



injury or death is proximately caused by a violent crime in the workplace. The employee must prove by clear and convincing evidence that prior violent crimes occurred in the workplace, that reasonable precautions could have been taken by the employer, and that the employer unreasonably failed to take those precautions. [*S. Appr*]

LITIGATION

In *California Labor Federation, AFL-CIO, v. OSB*, No. 95CS00362 (Sacramento County Superior Court, filed Feb. 2, 1995), petitioners seek a court order mandating OSB to comply with Labor Code section 6357 and adopt an ergonomics standard as soon as possible (*see MAJOR PROJECTS*). [*15:2&3 CRLR 131*] On May 26, Sacramento County Superior Court Judge James Ford ordered OSB to develop a proposed standard within six months, and to complete the rulemaking process to adopt that standard by the end of 1997.

RECENT MEETINGS

At its June 22 meeting, OSB considered Petition No. 361, which requested OSB to adopt a standard addressing employee crime protection and prevention. In response to the petition, DOSH noted that workplace safety and health hazards affecting California employees have traditionally been viewed as arising from unsafe work practices, hazardous industrial conditions, or exposures to harmful chemical, biologic, or physical agents, not from violent acts committed by other human beings. DOSH agreed that workplace violence is on the rise, but noted that no single explanation for the increase is readily available. DOSH further noted that employers who have employees at risk or workplace violence are currently required to address workplace security hazards in

order to satisfy the IIPP requirement. Following discussion, OSB denied the petition.

At its July 20 meeting, OSB considered Petition No. 362, which requested OSB to amend sections 1598 and 1599, Title 8 of the CCR, regarding highway traffic safety issues; among other things, the petitioner asked that a reference to the Manual of Traffic Controls for Construction and Maintenance Work Zones reflect the 1995 document, which is currently in its final draft form. The petitioner also asked that the provisions be amended to allow colors other than orange to be worn by workers in traffic area construction zones. Following discussion, OSB returned the matter to staff for further review.

Also at its July 20 meeting, OSB considered Petition No. 363, requesting OSB to amend section 1675, Title 8 of the CCR, regarding ladders. Specifically, the petitioner asked that the section be revised to provide that no one shall be permitted to stand and work on the top two rungs or cleats of a ladder unless there are members of the structure that provide a firm handhold or the worker is protected by appropriate fall protection devices. Following discussion, OSB denied the petition, but directed staff to convene an advisory committee to consider some of the issues raised in the petition.

At its August 17 meeting, OSB reconsidered Petition No. 362, which it first reviewed at its July 20 meeting (*see above*). Following discussion, OSB granted the petition.

At its September 21 meeting, OSB considered Petition No. 364, which requested OSB to amend section 3410, Title 8 of the CCR, with regard to wildland firefighting requirements. Current regulations require that wristlets be attached to the gloves of wildland firefighters; for structural firefighting, wrist protection is

required by wristlets attached to the structural firefighting coat, not the gloves. The petitioner submitted language which would give fire departments the option of using structural firefighting gloves when fighting wildland fires. Following discussion, OSB agreed to adopt the proposed changes.

At its October 19 meeting, OSB discussed Governor Wilson's Executive Order 127-95, signed in September, which directs state agencies to review their regulations and identify all regulations suitable for repeal for the purpose of simplifying regulations, making them more user-friendly, and reducing excessive regulatory burden. In order to receive input on which OSB regulations are suitable for repeal, the Board scheduled a special public meeting to be held on November 29 in Sacramento.

At its December 14 meeting, OSB considered Petition No. 365, which requested amendments to sections 5095(b), 5097(a), and 5097(b)(2), Title 8 of the CCR, regarding the measurement of occupational noise exposures. Following discussion, OSB returned the petition for staff for further review.

FUTURE MEETINGS

January 18 in Los Angeles.
February 22 in Oakland.
March 21 in San Diego.
May 16 in Los Angeles.
June 20 in Oakland.
July 18 in San Diego.
August 15 in Sacramento.
September 19 in San Diego.



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY (CAL-EPA)

AIR RESOURCES BOARD

Executive Officer: James D. Boyd
Chair: John D. Dunlap III
(916) 322-2990

Pursuant to Health and Safety Code section 39003 *et seq.*, the Air Resources Board (ARB) is charged with coordinating efforts to attain and maintain ambient air quality standards, to conduct research into the causes of and solutions to air pollution, and to systematically attack the serious

problem caused by motor vehicle emissions, which are the major source of air pollution in many areas of the state. ARB is empowered to adopt regulations to implement its enabling legislation; these regulations are codified in Titles 13, 17, and 26 of the California Code of Regulations (CCR).

ARB regulates both vehicular and stationary pollution sources. The California Clean Air Act requires attainment of state ambient air quality standards by the earliest practicable date. ARB is required to

adopt the most effective emission controls possible for motor vehicles, fuels, consumer products, and a range of mobile sources.

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



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

On September 15, the Senate confirmed John D. Dunlap III as ARB's new chair.

MAJOR PROJECTS

ARB Backs Down on 1998 Zero-Emission Vehicle Mandate. At its December 21 meeting, ARB backed away from its 1990 mandate that electric cars (or zero-emission vehicles) be introduced for sale in California by 1998. The Board finally caved in to increasing pressure which had been exerted for at least a year by major automakers, the oil industry, and the Wilson administration.

In 1990, ARB adopted section 1960.1, Title 13 of the CCR, landmark regulations establishing four progressively more stringent categories of standards for passenger cars and light-duty trucks: transitional low-emission vehicles (TLEVs), low-emission vehicles (LEVs), ultra-low-emission vehicles (ULEVs), and zero-emission vehicles (ZEVs). Simultaneously, the Board adopted regulatory changes requiring the introduction of commensurate volumes of cleaner-burning fuels for these vehicles, and a requirement that—beginning in 1998—2% of all vehicles sold by each major manufacturer must be ZEVs; the sales quota increases to 5% of all vehicles sold in 2001 and to 10% in 2003. [11:1 CRLR 113] The only zero-emission vehicle technology that is sufficiently advanced to meet the ZEV requirement in the near term is the electric vehicle (EV). Collectively, these regulatory changes are known as the Board's "low-emission vehicle (LEV) program."

Since ARB's adoption of its LEV program regulations, staff has investigated the ongoing implementation of the LEV program and reported the auto industry's progress toward development of the EV every two years; on each occasion, ARB has found that its LEV program standards continue to be technologically feasible within the designated timeframes. [14:2&3 CRLR 152-53; 12:4 CRLR 170]

However, as the 1998 deadline for the introduction of electric cars in California approaches, the auto and oil industries and the Wilson administration have begun to exert pressure on the Board to reconsider the mandate. At ARB's October 26 meeting, staff reported on the results of five public forums it conducted between May and October 1995, at which representa-

tives of "major stakeholders" in the ZEV mandate (automobile manufacturers and dealers, battery manufacturers, electric utilities, start-up businesses, environmental groups, the oil industry, and consumers) participated. Staff also created a Battery Technology Advisory Panel to evaluate the types of batteries likely to reach production before 2002 and the status of battery technology development; its purpose is to investigate batteries "worldwide" which might be commercially available for use in electric vehicles in the 1998-2003 timeframe.

Based on the public forums and the findings of the battery committee, staff presented some preliminary conclusions to the Board at its October 26 meeting: (1) lead-acid batteries are the primary high-volume option for 1998 EVs; (2) although some advanced batteries are possible in 1998, high-production volumes of advanced batteries are not expected until about 2001; (3) realizing the promise of advanced batteries requires pilot production and vehicle demonstrations using advanced batteries between now and 1999; and (4) the current ZEV mandate could be amended to be more responsive to the concerns raised at the forums and by the battery committee.

At the Board's November 16 meeting, staff reported on the results of an additional public forum held on November 8 on the costs and benefits of ZEVs. The major automakers who participated testified that they do not believe EVs will become cost-competitive within the 2003-2006 timeframe. However, small EV manufacturers and some industry consultants argued that EVs could be produced at reasonable cost even in low volumes. Many presenters stated that the air quality benefits of any alternatives to the current ZEV mandate must equal those expected to be achieved as a result of the program. Staff reiterated its position that the ZEV program regulations could be amended to be responsive to the concerns raised; however, staff also concluded that there are significant long-term emission reductions associated with the ZEV program which are a critical element of California's State Implementation Program (SIP), which was tentatively approved by the U.S. Environmental Protection Agency (EPA) in August [15:2&3 CRLR 133; 15:1 CRLR 124-25; 14:4 CRLR 144-45], and that alternatives to the existing program must offer equivalent or better air quality benefits. At the conclusion of the November hearing, Board Chair John Dunlap directed staff to propose ZEV program modifications to ARB at its December meeting.

On December 14, staff presented three "concepts" developed at a December 6 workshop:

- Concept A suggests that the mandate be eliminated and the program rely solely on performance standards and market forces to bring ZEVs into California.

- Concept B relies on a combination of market forces and regulatory requirements, with a commitment by the automakers to introduce increasing numbers of ZEVs starting in 1998.

- Concept C suggests that the mandate be maintained, but with a slower phase-in of ZEVs than the current program, and with added advanced technology incentives.

During extensive testimony presented at the Board's December 14 meeting, Concept A was favored by legislative and oil industry representatives; Concept B was favored by auto manufacturers; and Concept C was favored by environmental groups and electric utilities. Following the testimony, ARB continued the agenda item to December 21.

At its December 21 meeting, staff proposed that ARB publish regulatory amendments to section 1960.1 to implement a variation on Concept B above. Staff's proposal suggested suspending the ZEV mandate through 2002, and initiating a memorandum of understanding (MOU) between ARB and each automaker; the MOU would provide for placement of ZEVs in California prior to the 10% requirement in 2003 for demonstration purposes, among other purposes. Auto manufacturer representatives expressed general support for staff's recommendation, except that they urged the Board to delay the 10% requirement until 2004 due to the need for additional time to develop advanced batteries. Environmental group representatives voiced several concerns about staff's proposal, mostly regarding details which had not yet been determined, including questions regarding the enforcement mechanism of the MOU, penalties for noncompliance, automaker volume ramp-up plans beyond demonstration ZEVs, justifications for the proposed modifications, how emissions equivalence will be determined, and whether technology will continue at its current pace.

Following the testimony, ARB directed staff to pursue Concept B, negotiate the details with the auto manufacturers, publish notice of proposed regulatory changes to section 1960.1, and set a formal regulatory hearing for its March 1996 meeting.

Despite ARB's backtrack on its historic 1990 mandate, several major manufacturers recently announced plans to introduce EVs in California by 1998.



Heavy-Duty Vehicle Exhaust Emission Standards. At its June 29 meeting, ARB amended sections 1956.8, 1965, and 2112, Title 13 of the CCR; these regulatory changes specify mandatory standards for 1998 and subsequent-year heavy-duty engines and optional standards for 1995 and subsequent-year heavy-duty engines, exclusive of engines used in urban buses. These changes align California's emission standards for oxides of nitrogen (NOx) with existing federal requirements, and set optional low-emission NOx standards beginning with the 1995 year which provide the means for vehicle operators to generate mobile source emission reductions through a heavy-duty vehicle credits program and to participate in other incentive programs, as provided for in ARB's November 1995 State Implementation Plan. [15:2&3 CRLR 133; 15:1 CRLR 124-25; 14:4 CRLR 144-45] The proposed changes also amend the "useful life" requirements for heavy-duty engines to conform California's regulations with those of the federal government.

The Office of Administrative Law (OAL) approved these regulatory changes on December 14.

Employer-Based Trip Reduction Methodology. Also on June 29, ARB adopted new sections 2330, 2331, and 2332, Title 13 of the CCR; these regulations implement AB 2358 (Sher) (Chapter 924, Statutes of 1994), which requires the Board to develop a formula to estimate emission reductions which are equal to achieving the vehicle ridership goals of the APCDs' vehicle ridership rules. The formula will be used when employers choose to pursue alternative emission reduction strategies in lieu of meeting APCD ridesharing requirements. Thus, the new sections establish calculation methodology which must be used by APCDs to determine the level of emission reductions which would be equivalent to achieving employer-based average vehicle ridership goals. Because the Board adopted a slightly modified version of the proposed regulations, it released the modified rules for a 15-day comment period after adoption; OAL approved the proposed rules on December 21.

Gasoline Vapor Recovery Systems. At its June 29 meeting, ARB adopted new sections 94010-94015 and 94150-94160, Title 17 of the CCR, which pertain to the certification and testing of gasoline vapor recovery systems installed at gasoline marketing operations (service stations and "novel facilities" which dispense gasoline to vehicles in a nontraditional manner), gasoline storage and distribution facilities (bulk plants and terminals), and transfer

operations (cargo tanks which are vehicles used to transport gasoline). According to staff, the proposed procedures will result in no adverse economic impact for facility owners or the public while reducing air pollution impacts due to testing.

At this writing, staff is preparing the rulemaking file on these proposed regulatory changes for submission to OAL.

Onboard Refueling Vapor Recovery Standards. Also on June 29, ARB adopted new section 1978 and amended section 1976, Title 13 of the CCR; these changes establish onboard refueling vapor recovery (ORVR) standards and test procedures applicable to 1998 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles with a gross vehicle weight less than 8500 pounds. The proposed regulations incorporate ORVR standards and test procedures recently adopted by EPA.

At this writing, staff is preparing the rulemaking file on these proposed regulatory changes for submission to OAL.

Oxygen Content of Gasoline. At its June 29 meeting, ARB adopted proposed amendments to sections 2258(c), 2252.5(c), and 2263(b), Title 13 of the CCR, to update the method designated for use in determining the oxygen content of gasoline. OAL approved these regulatory changes on August 7.

Optional Retrofit Emission Standards for Heavy-Duty Engines and Vehicles. At its July 27 meeting, ARB adopted new section 1956.9, Title 13 of the CCR, which establishes new optional retrofit emission standards for heavy-duty engines and vehicles. The proposed regulation would establish emission standards that could be met through retrofitting existing heavy-duty engines; the standards will form the basis for determining emission reduction credits which may be earned through retrofitting existing engines. These credits will be used in mobile source emission reduction credit programs developed by the APCDs and AQMDs. The proposed retrofit emission standards are optional emission standards for heavy-duty engines that have been retrofitted for credit.

The Board also adopted amendments to the California Certification and Installation Procedures for Alternative Fuel Retrofit Systems for Motor Vehicles Certified for 1994 and Subsequent Model Years (the "1994+ retrofit certification procedures"), the California Exhaust Emission Standards and Test Procedures for Systems Designed to Convert Motor Vehicles Certified for 1993 and Earlier Model Years to Use Liquefied Petroleum Gas or Natural Gas Fuels, the California Exhaust Emission Standards and Test Procedures for Systems Designed

to Convert Motor Vehicles Certified for 1993 and Earlier Model Years to Use Alcohol or Alcohol/Gasoline Fuels, and the Procedures for Approval of Systems Designed to Convert Motor Vehicles to Use Fuels other than the Original Certification Fuel.

Because ARB modified the amendments to the 1994+ retrofit certification procedures, it released the modified language for a 15-day comment period on August 30; at this writing, the rulemaking file on these proposed regulatory changes is pending at OAL.

Certification Requirements and Procedures for Low-Emission Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles. At its September 28 meeting, ARB adopted proposed amendments to sections 1956.8 and 1960.1, Title 13 of the CCR, its low-emission vehicles and clean fuels regulations adopted in 1990 (*see above*). In this rulemaking, ARB approved the use of a single reactivity adjustment factor (RAF) value for each LEV and ULEV fuel category, to provide manufacturers with enough lead time to develop their product lines; for medium-duty vehicles, ARB also approved a modification reducing the LEV NOx standards to ULEV levels and increasing the number of medium-duty vehicle ULEVs from 15% to 40% by 2003. ARB also adopted new section 2062 and amended sections 1960.1, 1965, 2101, and 2292.1, Title 13 of the CCR, to clarify these regulations and facilitate the introduction of LEVs in California.

At this writing, staff is preparing the rulemaking file on these proposed regulatory changes for submission to OAL.

VOC Emissions from Antiperspirants and Deodorants, Consumer Products, and Aerosol Coating Products. Also on September 28, ARB amended three sets of regulations recently adopted to reduce volatile organic compound (VOC) emissions from antiperspirants and deodorants [10:1 CRLR 124], other consumer product categories (*see below*) [15:2&3 CRLR 134; 15:1 CRLR 126-27; 14:1 CRLR 125], and aerosol coating products (*see below*) [15:2&3 CRLR 133]. The amendments modify the antiperspirant and deodorant regulations to allow all products (rather than just "existing" products) to utilize the "ethanol exemption"; modify the "special requirements for aerosol manufacturers" and make other changes to the antiperspirant and deodorant regulations; and modify the definition of "VOC" in all three sets of regulations to make it more consistent with the definition used by EPA. At the September 28 meeting, ARB also accepted a modification exempting acetone and ethane from the



VOC definition in the consumer products regulation.

At this writing, the rulemaking file on these proposed regulatory changes is pending at OAL.

Amendments to Specifications for Phase 2 Reformulated Gasoline. During the fall, ARB adopted two sets of amendments to its regulations specifying the content of "Phase 2 Reformulated Gasoline" (RFG); the RFG regulations were originally adopted in November 1991 [12:1 CRLR 139-40] and are scheduled to go into effect on March 1, 1996. The RFG specifications—which cover sulfur, benzene, olefin, oxygen, and aromatic hydrocarbon contents, 50% (T50) and 90% (T90) distillation temperatures, and Reid vapor pressure (RVP)—are designed to achieve the maximum reductions in emissions of criteria pollutants and toxic air contaminants from gasoline-powered motor vehicles.

At its October 26 meeting, ARB adopted proposed amendments to section 2263(b), Title 13 of the CCR, the regulation which designates the test methods used to measure the amount of benzene, aromatic hydrocarbons, olefins, and sulfur in gasoline. The updated methods would be used to determine if motor vehicle gasoline complies with ARB's Phase 2 RFG requirements. Staff arrived at the amendment recommendations after several years of cooperative effort with members of the regulated industry, in particular the Western States Petroleum Association's Working Group on Fuels Test Methods and Subcommittee D2 of the American Society of Testing and Materials; staff has also carefully evaluated the test methods required by EPA.

At its December meeting, ARB approved more significant amendments to its RFG specifications by adopting new sections 2263.7 and 2266.5, and amending sections 2260, 2262.5, 2264, 2265, and 2272, Title 13 of the CCR. According to staff, these amendments will provide compliance flexibility to gasoline producers without sacrificing any of the emission reduction benefits of the RFG regulations. Again, the amendments were proposed after many discussions with the gasoline producers and reflect many of the producers' suggestions.

The most significant of the proposed amendments will allow gasoline producers who blend oxygenates into gasoline downstream from where the gasoline is produced to have compliance determined on the basis of the properties of gasoline after the oxygenates have been added. These provisions allow producers to take advantage of the beneficial properties of

oxygenates, from a compliance standpoint. The amendments pertaining to the downstream blending of oxygenates include a number of provisions to ensure that the regulations are enforceable, including notification, reporting, sampling, testing, and recordkeeping requirements.

Staff also proposed a number of less significant amendments designed to fine-tune the RFG program and provide additional compliance flexibility. Because ARB adopted these regulatory changes with a number of modifications, it released the modified version for an additional 15-day comment period.

At this writing, staff is preparing the rulemaking files on both sets of proposed regulatory changes for submission to OAL.

Gasoline Deposit Control Additive Regulation. At its November 16 meeting, ARB adopted amendments to section 2257, Title 13 of the CCR, its gasoline deposit control additive regulation which requires that all commercial gasolines be certified to contain effective levels of detergent additives. The regulation contains specific administrative and performance requirements that a producer, importer, or distributor must meet to obtain certification of a gasoline. As part of the administrative requirements, an applicant must provide specific information in support of the request for certification. ARB staff uses this information, and other requested information as necessary, to evaluate and process applications for certification of gasolines.

Since the adoption of section 2257 in 1991, ARB staff has gained experience applying the regulation indicating the need to clarify various provisions of the regulation. In general, the amendments clarify provisions relating to certification of test fuels, update the additive evaluation test methods, and clarify various definitions within the regulation (including the definition of the term "gasoline").

Although staff also proposed amendments to the existing recordkeeping provisions of section 2257, at the November 16 hearing staff notified ARB that EPA would be promulgating a final federal gasoline additive regulation sometime in 1996, and recommended—and the Board approved—that ARB delay action on the recordkeeping requirements of the regulation.

Due to the modification, ARB released the modified version of section 2257 for an additional fifteen day comment period on December 22. At this writing, staff is preparing the rulemaking file on these proposed regulatory changes for submission to OAL.

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

- At its April 1995 meeting, ARB adopted new section 90800.6 and amended section 90803, Title 17 of the CCR, pursuant to Health and Safety Code section 39612; these regulatory changes would establish the fee rate which APCDs and AQMDs must pay ARB to offset the state costs of air pollution control programs related to nonvehicular sources during the seventh year of ARB's implementation of the California Clean Air Act of 1988. [15:2&3 CRLR 133] At this writing, the rulemaking file on these proposed changes is pending at OAL.

- At its March 1995 meeting, ARB adopted new Article 3 (sections 94520-94528), and amended sections 94540-94543, 94547, 94550, 94551, and 94553, Title 17 of the CCR. These regulatory changes will prohibit the sale, supply, offer for sale, commercial application, or manufacture for use in California of any aerosol coating product with a volatile organic compound (VOC) content greater than the specified standards, which are based on the percentage of VOC by weight. The proposed regulations establish two sets of standards limiting the VOC content of 35 different categories of aerosol paints and related products. For all categories, the effective date of the first set of standards is January 1, 1996, and the effective date of the second set of standards is December 31, 1999. The proposed regulations also include an eighteen-month sell-through period for non-complying products; restrictions on the use of toxic air contaminants and ozone-depleting compounds; requirements for multi-component kits; administrative requirements for labeling and reporting information; exemptions for specific products and for products that are manufactured for use outside of California; compliance test methods; and amendments to the alternative control plan (ACP) adopted by the Board in September 1994 for other consumer products (*see below*) to allow aerosol coating products to be included in the ACP. These changes would allow an ACP to include either consumer products or aerosol coating products, but not both. [15:2&3 CRLR 133] At this writing, the rulemaking file on these proposed changes is pending at OAL.

- On June 8, OAL approved ARB's December 1994 amendments to sections 1968.1, 2040, and 2031, Title 13 of the CCR; originally adopted in September



1989, these provisions require automobile manufacturers to implement new on-board diagnostic (OBD) systems to monitor all emission-related components or systems for proper performance, starting with the 1994 model year. [13:4 CRLR 139; 11:4 CRLR 154; 9:4 CRLR 107-08] The so-called "OBD II" regulations apply to passenger cars, light-duty trucks, and medium-duty vehicles and engines, and require the implementation of monitoring strategies for catalyst efficiency, misfire detection, evaporative systems, exhaust gas recirculation systems, fuel systems, oxygen sensors, secondary air systems, electronic emission-related powertrain components, and others. Although manufacturers were able to certify and have been offering for sale in California motor vehicles meeting the OBD II regulations, these amendments to the OBD II regulations address problems experienced by manufacturers in attempting to satisfy enhanced monitoring requirements that become effective with the 1996 or later model years. [15:2&3 CRLR 134; 15:1 CRLR 126]

• On November 30, OAL approved the Board's December 1994 amendment to section 2190, Title 13 of the CCR, to delay implementation of the Periodic Smoke Self-Inspection Program (PSI) for heavy duty diesel vehicles from January 1, 1995 to January 1, 1996. [15:2&3 CRLR 134; 15:1 CRLR 125]

• On August 4, OAL approved ARB's December 1994 amendments to section 2292.1, Title 13 of the CCR, which contains its specifications for M100 methanol fuel (100% methanol) and required such fuel to contain a flame luminosity additive by January 1995. Because no additive has been found which satisfies the luminosity requirements of M100 without sacrificing emissions performance, ARB adopted amendments which permit fuel suppliers to sell M100 fuel which does not have a luminosity additive after January 1, 1995 if they can demonstrate that the fuel will be used in vehicles equipped with either a system for automatically detecting and suppressing on-board fires or a system for on-board luminosity enhancement. [15:2&3 CRLR 134; 15:1 CRLR 125-26]

• On June 23, OAL approved ARB's November 1994 amendments to sections 60201, 60202, 60204, and 60206, Title 17 of the CCR, the regulatory provisions which designate certain areas of the state as attainment, nonattainment, or unclassified for any state ambient air quality standard cited in section 70200, Title 17 of the CCR. The amendments change the carbon monoxide designations for the counties of Santa Clara, Orange, San Joaquin, and

Stanislaus; the sulfur dioxide designation for the Southeast Desert Air Basin portion of Kern County; and the sulfate designation for the South Coast Air Basin. [15:2&3 CRLR 134; 15:1 CRLR 126]

• On August 10, OAL approved ARB's September 1994 adoption of new sections 94540-94555, Title 17 of the CCR, to establish a voluntary, market-based "alternative control plan" for controlling VOC emissions from consumer products. Under this approach, manufacturers of consumer products are permitted to replace traditional emissions controls on individual products with company-wide pollution limits. In other words, manufacturers of consumer products like hair sprays, colognes, window cleaners, and adhesives have greater freedom to choose from a number of emission reduction options that allow maximum operating flexibility, theoretically without increasing pollution. [15:2&3 CRLR 134; 15:1 CRLR 126-27; 14:1 CRLR 125]

• On July 24, OAL approved ARB's amendments to sections 2400-2407, Title 13 of the CCR, its regulations and test procedures for controlling emissions from utility engines such as lawn mowers, chain saws, leaf blowers, and generator sets. The regulations are applicable to engines produced on or after January 1, 1995; the amendments conform the Board's regulations to newly approved test procedures and clarify and enhance the certification and compliance process. [15:2&3 CRLR 134; 15:1 CRLR 127; 14:4 CRLR 142-43]

• On June 6, OAL approved ARB's amendments to sections 90700-90705, Titles 17 and 26 of the CCR, the Board's 1994-95 fee regulations to cover the cost of implementing the Air Toxics "Hot Spots" Information and Assessment Act of 1987, Health and Safety Code section 44300 *et seq.* [15:2&3 CRLR 134; 15:1 CRLR 127; 14:4 CRLR 143]

• On July 24, OAL approved ARB's amendments to section 2282, Title 13 of the CCR, which imposes statewide limits on the aromatic hydrocarbon content and the sulfur content of diesel fuel sold or supplied after September 30, 1993, for use in motor vehicles in California. Among other things, the amendments permit small refiners to produce greater quantities of exempt volume diesel fuel which is subject to a 20% aromatic hydrocarbon limit, provide a new "optional calculation" which small refiners may elect to calculate their exempt volume, and delay the effective date of the exempt volume limitation from October 1, 1994 to January 1, 1995. [15:2&3 CRLR 134-35; 15:1 CRLR 127; 14:4 CRLR 143]

• On June 16, OAL approved ARB's adoption of new sections 2264.2 and

2265, and amendments to sections 2260, 2261, 2262.2, 2262.3, 2262.4, 2262.5, 2262.6, 2262.7, 2264, and 2270, Title 13 of the CCR, its Phase 2 RFG regulations originally adopted in November 1991 (*see above*). The regulatory changes will allow gasoline producers the option to use the "California predictive model" to assign specifications to an alternative gasoline formulation, which could then be used in lieu of meeting either the flat or averaging limits applicable to gasoline being supplied from production and import facilities. [15:2&3 CRLR 135; 15:1 CRLR 127-28; 14:4 CRLR 143-44]

LEGISLATION

SB 437 (Lewis), as amended September 1, prohibits APCDs, AQMDs, and other public agencies from imposing any requirement on any employer to implement a trip reduction program unless the program is expressly required by federal law and elimination of the program will result in the imposition of federal sanctions. This bill was signed by the Governor on October 4 (Chapter 607, Statutes of 1995).

SJR 5 (Kopp), as amended July 5, memorializes the President and Congress to amend the federal Clean Air Act to retain clean air standards prescribed by the Act, including requirements to reduce emissions from mobile sources, but remove specific requirements such as vehicle inspection and maintenance; and to require the EPA to reevaluate, using recent scientific, technological, and other environmental findings, the methodology and science used to measure both the inventory of emissions and the effectiveness of individual components of state clean air plans for purposes of compliance with the broader goals of the Clean Air Act Amendments of 1990. The measure states that the legislature will continue to pursue all feasible and cost-effective strategies that, as implemented, produce cleaner air. This measure was chaptered on July 24 (Chapter 57, Resolutions of 1995).

SB 501 (Calderon). Existing law requires the Department of Consumer Affairs, and authorizes APCDs and AQMDs, to establish programs to repair or replace high-pollution vehicles, and authorizes the districts to establish programs for the banking and use of emission reduction credits. As amended September 14, this bill deletes various provisions relating to the operation of the high-polluter repair or removal program; requires ARB to establish, by regulation, a statewide privately-operated program, to be overseen by a state agency designated by the Governor, to generate emission reduction credits



through the retirement or disposal of high-emitting light-duty vehicles; and prescribes means of funding those programs and requires the Department to establish the percentage of the available funds to be expended for specified purposes.

Existing law authorizes a specified payment to be made by an applicant for registration of a new motor vehicle to be used for purposes of the high-polluter repair or removal program, in lieu of the first biennial inspection of the vehicle. This bill repeals that provision on October 1, 1996 and, not later than October 1, 1996, authorizes such a payment to be made upon the second renewal of registration and authorizes the payment to also be used for an accelerated light-duty vehicle retirement program created by the bill. This bill was signed by the Governor on October 14 (Chapter 929, Statutes of 1995).

SB 1302 (Peace). Existing law establishes the Katz Safe Schoolbus Clean Fuel Efficiency Demonstration Program to provide state funding through the Katz Schoolbus Fund to replace schoolbuses with schoolbuses meeting federal motor vehicle safety standards, having greater energy efficiency, and producing fewer adverse air emissions. As amended September 8, this bill authorizes any school district or county office of education to establish and administer a schoolbus emissions reduction fund to provide revenue from state, local, and private sources to replace, or increase the number of, schoolbuses in the existing school district or county fleet with the purchase of low- or zero-emission schoolbuses or to retrofit schoolbuses to achieve reductions in emissions. The bill authorizes the distribution, upon appropriation by the legislature, of state funds to the Superintendent of Public Instruction for distribution to school districts for purposes of the bill, and authorizes the issuance of emission reduction credits to private sector contributors who provide funding for purposes of the bill. The bill requires the ARB Chair and the Superintendent of Public Instruction to jointly develop guidelines for purposes of the bill. This bill was signed by the Governor on October 12 (Chapter 862, Statutes of 1995).

AB 531 (Morrissey), as amended September 6, requires ARB to establish an optional registration program, by regulation, for portable internal combustion engines; authorizes ARB to assess fees for the registration or the renewal of the registration of those engines; expresses the intent of the legislature that the registration and regulation of emissions from those engines be done on a uniform, state-wide basis and that registration and regu-

lation of those engines by the districts be preempted, except as specified; prohibits districts from taking prescribed actions regarding those engines; and requires ARB to establish emission limits and emission control requirements for those engines after conducting an evaluation, holding public hearings, and considering prescribed factors. The bill also requires districts to enforce the registration program, emission limits, or emission control requirements in the same manner as district rules and regulations. This bill was signed by the Governor on October 12 (Chapter 817, Statutes of 1995).

SB 163 (Johannessen), as amended September 8, imposes, until January 1, 1999, civil or administrative civil penalties up to a prescribed maximum depending on the nature of the violation for violation of prescribed statutes or any rule, regulation, permit, variance, or order of ARB pertaining to fuel requirements and standards. The recovery of those penalties would preclude criminal prosecution, or the filing of a criminal complaint would require dismissal of any action or administrative proceeding seeking those civil penalties. The bill requires ARB to expend those penalty revenues for specified purposes, and requires ARB to report to specified legislative committees by June 30, 1998, regarding those violations. This bill was signed by the Governor on October 16 (Chapter 966, Statutes of 1995).

AB 552 (House). Under existing law, any person who violates specified provisions relating to air pollution is subject to prescribed penalties. Existing law also prescribes penalties for conduct defined as unfair competition. As amended July 14, this bill authorizes the collection of a fine or monetary penalty for the same conduct either under specified air pollution provisions or under those unfair competition provisions, but not under both. This bill was signed by the Governor on October 4 (Chapter 618, Statutes of 1995).

SB 37 (Kelley), as amended August 29, requires ARB to consult with significantly impacted entities and to make specified determinations before adopting or amending a standard or regulation relating to motor vehicle fuel specifications. This bill was signed by the Governor on October 14 (Chapter 930, Statutes of 1995).

SB 709 (Maddy), as amended August 29, prescribes procedures for the granting of variances by ARB or its Executive Officer from gasoline specifications adopted by ARB. The bill requires variance fee revenues to be deposited in a specified account and used, upon appropriation, to implement a program for accelerated retirement of light-duty vehicles to reduce

emissions, as specified. The bill states that certain of its provisions are declaratory of existing law. This bill was signed by the Governor on October 8 (Chapter 675, Statutes of 1995).

SB 456 (Kelley). The Lewis-Presley Air Quality Management Act prescribes the powers and duties of the South Coast Air Quality Management District (SCAQMD) with respect to air pollution control in the South Coast Air Basin. The Act requires the district's regulations to require the use of best available control technology for new and modified sources, and the use of the best available retrofit control technology for existing sources. As amended August 31, this bill requires the SCAQMD Board to hold a public hearing prior to approving any revision to the best available control technology guidelines that amends any policy or implementation procedure for determining the best available control technology. The bill requires SCAQMD, in establishing the best available control technology for a source of emissions to consider only specified control options or emission limits. The bill requires SCAQMD, when a control alternative for one pollutant will increase emissions of another pollutant from the same source, to include the cost of eliminating or reducing those increases in the cost-effectiveness calculation for the first pollutant. The bill prohibits SCAQMD from establishing an emission limit that is conditioned on the use of a particular control option unless the incremental cost-effectiveness value, determined as prescribed, is less than the District's established incremental cost-effectiveness value for each pollutant. The bill prohibits SCAQMD, after it determines what is the best available control technology for a source, from changing that determination for an application for a period of at least one year.

The bill requires any APCD or AQMD, prior to adopting regulations to meet the requirement for best available retrofit control technology, or a requirement for a feasible measure to reduce districtwide emissions by 5% per year, to identify and assess the cost-effectiveness of potential control options. The bill authorizes any district to establish its own best available retrofit control technology requirement, and requires the districts to allow the retirement of marketable emission reduction credits in lieu of such a requirement. This bill was signed by the Governor on October 12 (Chapter 837, Statutes of 1995).

AB 1849 (Sher). Existing law prohibits, with specified exceptions, the discharge of air contaminants into the atmosphere that exceed a specified shade or opacity. As amended July 6, this bill would prohibit ARB, any APCD, or any



REGULATORY AGENCY ACTION

AQMD from imposing a discharge requirement on emissions of visible smoke from any diesel engine or generator used exclusively to operate a drinking water system in specified circumstances.

Existing law requires ARB to adopt regulations to achieve the maximum feasible reduction in reactive organic compounds emitted by consumer products, if ARB determines that adequate data exists for it to adopt the regulations. This bill would apply those provisions to volatile organic compounds instead of reactive organic compounds. [S. GO]

AB 1135 (Morrissey), as amended August 21, would require ARB, until January 1, 1999, when proposing to adopt or substantively amend any administrative regulation, to consider the cumulative economic impact of all regulations adopted by ARB that became effective on and after January 1, 1990 on specific private sector entities, as well as state and local governmental agencies, that may be affected by the proposed adoption or amendment of the regulation, and to include this information in the notice of proposed action. The bill would also require ARB to permit public comment on the cumulative economic impact of regulations that became effective on and after January 1, 1990 and, if the Board determines that the impact of these regulations and the proposed regulation on the same affected private sector entity and state and local governmental agencies is significant and adverse, to determine whether the adoption of an alternative regulation that would be less harmful to that private sector entity, the affected state or local governmental agencies, and the economy in general, should be adopted, and would require ARB to permit public comment on this alternative regulation. [S. Appr]

AB 423 (Olberg). The California Environmental Quality Act (CEQA) requires a public lead agency to prepare or cause to be prepared and certify the completion of an environmental impact report on a project which it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect, unless the project is exempt from CEQA. As amended July 19, this bill would exempt from CEQA the issuance, modification, amendment, or renewal of any permit by an APCD or AQMD, except as specified. [Conference Committee]

AB 564 (Cannella). The Air Toxics "Hot Spots" Information and Assessment Act of 1987 requires ARB to compile a list of substances which present a chronic or acute threat to public health when present

in the ambient air; requires operators of facilities which are sources of air releases or potential air releases of hazardous materials to develop, submit to the appropriate APCD or AQMD, and update every four years, emissions inventories; requires the districts, based on data from the inventories, to designate facilities as high, intermediate, or low priority category facilities; requires the highest priority facilities to prepare and submit to the district a health risk assessment and authorizes the districts to require any facility operator to prepare and submit a health risk assessment; requires the districts to collect fees from facility operators; and requires that a facility be granted an exemption by a district if specified criteria are met.

As amended July 13, this bill would, instead of that exemption provision, exempt a facility from any reporting, fee, emissions inventory update, or other requirement of the Act if a health risk assessment is not required for the facility by January 1, 1996, or one year after the facility's most recent submission of an emissions inventory update, whichever is later, and would prescribe circumstances that would subsequently make the facility subject to the Act. The bill would require the district, within 180 days of a facility's complete implementation of an emissions inventory plan, to determine whether there continues to be a significant health risk associated with emissions from the facility. The bill would, if the district makes a determination that a significant health risk is no longer associated with emissions from the facility, except as provided, exempt the facility from compliance with any reporting, fee, emissions inventory update, or other requirement of the Act. The bill would require certain exempt facilities to submit a specified quadrennial statement and would limit any fee that may be imposed for that purpose to the administrative processing cost.

The Act requires ARB to adopt a regulation that requires each district to adopt a fee schedule to recover the reasonable anticipated cost of ARB and the Office of Environmental Health Hazard Assessment in administering the Act (see MAJOR PROJECTS). This bill would impose a prescribed limit on those costs. [S. T&PSM]

SB 1116 (Monteith and Haynes), as amended April 25, would also recast provisions exempting certain facilities from the Air Toxics "Hot Spots" Information and Assessment Act to instead exempt any facility for which a health risk assessment is not required to be filed or as to which the district finds that the facility poses no significant health risk. The bill would require exempted facilities to submit a spec-

ified statement and emissions inventory to the district. [S. Appr]

AB 339 (Richter). In 1990, ARB adopted regulations that require each vehicle manufacturer's sales fleet of passenger cars and light-duty trucks to be composed of at least 2% zero-emission vehicles commencing in the 1998 model year, 5% in 2001 and 2002, and 10% commencing in 2003 (see MAJOR PROJECTS). [14:2&3 CRLR 152-53; 11:1 CRLR 113] As amended March 16, this bill would express the intent of the legislature to establish an incentive for automobile manufacturers to remove vehicles that are high polluters from highway use in lieu of producing electric vehicles pursuant to ARB's regulations. [A. Trans]

SB 811 (Monteith and Haynes), as amended April 17, would, on and after January 1, 1997, abolish AQMDs (except the Sacramento district), unified districts, and regional districts. The bill would require the functions of those abolished districts to be performed by a county air pollution control district in each county, unless the functions of the county district are delegated to a joint powers agency; require each district which is to be abolished to determine by December 31, 1996, the manner in which the funds, properties, obligations, and employees of the district shall be apportioned among the succeeding county districts; and make conforming changes in ARB's membership as it relates to members who are board members from the districts.

Existing law requires the membership of the county districts to include one or more mayors, city council members, or both, and one or more county supervisors. This bill would require the membership to include every county supervisor. [S. LGov]

AB 1318 (Kuehl). The Personal Income Tax Law and the Bank and Corporation Tax Law allow credits against the taxes imposed by those laws for the cost of the conversion of a vehicle to a low-emission motor vehicle or for the differential cost of a new low-emission motor vehicle that meets specified requirements. As amended May 9, this bill would enact the Zero-Emission Vehicle Development Incentive Program Act to require ARB, in consultation with the California Energy Commission and the Trade and Commerce Agency, to adopt standards for zero-emission vehicles to qualify for a sales tax exemption. The bill would, until January 1, 1998, exempt zero-emission vehicles that are certified by ARB from certain state, but not local, sales and use taxes. [A. Appr]

LITIGATION

Citizens for a Better Environment—California v. California Air Resources



Board, No. 378401 (filed June 14, 1994), is still pending in Sacramento County Superior Court. In this action, Citizens for a Better Environment—California (CBE), a nonprofit environmental organization, challenges ARB's March 1994 decision to permit implementation of the South Coast Air Quality Management District's (SCAQMD) recently-approved Regional Clean Air Incentives Market (RECLAIM) program. RECLAIM is a market-based pollution control strategy which allows industries in Los Angeles, Orange, Riverside, and San Bernardino counties an annual pollution limit and then lets them choose the cheapest way to stay within the limit, including trading of pollution credits. [14:2&3 CRLR 153; 14:1 CRLR 125; 13:4 CRLR 145-46]

CBE alleges that ARB should not have approved RECLAIM because it will fail to achieve equivalent pollution reductions compared with the District's 1991 Air Quality Management Plan; it will delay, postpone, or hinder compliance with state ambient air quality standards; it fails to require the installation of the best available retrofit control technology at all existing sources; it fails to show expeditious progress toward attainment of state ambient air quality standards; it fails to assure the earliest practicable attainment date for ambient air quality standards; and it fails to maintain progress toward attainment of state ambient air quality standards.

■ FUTURE MEETINGS

January 25 in Sacramento.
 March 27-28 in Sacramento.
 April 25-26 in Sacramento.
 May 30 in Sacramento.
 June 14 in Sacramento.
 July 25 in Sacramento.

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Executive Director:
 Ralph E. Chandler
Chair: Daniel G. Pennington
 (916) 255-2200

The California Integrated Waste Management 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 abolished CIWMB's predecessor, the California Waste Management Board. [9:4 CRLR 110-11] CIWMB is located within

the California Environmental Protection Agency (Cal-EPA).

CIWMB reviews and issues permits for landfill disposal sites and oversees the operation of all existing landfill disposal sites. The Board requires counties and cities to prepare Countywide Integrated Waste Management Plans (CoIWMPs), upon which the Board reviews, permits, inspects, and regulates solid waste handling and disposal facilities. Alternatively, local governments may join together to form regional agencies which must file Regional Agency Integrated Waste Management Plans (RAIWMPs). Approved CoIWMPs or RAIWMPs must outline the means by which the locality will meet AB 939's required 25% waste stream reduction by 1995 and 50% waste stream reduction by 2000. Under AB 939, the primary components of waste stream reduction are recycling, source reduction, and composting.

CoIWMPs and RAIWMPs are comprised of several elements. Each area must produce a source reduction and recycling (SRR) element, which describes the constituent materials which compose solid waste within the area affected by the element, and identifies the methods the city will use to divert a sufficient amount of solid waste through recycling, source reduction, and composting to comply with the requirements of AB 939. Each area must also produce a household hazardous waste (HHW) element which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes which are generated by households in the area and should be separated from the solid waste stream. The siting element describes the methods and criteria a jurisdiction will use in the process of siting a new or expanding an existing solid waste disposal and transformation facility. The non-disposal facility (NDF) element must include a description of new facilities or expansion of existing facilities that will be needed to reach AB 939's mandated disposal reduction goals, and must identify transfer stations to be used by the local jurisdiction. Once a CoIWMP or RAIWMP is certified by the Board, the responsibility for enforcing its terms is delegated to a CIWMB-approved local enforcement agency (LEA).

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).

CIWMB is composed of six full-time salaried members: one member who has private sector experience in the solid waste industry (appointed by the Governor and confirmed by the Senate); 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 and confirmed by the Senate); two public members appointed by the Governor (and who need not be confirmed by the Senate); one public member appointed by the Senate Rules Committee; and one public member appointed by the Speaker of the Assembly.

Issues before the Board are delegated to any of six committees; each committee includes two Board members and is chaired by a third. The Permitting and Enforcement Committee handles all matters pertaining to the issuance and enforcement of solid waste facilities permits and state standards for solid waste. The Legislation and Public Education Committee recommends positions to the Board regarding relevant legislation, and oversees Board involvement in public affairs activities. The Policy, Research, and Technical Assistance Committee is responsible for all issues and policy development regarding research, development, and special wastes activities. The term "special wastes" refers to those wastes which require unique collection, handling, or disposal methods, such as HHW, sludge, and medical wastes. The Local Assistance and Planning Committee deals with the CoIWMPs and local waste reduction plans submitted by cities and counties, and helps cities and counties implement their plans. The Market Development Committee is responsible for developing new markets for recycled materials. The Administration Committee is responsible for contracts entered into by the Board, and for issues that do not clearly belong to any other committee.

On June 5, Governor Wilson announced the appointment of Daniel G. Pennington to CIWMB, filling the vacancy left by former Board Chair Jesse R. Huff. Pennington previously served as special assistant to the Century Freeway Housing Program, where he acted as liaison officer between the multimillion-dollar Program in South Central Los Angeles and the Sacramento headquarters of the Department of Housing and Community Development (DHCD). Prior to that, Pennington served