



# REGULATORY AGENCY ACTION

tions of specified laws are infractions punishable by fines, instead of misdemeanors. AB 2728 has been signed by the Governor (Chapter 238, Statutes of 1988).

**AB 2642 (W. Brown)** would require the Director of CDFA to become involved in negotiations between any bargaining association and food processors and to order conciliation if the Director determines, under a specified procedure, that conciliation will significantly assist the parties in negotiating an agreement. The measure would further provide a specified conciliation procedure and would establish refusal to submit to conciliation as an unfair trade practice, punishable as a misdemeanor. As of this writing, AB 2642 is pending before the Senate Appropriations Committee.

**AB 1596 (Cortese)**, which would authorize the CDFA Director to levy a civil penalty of not more than \$500 against an imported produce handler for each violation of provisions relating to produce which is carrying pesticide residue, was placed in the inactive file on April 28.

**AB 4097 (Connelly)** would increase the economic poisons assessment paid to the CDFA Director by registrants of pesticides. The bill would also require that these funds be used by the CDFA and the DHS to enforce specific testing requirements involving the registration of pesticide products and to develop practical analytic testing methods for specified pesticides. This bill would specify priority pesticides for food monitoring and would require the departments to determine whether there is a practical analytical testing method for each priority pesticide. Registrants of pesticides for which a practical analytical testing method does not exist would be required to submit a method and pay an additional assessment, as specified. CDFA would be prohibited from registering or renewing the registration of a priority pesticide unless a practical analytical testing method is submitted. The measure would further require CDFA and the DHS to develop programs to detect and monitor raw produce and processed food for pesticide residues. At this writing, AB 4097 is pending in the Assembly Agriculture Committee.

**SB 1838 (Ayala)**, which would have authorized the CDFA Director to establish the tolerance level at zero for any pesticide chemical on produce upon finding that a greater tolerance is not justified from the facts available, died in committee.

## LITIGATION:

In *Menefee & Son, et al. v. California Department of Food and Agriculture*, No. C000765 (March 18, 1988), the Third District Court of Appeal struck down Food and Agriculture Code section 12648 as unconstitutional. The section empowered the CDFA Director to seize and destroy, without a hearing and under nonemergency circumstances, a crop or commodity that had been treated with an unauthorized economic poison. After seizure, the section shifted burden to the grower to bring suit within thirty days to contest the seizure. The court held that the statute "fails to provide the minimum due process protections required by the state Constitution," and invalidated the statute and the CDFA seizure orders issued pursuant to it.

## RECENT MEETINGS:

At the Board's regular monthly meeting on April 7 in Sacramento, Director Parnell reported on his trip to Pacific Rim countries to promote California agricultural products. Parnell met with government officials and visited major supermarket chain stores.

Board members also heard comments from economist Kirby Moulton of the University of California's Cooperative Extension Center. Moulton discussed the effect of Mexico's "robust" frozen vegetable industry on California agriculture. He introduced a study on the subject sponsored by the Agricultural Issues Center of the University of California, entitled "Competitiveness at Home and

Abroad—Report of a 1986-87 Study Group on Marketing California Specialty Crops: Worldwide Competition and Constraints." The report concludes that California must maintain technological leadership if it is to retain a competitive edge.

David Gill, President of Nor Cal/Crosetti Foods, Inc., discussed setbacks suffered in California's broccoli industry due to competition from Mexico's frozen vegetable industry. He reported that California's market share has dropped almost 50% in the last five years due to imports. He stated that in some cases Mexico's packers can undersell California companies by 10-20% due to their lower labor costs and subsidized power and fuel. Gill suggested the need to enforce pesticide regulations on imports and for a point of origin label to inform consumers that they are buying imported produce.

On May 5, the Board again met in Sacramento. Board members discussed pending legislation of interest to the Department with the assistance of the Department's legislative coordinator. Members then heard a presentation by economist Jerome B. Siebert of the University of California at David regarding a recently released Agricultural and Natural Resources Marketing Study. The Board spent the afternoon touring the Department's Chemical Laboratory in Sacramento.

## FUTURE MEETINGS:

To be announced.



## RESOURCES AGENCY

### AIR RESOURCES BOARD

*Executive Officer: James D. Boyd*  
*Chairperson: Jananne Sharpless*  
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The California legislature created the Air Resources Board in 1967 to control air pollutant emissions and improve air quality throughout the state. The Board evolved from the merger of two former agencies, the Bureau of Air Sanitation within the Department of Health and the Motor Vehicle Pollution Control Board. The members of the Board have experience in chemistry, meteorology, physics, law, administration, engineer-

ing and related scientific fields.

The Board regulates both vehicular and stationary pollution sources. The primary responsibility for controlling emissions from nonvehicular sources rests with local air pollution control districts (California Health and Safety Code sections 39002 and 40000).

The Board develops rules and regulations for stationary sources to assist local air pollution control districts in their efforts to achieve and maintain air quality standards. The Board oversees their enforcement activities and provides them with technical and financial assistance.



The Board's staff numbers approximately 425 and is divided into seven divisions: Technical Services, Legal and Enforcement, Stationary Source Control, Planning, Vehicle Control, Research and Administrative Services.

#### MAJOR PROJECTS:

*Amendment to Agricultural Burning Regulations for the South Central Coast Air Basin.* On May 12, ARB adopted amendments to section 80210 of its Agricultural Burning Regulations for the South Central Coast Air Basin, which includes San Luis Obispo, Santa Barbara, and Ventura counties.

Existing section 80210, Title 17 of the California Code of Regulations (CCR), specifies the criteria to be used in the South Central Coast Air Basin in declaring permissive-burn days. There are two criteria, one involving a maximum-allowable temperature difference for a surface-based inversion; and the other requiring that, from May through September, the expected afternoon coastline onshore airflow be at least five miles per hour. On permissive-burn days, agricultural burning may be conducted by persons holding burning permits. On no-burn days, agricultural burning may take place only if a special permit is issued by the local air pollution control district.

The amendments approved by the Board involve the criteria for permissive-burn days for the South Central Coast Air Basin and would set up three areas within the air basin, providing for separate permissive-burn day determinations in each area. The regulatory changes are intended to more closely match the burn criteria to meteorological conditions within the three areas of the air basin. One area would consist of all land over the 3,000-foot level. There would be two lower elevation areas. One would include the southern coastal area of Santa Barbara County below the southern ridge line of the Santa Ynez Mountains and Ventura County. The other lower elevation area would include San Luis Obispo County and the remainder of Santa Barbara County. Separate criteria in making burn-day determinations would be used in the three areas. The adopted amendments were submitted to the Office of Administrative Law (OAL) in June.

*Report to the Legislature Concerning Opacity Standards.* Also on May 12, the Board approved a report to the legislature concerning the economic and technical feasibility of requiring diesel pile-driving hammers to meet shade and

opacity standards more stringent than Number 2 on the Ringelmann Chart.

Health and Safety Code section 41701 prohibits any person from discharging into the atmosphere any air contaminant, other than uncombined water vapor, which is dark or darker in shade than Number 2 on the Ringelmann Chart. The Chart is published by the U.S. Bureau of Mines. Many local air pollution control districts have adopted more stringent opacity standards, limiting the opacity of stationary source stack gases to Number 1 or less on the Ringelmann Chart.

Health and Safety Code section 41701.5 currently exempts diesel pile-driving hammers from meeting discharge requirements on emissions of visible smoke more stringent than Number 2 on the Ringelmann scale. This exemption expires January 1, 1989. Section 41701.5 requires the Board to prepare a feasibility report on this issue for the Legislature.

The Board's report recommends to the legislature that pile-driving hammer operators be required to obtain permits from their local air pollution control districts in order to operate their hammers. The report states that there is regional variability in the feasibility of requiring hammer operators to meet opacity standards more stringent than Ringelmann 2. Due to this regional variability, the Board recommends that compliance options be made available to the hammer operators.

*OAL Approves Nonconformance Penalty Program for Heavy-Duty Engines and Vehicles.* OAL has approved re-submitted amendments to sections 1956.8(d) and 1965, Title 13 of the CCR. The amendments, which establish a nonconformance penalty program (NCP) for heavy-duty engines and vehicles, were initially disapproved by OAL on March 18. (See CRLR Vol. 8, No. 1 (Winter 1988) pp. 89-90 for detailed information about the NCP.)

*Test Method for Determining Emissions from Non-Vehicular Sources.* An amendment to section 94105, Title 17 of the CCR, adopted by the Board on January 7, has been approved by OAL and was filed with the Secretary of State on April 27. The amendment concerns a test method for determining particulate matter emissions from stationary sources. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 97 for detailed information.)

*Service Station Benzene Control Measure.* In June, OAL approved the Board's retail service station benzene

control measures. The approved changes add sections 93100 and 93101 to Titles 17 and 26 of the CCR, respectively. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 89 for detailed information.)

*Ethylene Oxide as a Toxic Air Contaminant.* A proposed regulatory amendment to section 93000, Titles 17 and 26, which identifies ethylene oxide as a toxic air contaminant, is being reviewed by OAL at this writing. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 89 for background information.)

*State Ambient Air Quality Standard for Oxidant.* Regulatory amendments regarding the California ambient air quality standard for oxidant and the measurement method for oxidant were recently approved by OAL. The Board approved the regulatory changes, involving amendments to sections 70100 and 70200 of Title 17, on November 12, 1987. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 89.)

*Adoption of an Airborne Toxic Control Measure for Hexavalent Chromium Emissions from Chrome Plating and Chromic Acid Anodizing Facilities.* Proposed section 93102 of Titles 17 and 26, an airborne toxic control measure for hexavalent chromium emissions from chrome plating and chromic acid anodizing facilities adopted by ARB on February 18, has not yet been submitted to OAL. (See CRLR Vol. 8, No. 2 (Spring 1988) pp. 97-98 for additional information.)

*Attorney General Responds on Open Meetings Issue.* On March 24, Attorney General John Van de Kamp filed an opinion in response to the Board's request on the following question: Does the Ralph M. Brown Act require that the deliberations of a hearing board of an air pollution control district, after it has conducted a public hearing on a variance, order of abatement, or permit appeal, be conducted in public? If so, may the board deliberate in private after such public hearings with the board's legal counsel, or the board's attorney member?

In Opinion No. 87-1205, the Attorney General concluded that the Brown Act does require the deliberations of a hearing board of an air pollution control district, after it has conducted a public hearing on a variance, order of abatement, or permit appeal, to be conducted in public. The Act prohibits the hearing board from conducting such deliberations in private with the board's counsel or the board's attorney member.



## LEGISLATION:

**AB 514 (Clute)**, as amended, prohibits the burning of tires in resource recovery projects in areas of the state that do not meet national clean air standards. The bill also requires the ARB, the California Waste Management Board, and the Energy Commission to report to the legislature by January 1, 1990 on waste tires. The bill passed the Assembly on June 10 and is pending in the Senate Committees on Governmental Organization and Natural Resources and Wildlife.

**AB 2969 (Frizzelle)**, as amended, would extend the operation of existing provisions prohibiting the ARB and air pollution control districts and air quality management districts from establishing standards for emissions of visible smoke from diesel pile-driving hammers which are more stringent than that designated as No. 2 on the Ringelmann Chart. Operating a diesel pile-driving hammer in a manner that exceeds these limits for an aggregate of more than four minutes during the driving of a single pile is also prohibited. The bill would also prohibit the state board and districts from regulating the operation of diesel pile-driving hammers unless ARB adopts a permit process, as specified. At this writing, AB 2969 is pending in the Assembly Committee on Natural Resources. (See *supra* MAJOR PROJECTS for related discussion.)

**AB 4434 (Tanner)**, as amended, would require the ARB to identify the relative contribution to total exposure to contaminants from indoor concentrations, taking into account both ambient and indoor air environments. The bill passed the Assembly on June 9 and is pending in the Senate Committee on Toxic and Public Safety Management.

**AB 3672 (Clute)**. Existing law designates the ARB as the responsible agency for preparation of the state implementation plan required by the federal Clean Air Act. Regulations adopted pursuant to that Act require the state plan to include a contingency plan for the prevention of air pollution emergency episodes. As amended, this bill would require ARB to hold a hearing to review the considered Air Pollution Emergency Plan for ozone, including a review of the criteria in light of current scientific evidence regarding the effects of air pollution on public health. The review would also include an evaluation of existing public information programs in terms of effectiveness in disseminating health information to persons most likely to be adversely affected by air pollu-

tion. The bill passed the Assembly on June 2 and is pending in the Senate Appropriations Committee.

**AB 3757 (Stirling)**, as amended, gives local air pollution boards the power to immediately issue orders to shut down illegal manufacturing operations or construction projects which violate clean air laws. The bill has been signed (Chapter 183, Statutes of 1988).

**AB 3971 (Cortese)**, as amended, would allow the Bay Area Air Quality Management District, in cooperation with the Metropolitan Transportation Commission and the Association of Bay Area Governments, to require employers of at least 100 employees at any work-site to institute ridesharing and car-pooling programs. This provision is similar to the authority granted by SB 151 (Presley) in 1987 to the South Coast Air Quality Management District. The bill passed the Assembly on April 28 and is pending in the Senate Transportation Committee.

**AB 4355 (Connelly)**, as amended, would create the Sacramento Metropolitan Air Quality Management District, replacing the Sacramento County Air Pollution Control District, and vesting the new district with broader regulatory authorities and responsibilities. The bill would allow Placer County (or any portion thereof) to join the new district at the discretion of the Placer County Board of Supervisors. This bill passed the Assembly on June 9 and is pending in the Senate Committee on Local Government.

**AB 4663 (Hauser)**, as amended, would require ARB, after holding public hearings, to publish maps classifying cities, counties, or portions thereof, on the basis of compliance or non-compliance with ambient air quality standards. The bill would prescribe procedures for preparation of those maps by ARB, or at their option, by local pollution control districts, and would require annual revision. This bill passed the Assembly on June 9 and is pending in the Senate Committee on Governmental Organization.

**SB 1931 (Campbell)**. Current law requires ARB to establish, by regulation, specified maximum standards for the volatility of gasoline sold in California at nine pounds per square inch Reid vapor pressure, except that any blend of gasoline consisting of at least 10% ethyl alcohol is exempt from the regulations until January 1, 1990, if the gasoline used in the blend meets the nine pounds per square inch Reid vapor pressure standard. This bill would instead provide

that a blend of gasoline consisting of at least 10% ethyl alcohol is exempt from sales and use taxes, as specified, until October 1, 1993, if it meets those volatility standards. This bill passed the Senate on June 8 and is pending in the Assembly Transportation Committee.

**SB 2285 (Presley)**, as amended, would make the provisions of the Brown Act, an open meetings law, applicable to special and emergency meetings of the South Coast Air Quality Management District. It would also increase the membership of the governing board of the District. SB 2285 is pending in the Assembly Natural Resources Committee.

**SB 2646 (Presley)**, as amended, would authorize the ARB to establish, and require the districts to enforce, limits on the volatile organic compound content of coatings, solvents, and consumer products. The bill would define the term "volatile organic compound" and authorize the districts to continue to establish and enforce their own limits until limits are established by the ARB. SB 2646 passed the Senate on May 26 and is pending in the Assembly Natural Resources Committee.

The following is a status update of bills discussed in detail in CRLR Vol. 8, No. 2 (Spring 1988) at pages 98-99:

**AB 1461 (Elder)**, concerning closure of facilities, died in committee.

**AB 1479 (Sher)**, which would require implementation of a statewide plan for monitoring environmental impacts of waste- or fuel-burning projects, remains in the inactive file.

**SB 1016 (Keene)**, concerning regulation of benzene from retail service stations, is in the inactive file.

**AB 2595 (Sher)**, which would impose extensive requirements on ARB and local districts concerning air basin attainment of state air pollution standards, has been amended. The measure would additionally (1) require local districts, as specified, to establish permitting programs designed to achieve no net increase in emissions of a nonattainment pollutant from new or modified stationary sources, control measures for existing sources, and sulfur content regulations for diesel fuel; (2) require ARB, by December 31, 1991, to take whatever action is required to achieve, by December 31, 2000, a reduction of 80% or more in statewide emissions of reactive organic compounds from consumer products; (3) permit ARB to adopt and implement motor vehicle in-use performance standards; and (4) require that a district's permit system mandate that, once a permit to con-



struct has been issued, the start-up operations must be monitored to ensure compliance with the permit, as well as with district rules and regulations. AB 2595 is pending in the Senate Committee on Governmental Organization.

AB 2930 (Sher) has also been amended. The measure would now create the Atmospheric Acidity Protection Act of 1988, which would require ARB to adopt and implement a program to determine damage to, and develop ways to protect, public health from atmospheric acidity. The bill would require local districts to impose specified fees through 1993 and would limit collection of those fees to an amount designated by the legislature. AB 2930 is pending in the Senate Appropriations Committee.

SB 1274 (Senate Committee on Natural Resources and Wildlife) has been substantially amended. It would no longer modify the requirements of the acid deposition program; instead, it would require ARB to evaluate and measure the effects on agriculture and forests of combined and cumulative exposure to acid deposition and photochemical oxidants. The bill would also impose specified hearing and reporting requirements on ARB. This bill is pending in the Assembly Natural Resources Committee.

SB 1997 (Presley), which would create a Department of Vehicle Inspection and Repair within the Resources Agency, passed the Senate on May 20 and is pending in the Assembly Ways and Means Committee. (For further details on SB 1997, as amended, see *supra* agency report on BUREAU OF AUTOMOTIVE REPAIR.)

SB 2297 (Rosenthal), which would require southern California air pollution officials to promote the use of methanol and other clean-burning fuels, passed the Senate on June 8 and is pending in the Assembly Natural Resources Committee.

#### RECENT MEETINGS:

On April 7, the ARB conducted a public meeting to discuss information regarding the air quality impacts of anticipated economic, population, and industrial growth in the San Joaquin Valley Air Basin (SJVAB). The Board also considered a petition, received from Ecology Action Educational Institute, League of Conservation Voters, and other groups in the Central Valley Safe Environmental Network, which requests the preparation of an environmental impact report to address, on a valley-wide basis, the cumulative environ-

mental impacts of all new stationary sources, particularly biomass, waste-to-energy, and cogeneration facilities. No regulatory action was proposed.

The Board's staff presented information regarding current air quality in the SJVAB and anticipated a worsening of air quality with future economic, population, and industrial growth. The focus of the staff presentation was on the outlook for attaining ambient air quality standards for ozone, carbon monoxide, and particulate matter .10 microns and smaller in size. A panel composed of invited guests from industry, academia, citizen groups, and government presented its views on anticipated growth in SJVAB and air quality impacts, and on possible actions to balance the anticipated growth with air quality improvement and protection.

#### FUTURE MEETINGS:

To be announced.

### CALIFORNIA WASTE MANAGEMENT BOARD

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Created by SB 5 in 1972, the California Waste Management Board (CWMB) formulates state policy regarding responsible solid waste management. Although the Board once had jurisdiction over both toxic and non-toxic waste, CWMB jurisdiction is now limited to non-toxic waste. Jurisdiction over toxic waste now resides primarily in the toxic unit of the Department of Health Services. CWMB considers and issues permits for landfill disposal sites and oversees the operation of all existing landfill disposal sites. Each county must prepare a solid waste management plan consistent with state policy.

Other statutory duties 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. The Board has also attempted to develop economically feasible projects for the recovery of energy and resources from garbage, encourage markets for recycled materials, and promote waste-to-energy (WTE) technology. Additionally, CWMB staff is responsible for inspecting solid waste facilities, e.g., landfills and transfer stations, and re-

porting its findings to the Board.

The Board consists of the following nine members who are appointed for staggered four-year terms: one county supervisor, one city councilperson, three public representatives, a civil engineer, two persons from the private sector, and a person with specialized education and experience in natural resources, conservation, and resource recovery. The Board is assisted by a staff of approximately 86 people.

#### MAJOR PROJECTS:

*Status of CoSWMPs.* Each county must prepare a solid waste management plan (CoSWMP) consistent with state policy which is reviewed by the Board. As of May, the Board reported that 52 CoSWMPs are current and complete. The Napa CoSWMP revision was approved at the CWMB's May meeting. Contra Costa was scheduled to resubmit its plan revision in May, and Alameda will resubmit its partially approved plan in August. San Francisco and Kern CoSWMP revisions have been referred to the Attorney General for legal action because of failure to comply with revision deadlines, and the Solano CoSWMP has recently become delinquent.

As per legislative amendment (Government Code section 66780.5 *et seq.*), any review of CoSWMPs after January 1, 1988 must (1) include a plan for the safe management and disposal of household hazardous waste; (2) demonstrate that the county has eight years' total remaining capacity at solid waste disposal facilities; and (3) include a mechanism for establishing and implementing a recycling goal of 20% of the waste disposed in the county.

*Enforcement Advisory Council Report.* The EAC is designed to achieve a coordinated, consistent statewide enforcement program through ongoing communication among all local enforcement agencies (LEAs) and the CWMB; assure that the local enforcement interests and viewpoints regarding legislation, policies, programs, and training needs are considered at the state level; and continue to support the concept of the Guidelines for the Enforcement of the State Minimum Standards.

The EAC met on March 2-3, and recommended that the Board write to facility operators to inform them that the Board is currently in the process of developing the requisite regulations and minimum standards to implement AB 2448 (Eastin) (Chapter 1319, Statutes of 1987), which requires them to provide financial assurances and closure plans.