 13, Title 8 of the CCR, to set forth additional requirements for the certification of cranes. Proposed section 344.80 would set forth duties and recordkeeping requirements for licensees, and proposed section 344.81 would set forth criteria regarding fixed and mobile tower crane certification.

On July 15, DOSH adopted the above revisions on an emergency basis; the changes are in full force and effect for 120 days. DOSH was scheduled to hold a public hearing on October 22 to receive testimony on the permanent adoption of the regulatory package.

**Update on Other Proposed Regulatory Changes.** The following is a status update on other proposed regulatory changes considered and/or approved by OSB and discussed in detail in previous issues of the *Reporter*:

—On June 13, OAL approved OSB's proposed revisions to section 3656(f), Title 8 of the CCR (General Industry Safety Orders), which replace the term "picking aisles" with "storage access aisles" and thus limits the application of the section to storage access aisles in which only order pickers, stock pickers, and side loaders are used. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 141 for background information.)

—On July 1, OAL approved OSB's proposed amendments to section 3212(d), Title 8 of the CCR, and section 1711(h), Title 24 of the CCR, which now require that guardrail protections be provided for employees working within six feet of the edge of a roof. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 131; Vol. 11, No. 1 (Winter 1991) p. 109; and Vol. 10, No. 4 (Fall 1990) pp. 131–32 for background information.)

—On July 15, OAL approved OSB's proposed amendments to sections 341.1 and 341.3, Title 8, regarding permits for excavations, trenches, construction, and demolition. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 132 and Vol. 11, No. 1 (Winter 1991) p. 108 for background information.)

—On July 25, OSB adopted proposed amendments to sections 1504, 1539, 1540, 1541, 1541.1, 1542, 1543, 1544, 1545, 1546, 1547, Plate C-22, and Plates C-24a through C-24e of the Construction Safety Orders, Title 8 of the CCR, concerning excavations, trenches, and earthwork. On August 26, OAL approved the amendments. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 142 and Vol. 11, No. 2 (Spring 1991) p. 131 for background information.)

—On July 25, OSB adopted proposed amendments to section 5192, Title 8 of the CCR. In August 1990, former Governor Deukmejian signed AB 3018, requiring DOSH to enforce the federal OSHA standard for the control of occupational exposures to hazardous substances during hazardous waste operations and emergency response until a California standard was promulgated. The revisions to section 5192, setting forth California's requirements for hazardous waste operations and emergency response, were approved by OAL on August 26. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 132 for background information.)

—On June 30, OAL approved OSB's amendments to section 3041 and 3071, Title 8, and section 7-3071, Title 24 of the CCR (Elevator Safety Orders); the amendments extend the photoelectric tube by-pass switch and medical emergency elevator requirements to hydraulic elevators. (See CRLR Vol. 11, No. 3



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(Summer 1991) p. 142 and Vol. 11, No. 2 (Spring 1991) p. 131 for background information.)

-On June 30, OAL approved OSB's amendments to Title 8, sections 3000, 3001, 3002, 3009, 3021, 3022, and 3041 (Elevator Safety Orders); Title 24 sections 7-3000, 7-3001, 7-3002, 7-3009, 7-3021, and 7-3041 (State Elevator Safety Regulations); and Title 24, section 5103 (California Building Code). (See CRLR Vol. 11, No. 2 (Spring 1991) p. 132 for background information.)

-Proposed revisions to section 1721, Title 8 of the CCR (Construction Safety Orders), addressing hazards involved with the installation of structural wood framing, were scheduled to be voted on by the Board at its November 21 meeting. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 141 for background information.)

-On June 20, OSB adopted revisions to section 3650, Title 8 of the CCR (General Industry Safety Orders), involving required tags and labels for industrial trucks; on July 17, OAL approved the revisions. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 141 for background information.)

### LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 142-44:

**AB 2104 (Bane)**, as amended June 30, requires OSB, on or before July 1, 1992, to compile existing research studies and other information on the effects of continuous exposure to low-frequency magnetic radiation emitted from video display terminals (VDTs), and to report its findings to the Assembly Rules Committee and the Senate Rules Committee. This bill was signed by the Governor on October 14 (Chapter 1151, Statutes of 1991).

**AB 581 (Floyd)**, as amended August 26, would have required every person, including a flag person, flagger, construction traffic controller, and supervisor, who directs and controls moving traffic or who immediately supervises the selection, placement, and maintenance of traffic control devices on any public street or highway where construction work is occurring, to complete a specified training course and be registered by DOSH in accordance with specified registration procedures. This bill also would have required OSB to promulgate safety standards, orders, rules, and regulations for the safe control of moving traffic on a public street or highway where construction work is occurring. This bill was vetoed by the Governor on October 7.

**AB 1545 (Friedman)**. Existing law prohibits DOSH from imposing civil penalties against any employer for first instance violations of any standard, rule, order, regulation, other than serious, willful, or repeated violations, resulting from an inspection of the employer's establishment or workplace, unless the establishment or workplace is cited, on the basis of the inspection, for ten or more violations. As amended June 20, this bill deletes this prohibition on the imposition of civil penalties. This bill, which also increases the dollar amounts of civil and criminal penalties which may be assessed for violations of certain occupational safety or health laws or regulations, was signed by the Governor on October 5 (Chapter 599, Statutes of 1991).

**AB 1495 (Tanner)**, as amended July 15, requires an employer's injury prevention program to contain specific provisions which include, among the employees covered by the program, all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. This bill was signed by the Governor on October 13 (Chapter 964, Statutes of 1991).

**AB 1718 (Boland)**. Existing law permits DOSH to issue elevator permits based upon a certificate of inspection by any qualified elevator inspector of any municipality, upon proof to its satisfaction that the safety requirements of the municipality equal the minimum safety requirements for elevators adopted by OSB. As introduced March 8, this bill permits the operation of an elevator if a permit for its operation is either issued by, or in behalf of, DOSH, in conformance with these provisions. This bill was signed by the Governor on July 29 (Chapter 258, Statutes of 1991).

**AB 1980 (Horcher)**, as amended May 13, extends to 45 days from the date of filing the time within which OSB is to act upon a petition for reconsideration before the petition is deemed to have been denied. This bill was signed by the Governor on October 7 (Chapter 734, Statutes of 1991).

**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)**, as introduced March 8, 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)**, as introduced March 8, 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 1184 (Floyd)** was substantially amended and no longer is relevant to Cal-OSHA.

**AB 198 (Elder)**, as introduced January 7, 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:

On September 16, the first legal challenge to San Francisco's new ordinance governing the use of VDTs was filed in San Francisco County Superior Court. The ordinance covers city workers and businesses with fifteen or more employees, and requires employers to provide adjustable work stations, regular breaks, and training on the safe use of VDTs. Employers have four years to implement the ordinance. (See CRLR Vol.

11, No. 3 (Summer 1991) p. 140 and Vol. 11, No. 1 (Winter 1991) p. 106 for background information.)

In **C&T Management Services, et al. v. San Francisco**, No. 936661, filed by the San Francisco-based law firm Littler, Mendelson, Fastiff & Tichy, plaintiffs C&T Management Services, Inc., and Zack Electronics, Inc., both data processing companies, seek invalidation of the ordinance and a ruling that VDT regulations are properly governed by Cal-OSHA and state workers' compensation laws. Plaintiffs contend that Cal-OSHA's jurisdiction preempts local regulation of safety and health issues for private employees; the ordinance is beyond the authority granted to municipalities by the state Constitution; and the VDT ordinance further violates the state Constitution by attempting to circumvent laws on workers' compensation and denying businesses due process by failing to provide for a hearing before OSB.

Despite the increasing number of VDT-related injuries, OSB consistently refuses to take action on this issue. A year ago, former Governor Deukmejian vetoed AB 955 (Hayden), which would have established statewide VDT exposure standards. (See *supra* LEGISLATION for update on AB 644 (Hayden) and AB 2110 (Friedman), the legislature's current efforts to force OSB to adopt regulations.)

## RECENT MEETINGS:

At its June 20 meeting, OSB considered a petition for rulemaking filed by Kelley Construction and Engineering Company (Kelley), which has developed a safety device referred to as a "safety pier plug." The device is an inflatable pier plug that is placed in a pier hole after the hole is drilled and before the concrete or steel are placed. According to Kelley, the most commonly used method of providing protection from falling into drilled pier holes is covering the hole with a low quality plywood; Kelley believes this method is approximately 45% effective. Instead, Kelley proposes that current regulations be amended to require that safety pier plugs be used as a safety device to guard open pier holes on job sites.

OSB staff noted that, although nothing in current regulations would prohibit the use of safety pier plugs, properly-secured plywood provides the same level of safety as the Kelley safety pier plug. Therefore, staff concluded that it is in the best interest of all concerned that the regulation remain a performance standard, thereby leaving the method of

barrier protection up to the employer. However, staff recommended that an advisory committee be convened to review section 1540(m) of the Construction Safety Orders and, if appropriate, develop regulations concerning fall hazards associated with wells, pits, shafts, and caissons on all construction sites; such a proposal could be presented to the Board in the future. OSB adopted staff's recommendation and denied Kelley's petition.

Earlier this year, Elizabeth Treanor of Organization Resources Counselors, Inc., (ORC) addressed the Board and requested that OSB revise and clarify some of the definitions in its proposed new section 5191, Title 8 of the CCR, relating to control of occupational exposures to hazardous chemicals in laboratories (the Lab Standard). (See CRLR Vol. 11, No. 2 (Spring 1991) p. 131; Vol. 11, No. 1 (Winter 1991) p. 109; and Vol. 10, No. 4 (Fall 1990) p. 132 for background information.) Finding that the existing definitions are adequate, the Board stated at its June 20 meeting that no further rulemaking on the Lab Standard is needed at this time.

At its July 25 meeting, OSB entertained public comments on Variance File Nos. 90-V-102 and 103, which would permit Pacific Gas & Electric (PG&E) to allow its workers to use the live-line, barehand technique to work on energized lines of 230,000 volts up to 500,000 volts, and to use rubber gloves when working on voltages above 7,500, up to and including 21,000 volts. The main issue in these variance applications was whether PG&E established that equivalent safety measures exist with respect to electrical and magnetic fields (EMF) exposure. Comments received during the public meeting focused on the potentially increased exposure to deadly risk by permitting line employees to use rubber gloves instead of six-foot long "hot sticks." A number of witnesses criticized the variances, contending they place prospective financial gain above potential loss of life.

DOSH, OSB staff, and a hearing panel all found that PG&E had established equivalent safety with respect to EMF exposure and recommended that OSB grant the variance. After requiring PG&E to provide DOSH and OSB with copies of all relevant information it obtains concerning the health effects of EMF in the future, and to monitor EMF exposure and provide the monitoring results to DOSH on an annual basis, OSB approved the variances.

At its August 22 meeting, D.A. Swerrie of Swerrie, Inc., petitioned OSB to amend section 3040(b)(5) of the



## REGULATORY AGENCY ACTION

Elevator Safety Orders to be more consistent with current ASME/ANSI rules, which no longer require stop switches in passenger elevators. Swerrie proposed that section 3040(b)(5) be amended to make the requirement for an emergency stop switch in passenger elevators permissive rather than mandatory. OSB adopted staff's recommendation to grant the petition to the extent that DOSH convene an advisory committee and, if appropriate, develop proposed amendments.

At its September 26 meeting, ConVault, a manufacturer of above-ground steel storage tanks installed within special enclosures which serve as an overflow protection system for the storage of flammable and combustible liquids, petitioned OSB to amend section 5595 of the General Industry Safety Orders to allow the use of aboveground tanks and to recognize recent technology improvements in aboveground tank design with new overflow protection systems instead of drainage, dikes, or walls as currently required in section 5595. OSB staff found that aboveground storage methods greatly reduce the possibility of insidious leakage or leaching of contaminants into groundwater aquifers; however, staff noted that aboveground storage tanks which rely on special enclosures and overflow protection in lieu of drainage/diking systems need to be protected from mechanical damage, if safety to personnel and property damage prevention is to be achieved. Following discussion, OSB adopted staff's recommendation to grant the petition to the extent staff convene an advisory committee for the purpose of developing suitable regulations.

Also at its September 26 meeting, the Associated General Contractors of America petitioned OSB to adopt standards associated with the hazards of skylights and skylight assemblies. DOSH's report on this issue documents numerous accidents where workers have fallen through skylights which were inadequately protected. OSB adopted staff's recommendation to grant the petition to the extent that Board staff convene an advisory committee to consider the Petitioner's proposal and, if appropriate, develop proposed amendments to existing regulations to be presented to the Board at a future meeting.

### FUTURE MEETINGS:

January 16 in Los Angeles.  
February 27 in San Francisco.  
March 26 in San Diego.  
April 16 in Sacramento.  
May 28 in Los Angeles.



## 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 laboratories for the testing, examining, and diagnosing of livestock and poultry diseases.

The executive office of the Department consists of the director and chief deputy director, who are appointed by the Governor. The director, the executive officer in control of the Department, appoints two deputy directors. In addition to the director's general prescribed duties, he/she may also appoint committees to study and advise on special problems affecting the agricultural interests of the state and the work of the Department.

The executive office oversees the activities of six operating divisions:

1. Division of Animal Industry—provides inspections to assure that meat and dairy products are safe, wholesome,

and properly labeled, and helps protect cattle producers from losses from theft and straying;

2. Division of Plant Industry—protects home gardens, farms, forests, parks, and other outdoor areas from the introduction and spread of harmful plant, weed, and vertebrate pests;

3. Division of Inspection Services—provides consumer protection and industry grading services on a wide range of agricultural commodities;

4. Division of Marketing Services—produces crop and livestock reports, forecasts of production and market news information, and other marketing services for agricultural producers, handlers, and consumers; oversees the operation of marketing orders and administers the state's milk marketing program;

5. Division of Measurement Standards—oversees and coordinates the accuracy of weighing and measuring goods and services; and

6. Division of Fairs and Expositions—assists the state's 80 district, county, and citrus fairs in upgrading services and exhibits in response to the changing conditions of the state.

In addition, the executive office oversees the Agricultural Export Program and the activities of the Division of Administrative Services, which includes Departmental Services, Financial Services, Personnel Management, and Training and Development.

The State Board of Food and Agriculture is an advisory body which consists of the Executive Officer, Executive Secretary, and fifteen members who voluntarily represent different localities of the state. The State Board inquires into the needs of the agricultural industry and the functions of the Department. It confers with and advises the Governor and the director as to how the Department can best serve the agricultural industry and the consumers of agricultural products. In addition, it may make investigations, conduct hearings, and prosecute actions concerning all matters and subjects under the jurisdiction of the Department.

At the local level, county agricultural commissioners are in charge of county departments of agriculture. County agricultural commissioners cooperate in the study and control of pests that may exist in their county. They