6880 inadequately addresses the need for diesel runaway safeguards. OSB staff noted that the U.S. Department of Transportation has jurisdiction over all interstate and intrastate transportation of bulk flammable liquids; further, the California Highway Patrol enforces its own regulations concerning intrastate transportation of flammable liquids. Finding that it lacks jurisdiction to adopt a standard that would require the installation of an automatic diesel runaway shutdown system on trucks that transport products which omit flammable vapors, OSB denied the petition.

At its December 16 meeting, OSB considered Petition No. 339, submitted by David Smith on behalf of Ensign Safety and Health Advisory, requesting that OSB amend section 3203(c)(2), Title 8 of the CCR, to specify a retention period for labor/management safety and health committee meeting records. Noting that section 3203 would soon be amended anyway to comply with recently enacted legislation concerning safety records, OSB denied the petition.

Also at its December 16 meeting, OSB considered Petition No. 341, submitted by David Caldwell, requesting that OSB adopt the state of Washington's fall protection standards with one modification to disallow the use of a safety monitor system as a substitute for a personal fall arrest system, work positioning device, guardrail system, and catch platform. The Board agreed that revisions are appropriate, but refused to adopt Washington's regulations. Instead, OSB directed DOSH to analyze the Washington Code along with fed-OSHA regulations and ANSI standards and select appropriate language for a new regulation for Cal-OSHA. Accordingly, OSB denied the petition.

FUTURE MEETINGS

April 21 in Sacramento.
May 19 in Los Angeles.
June 23 in San Francisco.
July 21 in San Diego.
August 25 in Sacramento.
September 22 in Los Angeles.
October 27 in San Francisco.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY (CAL-EPA)

AIR RESOURCES BOARD

Executive Officer: James D. Boyd
Chair: Jacqueline E. Shafer
(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 November 17, Board Chair Jananne Sharpless announced her resignation from ARB effective November 18; her move followed a review of the Board's performance by the Wilson administration, which was pressured by business groups, the auto and trucking industries, and several conservative Assembly Republicans (*see below*). On November 18, Governor Wilson named Jacqueline E. Shafer as ARB's new chair. Although Shafer's appointment requires Senate confirmation, new appointees may begin to work immediately when the legislature is not in session. Shafer started work as ARB Chair on November 22; the position is full-time and commands an annual salary of $90,852.

Although Shafer has no experience in California political or environmental issues, she served as administrator of the New York regional office of the U.S. Environmental Protection Agency for two years during the Reagan administration, was Assistant Secretary of the Navy (with oversight of military environmental policies) during the Bush administration, and served from 1984–89 on the White House Council on Environmental Quality.

Also on November 18, Governor Wilson replaced longtime ARB member Betty Ichikawa with Lynne T. Edgerton, vice-president of CALSTART, a nonprofit consortium of California industries and governments working to produce electric cars and other transportation technologies. *[12:4 CRLR 20]* Edgerton is an attorney who formerly worked for the Natural Resources Defense Council. Ichikawa had been a member of ARB for ten years, and—like Sharpless—tended to favor stringent air pollution controls.

MAJOR PROJECTS

Sharpless Resigns Under Pressure. On November 17, longtime ARB Chair Jananne Sharpless announced her resignation from the Board following a "performance review" by the Wilson administration. The "performance review" was demanded by the auto and trucking industries and several conservative Assembly Republicans who have historically disapproved of ARB's direction under Sharpless' leadership. While his administration insisted that Sharpless' move was mutually agreed upon and that the Governor wanted to retain her recognized expertise in his administration, Wilson reassigned Sharpless to the California Energy Commission and later called for that agency's abolition.

Sharpless, a strong and vocal clean air advocate, chaired the Board for eight years prior to her resignation. Under her leadership, ARB adopted rules in 1988 which limit, effective October 1, 1993, the permissible sulfur content of diesel fuel to 500 parts per million, and restrict the aromatic hydrocarbon content of diesel fuel to 10% by volume. *[9:1 CRLR 86]* In spite of the five-year lead time, refiners failed

to produce enough of the new diesel fuel by the October 1 deadline, causing prices to soar and the trucking industry to pressure the Wilson administration to repeal the rule and fire Sharpless (*see below*).

In 1990, the Sharpless-led ARB bucked the auto industry by adopting historic rules requiring the gradual introduction of low-emission vehicles in California beginning in 1994; by 1998, 2% of all cars sold in California must be zero-emission vehicles. *[11:1 CRLR 113]*

Also during Sharpless' tenure, ARB supported the U.S. Environmental Protection Agency's (EPA) attempt to force California to revamp its Smog Check Program, and committed itself to establishing an enhanced Smog Check program consistent with new EPA guidelines *[13:1 CRLR 96–97]*; this position is not consistent with the Wilson administration's ongoing battle with EPA over the Program (*see below*).

ARB Temporarily Suspends New Diesel Fuel Standard. On October 1, the Board's 1988 amendments to sections 2281 and 2282, Title 13 of the CCR, became effective; these amendments limit the permissible sulfur and aromatic hydrocarbon content of diesel motor vehicle fuel sold in California. *[9:1 CRLR 86]* The effective date of ARB's diesel fuel standards coincided with the effective date of new federal regulations which also restrict the sulfur content of diesel fuel and impose a new 4.3-cents-per-gallon tax on diesel fuel. The Board's regulations are designed to substantially reduce emissions of health-endangering soot and smog-forming pollutants from diesel vehicles; the cost of producing the cleaner diesel was widely expected to increase fuel prices by about six cents per gallon.

However, during September, the price of diesel fuel increased in California—especially northern California—by approximately 30 cents per gallon wholesale; supplies of both complying and non-complying diesel fuel became tight throughout the state and across the nation. The supply problem and price increase were apparently caused by the panic buying and hoarding of pre-October 1 diesel fuel by users, and equipment outages at diesel refineries in California. The inability of California refineries to produce sufficient amounts of complying diesel fuel coupled with the price increase resulted in bitter complaints from the trucking and agricultural sectors, who largely blamed ARB and then-Chair Jananne Sharpless for the entire situation.

At the request of Governor Wilson, ARB scheduled a special hearing on the matter at its October 15 meeting. The hearing lasted twelve hours, and included extensive testimony from legislators, marketers and distributors of diesel fuel, farmers, truckers, and truck stop operators. In addition to complaining about the price and lack of supply, the trucking industry contended that the new fuel is causing performance problems; the truckers argued that the reformulated diesel fuel is causing additional wear and tear on o-rings and other engine parts which is resulting in fuel pump failure.

Following the lengthy hearing, ARB agreed by a 4–3 vote to suspend the part of the diesel fuel regulations that applies to off-road motor vehicles for 45 days (to December 4). In addition, the Board suspended the part of the regulations that requires use of cleaner diesel fuel in off-road vehicles for 120 days (until February 17, 1994). To accomplish its goal, the Board adopted emergency amendments to sections 2281 and 2282; these amendments were approved by the Office of Administrative Law (OAL) on October 21. Thus, farmers and construction firms (but not truckers or other highway users) are permitted to use the type of diesel fuel used in most of the country until February 17. The Board took this action to give the refineries a chance to stockpile production of the new fuel and to ensure that agriculture could obtain fuel during harvest season; the action is also designed to help the trucking and bus industries by freeing additional supplies of fuel for on-road users. Shortly after the October 15 decision, the price of diesel fuel began to drop both in California and nationwide. By December 4, the price had dropped significantly and the market stabilized; ARB's regulations were reinstated without incident.

On the o-ring issue, the Board directed its staff involved in the heavy-duty truck roadside inspection program to temporarily focus their expertise and energy on investigating this matter. In addition to visiting repair shops and other facilities to investigate reported problems, staff is also working with fuel pump manufacturers and oil companies to ascertain the causes and solutions to the alleged problem.

Also on October 15, Governor Wilson convened an "Interagency Diesel Advisory Committee" to review the causes of the fuel shortage and their impact on the state's economy and report back to him within thirty days. The Advisory Committee, which consisted of representatives from seven state agencies and was headed by Public Utilities Commission President Daniel Wm. Fessler, held a public hearing on November 8 and presented its report to the Governor on November 15. The Advisory Committee found that prices were falling and the supply/demand problems appeared to be ending as the market adjusted to the new fuels. The Committee recommended that ARB's rules be retained, but also advised the Governor to further investigate the o-ring problems alleged by the trucking industry.

On November 19, Governor Wilson—armed with the Fessler Committee's report—announced his decision to uphold ARB's new rules. "California has no choice but to clean up the air emission of mobile sources, and suspension of the rules is inconsistent with that goal," said the Governor. He rejected the trucking industry's request for a six-month moratorium on the use of the new fuel and convened a second task force headed by Cal-EPA Secretary James Strock; this task force is to investigate the truckers' reports of mechanical damage to engines from the new fuel and assess whether compensation for such damage should be made. The second task force, which will include representatives from the California Trucking Association, California Society of Automotive Engineers, California Farm Bureau, California Association of School Superintendents, and other affected industries, as well as experts from government agencies and academia, will examine whether mechanical damage is resulting from the introduction of a different fuel into diesel engines; whether mechanical damage is resulting from the new federal/state low sulfur requirement; whether mechanical damage is resulting from the state's new low aromatic content requirement, and whether some minimum aromatic content standard should be adopted; and whether mechanical damage is resulting from some combination of the above factors.

Board Adopts Perchloroethylene Regulations. At its October 14 meeting, ARB adopted new sections 93109 and 93110, Titles 17 and 26 of the CCR; section 93109 establishes an airborne toxic control measure (ATCM) for perchloroethylene (perc) in dry cleaning operations, and section 93110 establishes an environmental training program for perc dry cleaning operations.

ARB identified perc as a toxic air contaminant (TAC) in October 1991. *[12:1 CRLR 141]* Once a substance has been listed as a TAC, state law requires ARB to develop regulations to control its emission. During the hearing on the listing, individual dry cleaners and trade association representatives raised concerns about the impact of the anticipated control requirements on the industry. As a result, ARB directed its staff to work with interested parties to develop workable regulations.

Perc emissions in California result primarily from the use of the solvent in dry cleaning operations. ARB estimates that dry cleaning operations account for about 60% of the total perc use in the state. California dry cleaners use just over one million gallons of perc per year, and the total statewide perc emissions from dry cleaning are about 742,000 gallons per year.

The Board's ATCM for perc (section 93109) sets technology, operations, training, maintenance, and other requirements for the state's perc dry cleaners. The three major elements of section 93109 address equipment requirements for existing and new facilities, good operating practices, and recordkeeping/reporting activities. In the key area of equipment, ARB seeks to require all dry cleaners to use closed-loop machines with refrigerated condensers or equivalent primary control systems. As an option, dry cleaners may choose to convert their existing vented machines to closed-loop machines. After the regulation is implemented, existing dry cleaners would have four years to comply if they choose a closed-loop machine or 18 months if they choose a converted machine. The delay in implementation allows small business to make the change when they would normally be required to replace their machines. For new facilities, the best available control technology is closed-loop machines equipped with secondary controls. However, the secondary control requirement for new facilities does not apply until 18 months after the effective date of the regulation. This will allow dry cleaners more time to plan and evaluate secondary control options, and allow for additional manufacturers to enter the market and promote competition.

ARB's proposed training regulation (section 93110) would establish the criteria and procedures for ARB authorization of people who want to offer the environmental training courses that are required by section 93109. ARB authorization would provide certainty that the courses are offered by qualified instructors and satisfy the objectives of the environmental training program. The primary objectives of the program are to ensure that dry cleaners understand how to comply with the operation and maintenance, leak check, and recordkeeping requirements of section 93109; techniques to minimize perc use and emissions, as well as the business advantages of employing those techniques; and the requirements of other environmental regulations.

Following the public hearing, the Board adopted proposed sections 93109 and 93110 with several modifications to the originally proposed text. At this writing, the modified text is being circulated for final public comment; the proposal has yet to be submitted to OAL for review and approval.

ARB Amends Area Designation Criteria and Area Designations. At its November 18 meeting, the Board amended the criteria it uses for designating areas of California as nonattainment, attainment, or unclassified for state ambient air quality standards. *[13:1 CRLR 97]* Specifically, ARB amended sections 70300–70306 and Appendices 1–4 thereto, Title 17 of the CCR, to (1) change the requirements for determining complete data—when less than three years of data area available—to exclude data affected by highly irregular or infrequent events before using the maximum pollutant concentration to determine if the data meet the completeness criteria; and (2) change the emission screening value for the annual emissions of oxides of nitrogen in an air basin to reflect ARB staff's improved procedure for estimating oxides of nitrogen emissions. The screening value is used in determining the nitrogen dioxide attainment status for an area which lacks complete data.

ARB also amended its area designations in sections 60200–60209, Title 17 of the CCR, to accomplish the following:

–redesignate Del Norte, Humboldt, and Trinity counties in the North Coast Air Basin (NCAB) as attainment for ozone;

–redesignate the San Jose Urbanized Area in Santa Clara County in the San Francisco Bay Area Air Basin (SFBAAB) as nonattainment-transitional for carbon monoxide;

–redesignate the SFBAAB portion of Solano County as attainment for carbon monoxide;

–redesignate the San Diego Air Basin as attainment for carbon monoxide;

–redesignate the Sacramento County portion of the Census Bureau Urbanized Area in the Sacramento Valley Air Basin as nonattainment, and redesignate the remainder of Sacramento County as attainment, for carbon monoxide;

–redesignate Humboldt County in the NCAB as attainment for sulfur dioxide, sulfates, and hydrogen sulfide; and

–redesignate Santa Barbara County in the South Central Coast Air Basin as attainment for hydrogen sulfide.

At this writing, these regulatory changes await review and approval by OAL.

Update on Other Regulatory Changes. 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*:

• The Board's September 1993 adoption of new sections 2259, 2283, and 2293.5, amendments to sections 2251.5, 2258, 2263, and 2267, and repeal of section 2298, Title 13 of the CCR, which enhance the effectiveness of its wintertime oxygenated gasoline program which started last year and proved successful in reducing carbon monoxide levels, have not yet been submitted to OAL for approval. *[13:4 CRLR 140; 13:2&3 CRLR 157]*

• ARB's August 1993 amendments to sections 70500 and 70600, Title 17 of the CCR, which identify six additional "transport couple" regions and add new areas to the list of areas subject to mitigation requirements under Health and Safety Code section 39610(b), have not yet been submitted to OAL for approval. *[13:4 CRLR 139–40]*

• The Board's July 1993 amendments to sections 90700–90705, Titles 17 and 26 of the CCR, which establish new fee schedules which APCDs and AQMDs must adopt to cover the state's cost of implementing the Air Toxics "Hot Spots" Information and Assessment Act of 1987, have not yet been submitted to OAL for approval. *[13:4 CRLR 139]*

• ARB's June 1993 amendments to sections 1956.8, 1965, and 2112, Title 13 of the CCR, which establish emissions standards and test procedures for transit buses pursuant to SB 135 (Boatwright) (Chapter 496, Statutes of 1991), have not yet been submitted to OAL for approval. *[13:4 CRLR 139]*

• ARB's June 1993 amendments to sections 93300–93354, Titles 17 and 26 of the CCR, which would streamline the emission inventory reporting requirements and the biennial update process under the Air Toxics "Hot Spots" Information and Assessment Act of 1987, have not yet been submitted to OAL for approval. *[13:4 CRLR 138–39]*

• The Board's April 1993 amendments to sections 2400 and 2403–07, Title 13 of the CCR, which delay implementation of the first tier of ARB's lawn and garden engine emission regulations by one year, were approved by OAL on October 4. *[13:2&3 CRLR 155–56]*

• ARB's April 1993 adoption of new section 93001, Titles 17 and 26 of the CCR, which designates 189 federal hazardous air pollutants as toxic air contaminants, has not yet been submitted to OAL. *[13:2&3 CRLR 156]*

• The Board's March 1993 amendments to sections 70600–70601, Title 17 of the CCR, which delete the permitting provisions of its existing transport mitigation emission control regulations, were

approved by OAL on October 27. *[13:2&3 CRLR 156–57]*

• ARB's January 1993 adoption of new section 93107, Titles 17 and 26 of the CCR, establishing an airborne toxic control measure for hazardous emissions resulting from non-ferrous metal melting, was approved by OAL on December 7. These emissions include cadmium, inorganic arsenic, and nickel, which have been identified by ARB as toxic air contaminants, and other metals, such as lead, which may be potential contaminants. *[13:1 CRLR 97]*

• ARB's January 1993 amendments to sections 1960.1, 1976, and 2061, Title 13 of the CCR, were approved by OAL on November 8. These changes establish test procedures and requirements for certifying hybrid electric vehicles, which are designed to run on some combination of energy supplied by batteries and an auxiliary power unit, which is likely to be a combustion engine; establish reactivity adjustment factors (RAFs) for Phase 2 gasoline transitional low-emission vehicles (TLEV) and low-emission vehicles (LEV); adopt an RAF for methane emissions from compressed natural gas (CNG) TLEVs; modify the 50$F emission standard to take into account recent developments indicating that manufacturers will be able to certify to LEV and TLEV standards using conventional technologies; and make a number of additional changes to clarify the certification test procedures or to make their application to LEVs more practical. *[13:1 CRLR 98]*

• ARB's December 1992 amendment to section 1956.8(b), which sets forth standards and test procedures for heavy-duty diesel engines and vehicles, was approved by OAL on December 1. The amendment to this section allows as an option the use of a low-sulfur diesel fuel specified in federal regulations for the certification of 1993 and subsequent model-year diesel engines. *[13:1 CRLR 98]*

• The Board's December 1992 amendments to its Heavy-Duty Vehicle Roadside Inspection Program (sections 2180 through 2187, Title 13 of the CCR), which revise the smoke opacity standards for 1991 and subsequent model-year vehicles and require engine manufacturers to submit smoke emissions data to ARB within 60 calendar days after receiving federal or California engine certification approval, were approved by OAL on December 1. *[13:1 CRLR 97–98]*

• ARB's December 1992 adoption of new sections 2190–2194, Title 13 of the CCR, which require owners of heavy-duty diesel-powered fleets to test their vehicles annually for excessive smoke emissions and undertake repairs whenever tests reveal such problems (with some exceptions), was approved by OAL on December 1. *[13:1 CRLR 97]*

• ARB's December 1992 adoption of new section 70303.5 and amendments to sections 60200–60209 and 70303, Title 17 of the CCR, which change the designation criteria for the nonattainment-transitional area air pollution classification in compliance with AB 2783 (Sher) (Chapter 945, Statutes of 1992), was approved by OAL on November 30. *[13:1 CRLR 97]*

• ARB's November 1992 amendments to sections 2317 and 1960.1(k), Title 13 of the CCR, which revise existing test procedures for qualifying a fuel as a substitute or new clean fuel, were approved by OAL on November 2. *[13:1 CRLR 96]*

Smog Check Update: Citizen Lawsuit Filed; Legislative Stalemate Continues. California's Smog Check Program, which is administered through the Department of Consumer Affairs' Bureau of Automotive Repair (BAR), has been the focus of heated debate between the state and federal governments for the past year. Under federal law, the state's Smog Check Program was required to comply with 1990 amendments to the federal Clean Air Act by November 15 or risk losing over $750 million in federal highway funds. Although the California legislature failed to agree upon a program which meets the federal standards before adjourning last September, the EPA, which administers the Act, agreed not to initiate sanctions against the state so long as state and federal officials continued negotiations toward an acceptable plan. *[13:4 CRLR 141]*

Specifically, EPA believes that California's current Smog Check Program has failed because of its "decentralized" format, which allows approximately 9,000 private auto repair garages to test, repair, and retest the same vehicle before issuing a smog certificate. The EPA contends that such a self-serving system not only promotes the likelihood of fraud on the consumer, but also results in false test results due to lack of uniform testing equipment among the numerous smog inspection garages. Thus, EPA guidelines prefer a "centralized" model which provides for testing at approximately 200 government-operated sites; any needed repair work would be performed by independent garages. The legislature continues to reject the EPA plan, stating concern about the potential economic loss to the auto repair industry; some observers also contend that the Wilson administration is caught up in a power struggle with the Clinton administration over this issue.

On December 17, Senator Tom Hayden followed through on his threat to initiate a citizen lawsuit against EPA if it failed to enforce sanctions on California for noncompliance with the Act; in an attempt to bring about meaningful negotiations by state officials, Hayden filed suit in federal court seeking to compel EPA to impose sanctions against California, which could amount to the state's loss of $1 billion in federal highway funds and restrictions on new development (*see* LITIGATION). While EPA officials note that state and federal authorities may still reach a compromise agreement, Hayden claims that his technical advisers believe the emerging compromise will not fully comply with the federal mandates. At this writing, the first court hearing is scheduled for March 4.

At this writing, the Senate Transportation Committee has not announced plans to reconsider SB 119 (Presley), the only proposal which EPA has stated may satisfy federal standards; the Committee rejected SB 119 on August 31. *[13:4 CRLR 23–24]* Presently, there is some indication that the legislature may pursue SB 1195 (Russell) or SB 629 (Russell); many critics note that because both bills fall short of the federal requirements, the state's enactment of either bill could expedite the ultimate showdown between federal and state authorities (*see* LEGISLATION).

LEGISLATION

SB 1195 (Russell), as amended August 30, is a comprehensive proposal which purports to bring California's Smog Check Program into compliance with EPA's new standards (*see* MAJOR PROJECTS). Among other things, this bill would:

–declare legislative intent that the current Smog Check Program has provided beneficial and reasonable emissions reductions; that its required equipment has been designed to accommodate future program enhancements; and that it has achieved greater reductions than any other inspection and maintenance (I/M) program in use today, and is more convenient and economical for the public than centralized systems elsewhere;

–expand the I/M program statewide, with provisions for exempting an attainment area if not economically feasible to implement;

–revise emission reduction standards, to be met no later than January 1, 1998;

–raise vehicle repair cost limits by $25 to $150 (to a new range of $75 to $375), depending on the age of a vehicle;

–provide for no cost limit on gross polluters and authorize regulatory requirements for the expenditure of a minimum repair amount;

–authorize a smog inspection certificate charge of up to $10 for the state's program and administrative costs;

–add to the testing procedures a functional test of the fuel evaporative and crankcase ventilation systems, use of a loaded mode dynamometer for nitrogen oxides, and other equipment to detect non-exhaust-related volatile organic compound emissions;

–require a program for roadside emissions audits to detect gross polluters, including remote sensing of emissions and vehicle pullovers for testing and inspection, and impose a $1,000 fine for violations;

–direct the Bureau of Automotive Repair (BAR) to establish higher licensure and training standards for Smog Check "technicians" (currently "mechanics"), including provisions for incentives and remedial training; provide for inspection station or technician license suspensions for up to sixty days for specified offenses; and establish grounds for refusing to renew a license for improper testing or repair;

–create an inspection waiver option, extending from two to four years the Smog Check exemption period upon payment of $50 at the time of a new vehicle's purchase;

–establish a Motor Vehicle Replacement Program, to purchase (up to $500) gross-polluting vehicles and replace them with new low-emitting vehicles;

–require various agencies to undertake specific actions related to the Smog Check program, such as requiring BAR's I/M Committee to examine tampering problems, ways to remove gross-polluting vehicles, implementation of the federal $450 repair cost waiver and improvements to decentralized testing, and requiring DCA to investigate on-board diagnostic systems in vehicles for detecting excess emissions and identifying needed repairs; and

–make other miscellaneous and related changes to vehicle inspection provisions to implement the bill's requirements and make them consistent with existing law. *[S. Appr]*

SB 629 (Russell) would revise the Smog Check Program by requiring BAR to ensure reductions in emissions as required by federal law; revise the specification of vehicles subject to the program; require Smog Check stations to test the fuel evaporative system and crankcase ventilation system and perform other specified tests; revise the membership and duties of the Inspection and Maintenance Review Committee; require BAR to establish a centralized computer database to perform specified functions relative to the transmission of data from Smog Check stations; revise provisions relating to the use of remote sensors to identify gross polluters to, among other things, provide for roadside audits, the issuance of citations, and the imposition and disposition of specified penalties; revise the repair cost limits under the program, as specified; require BAR to implement prescribed measures, including the operation of test-only stations, if it is determined by June 30, 1995, that California will not meet federal emission reduction standards; and prohibit any person from operating or leaving standing on a highway any vehicle which is a gross polluter. *[S. Rules]*

AB 1119 (Ferguson). Existing law establishes the motor vehicle inspection program, which provides for smog checks and repairs to be made by smog check station mechanics. As introduced March 2, this bill would designate those mechanics as technicians, designate that program as the basic program, and require an enhanced program of testing and retesting at test-only stations. The bill would delete provisions for a fee to be charged for a certificate of compliance or noncompliance, and instead provide for the electronic filing of a certificate of compliance. *[A. Trans]*

SB 1070 (Presley). Existing law imposes various duties on ARB, the Department of Motor Vehicles (DMV), and APCDs and AQMDs relating to the control of vehicular air pollution. As amended September 10, this bill would require DMV to collect a specified registration fee on motor vehicles. The amount of the fee would be calculated on the basis of mileage and pollutants emitted by a vehicle as determined by ARB. The fees would be used by ARB for specified programs related to reducing emissions, including retrofitting, sale, or disposal of high-emission vehicles, and reduction in their use. The bill would make related changes concerning the pollution control equipment of vehicles. *[S. Trans]*

AB 1853 (Polanco). Existing law does not require the budget of any APCD or AQMD to be submitted to the Cal-EPA Secretary for inclusion in Cal-EPA's budget. As amended August 17, this bill would require each district having a budget in excess of $50 million (*e.g.*, the South Coast Air Quality Management District) to submit its operating budget to the Secretary for inclusion in the budget of the Agency in the annual budget bill. The bill would also prohibit any such district from increasing specified fees except pursuant to specific statutory authority; require such a district to transmit specified revenues to the state for deposit in the Air Quality Operation Fund which the bill would create; and require the legislature to appropriate, in the budget act, the money in the Air Quality Operation Fund to such a district for district operations. *[S. Appr]*

SB 801 (Lewis). The Lewis-Presley Air Quality Management Act requires SCAQMD to have an Office of Public Advisor and Small Business Assistance, and requires the Public Advisor to be appointed by the SCAQMD executive officer. As amended April 27, this bill would rename that office in SCAQMD the Office of Small Business Assistance; require every multi-county APCD and AQMD to establish an Office of Public Advisor, appointed by the Governor and independent of the district's executive officer, with specified powers and duties; and establish in every multi-county district an independent appeals board to hear appeals of decisions of the district board. *[S. Appr]*

SB 1134 (Russell). Existing law requires specified governmental agencies to adopt a congestion management plan for each county. Existing law authorizes APCDs and AQMDs to encourage or require the use of ridesharing, vanpooling, flexible work hours, or other measures which reduce the number or length of vehicle trips and to adopt, implement, and enforce transportation control measures for the attainment of state or federal ambient air quality standards. SCAQMD is prohibited from requiring employers with fewer than 100 employees at a single worksite to submit a trip reduction plan. As amended June 15, this bill would define, and specify measures that may or may not be included in, a trip reduction plan submitted by an employer to, and measures that may not be required as a condition of plan approval by, an agency or a district for purposes of those provisions. The bill would require employers to give employees notice of proposed plans and the opportunity to comment prior to submittal of the plan to the agency or district. The bill would require the agencies to modify existing programs, and the districts to modify existing regulations, by June 30, 1995, to conform to these provisions. *[A. Trans]*

SB 334 (Rosenthal), as amended May 25, would, until January 1, 2002, exempt from state sales and use taxes the gross receipts not exceeding $1,500 from the sale, storage, use, or other consumption in this state of zero-emission vehicles, as defined.

Existing law imposes a specified statewide fee for the registration or renewal of registration of motor vehicles, and permits

the imposition of various additional local vehicle registration fees, including fees for purposes relating to the reduction of air pollution. This bill would, commencing January 1, 1995, impose a $1 fee upon the registration or renewal of registration of any motor vehicle subject to specified vehicular air pollution control laws. *[S. Appr]*

SB 381 (Hayden). Existing law requires ARB to adopt standards and regulations to, among other things, require the purchase of low-emission vehicles by state fleet operators. As amended August 16, this bill would require ARB to require the purchase of low-emission and zero-emission vehicles by state and local governmental agencies, and authorize those agencies to form a consortium to purchase electric vehicles. The bill would require ARB to also require the purchase of specified percentages of zero-emission vehicles by fleet operators, and exempt from that requirement certain authorized emergency vehicles.

Existing law authorizes APCDs and AQMDs to impose fees of $1, $2, or $4, as specified, on motor vehicles for purposes of, and related to, reducing air pollution from motor vehicles. This bill would exempt zero-emission vehicles from those fees imposed by the districts. The bill would impose an additional $1 fee on the registration or renewal of registration of motor vehicles, other than zero-emission vehicles, to be collected by DMV and deposited in the general fund. The bill would declare legislative intent that these revenues replace the revenues lost through sales and use tax exemptions and tax credits pursuant to the bill.

Existing law exempts from sales and use taxes the incremental cost of the sale or use of a low-emission motor vehicle, and the gross receipts from the sale or use of a low-emission retrofit device, as specified, until January 1, 1995. This bill would extend that exemption to January 1, 2001, and would also exempt from sales and use taxes, until January 1, 2001, that portion of the sales price of a new electric vehicle that is above the sales price of a comparable vehicle of equal size and capacity with an internal combustion engine. The bill would require ARB to annually compute that cost differential.

The bill would also impose, commencing July 1, 1995, an additional $1 fee on the registration or renewal of registration of motor vehicles, to be collected by DMV and deposited in the Zero-Emission Vehicle Sales Tax Exemption Fund, which the bill would create, and thereafter transferred periodically to the general fund, as specified, until DMV receives a specified notification from the Controller. The bill would declare legislative intent that vehicle owners not be subjected to any additional fees beyond those fees which are necessary to offset the loss of revenues as a result of the sales and use tax exemption for zero-emission vehicles, and that no surplus be created in the Zero-Emission Vehicle Sales Tax Exemption Fund.

Existing law, the Personal Income Tax Law and the Bank and Corporation Tax Law, until January 1, 1995, allows credits against the taxes imposed by those laws for the costs of the conversion of a vehicle to a low-emission motor vehicle, or for the differential cost, as defined, of a new low-emission motor vehicle that meets specified requirements. This bill would extend those credits to January 1, 2001. *[S. Appr]*

SB 455 (Presley). Existing law requires agencies responsible for the preparation of regional transportation improvement programs to develop and biennially update a congestion management program for every county that includes an urbanized area and to monitor implementation of the program. Existing law specifies the elements required to be contained in a congestion management program, including a trip reduction and travel demand element. As amended September 7, this bill would prohibit that element from requiring an employer to implement a trip reduction plan if the employer is already required to implement a trip reduction plan by an APCD or AQMD pursuant to other provisions.

Existing law authorizes APCDs and AQMDs to adopt and implement regulations to reduce or mitigate emissions from indirect and areawide sources of air pollution. This bill would limit the requirements that the districts may impose by regulation on indirect sources for that purpose to requirements that the districts determine are based on the extent of the contribution of the indirect sources to air pollution by generating vehicle trips that would not otherwise occur.

The bill would allow a district to adopt, implement, enforce, or include in any plan to attain state ambient air quality standards, regulations or transportation control measures to reduce vehicle trips or vehicle miles traveled if the district determines that the regulation or measure is not duplicative, as specified. The bill would allow a district to delegate to any local agency the responsibility to administer those district regulations, except as specified.

Under existing law, the provisions authorizing a district to adopt and implement regulations to reduce or mitigate emissions from indirect and areawide sources of air pollution and to encourage or require the use of measures to reduce the number or length of vehicle trips do not constitute an infringement on the authority of counties and cities to plan or control land use. This bill would also state that those provisions, as modified by the bill, do not constitute an infringement of the authority of counties and cities to condition land use, or on the ability of a public agency to impose trip reduction measures pursuant to a voter-mandated growth management program.

Existing law requires the SCAQMD Board to adopt a plan to achieve and maintain the state and federal ambient air quality standards for the South Coast Air Basin. Existing law imposes on the Southern California Association of Governments the responsibility for preparing and approving the portions of the plan relating to, among other things, transportation programs, measures, and strategies. This bill would require the governing board of both the Association and SCAQMD, prior to the inclusion in the plan of a transportation control measure, to make a specified finding.

Existing law does not require the budget of any air pollution control district or air quality management district to be submitted to Cal-EPA Secretary for inclusion in Cal-EPA's budget. This bill would require each district having a budget in excess of $50 million (*e.g.*, SCAQMD) to submit its operating budget to the Secretary for inclusion in the budget of the Agency in the annual budget bill. The bill would prohibit any such district from increasing specified fees except pursuant to specific statutory authority. The bill would require any such district to transmit specified revenues to the state for deposit in the air quality operation fund, which the bill would create, and would require the legislature to appropriate, in the budget act, the money in the air quality operation fund to those districts for district operations. The bill would make those provisions inoperative on July 1, 1999, and would repeal the provisions as of January 1, 2000.

Existing law authorizes local authorities, under prescribed circumstances, to determine and declare prima facie speed limits different than the generally applicable speed limits. This bill would authorize, until January 1, 1997, a county or city that is wholly or partly within the Kern County Air Pollution Control District or SCAQMD to determine and declare a prima facie speed limit lower than that which the county or city is otherwise permitted to establish, for any unpaved road, if necessary to achieve or maintain state or federal ambient air quality standards for particulate matter.

Existing law authorizes the Los Angeles Metropolitan Transportation Authority to conduct a study of the congestion management program with the objective of recommending modifications that would reduce or eliminate any inconsistency with the requirements of specified state and federal air pollution control laws. This bill would make a statement of legislative intent with regard to that study and the avoidance of overlapping and duplicative requirements. *[S. Inactive File]*

SB 532 (Hayden). Existing law requires the state Department of Health Services (DHS) to submit to ARB recommendations for ambient air quality standards. As amended May 28, this bill would require DHS to determine if any adoption, amendment, revision, or extension of the recommendations adequately protects human health, including the health of infants, children, elderly, and other population categories and, if not, to take more stringent action.

Existing law requires ARB to divide the state into air basins and adopt standards of ambient air quality for each air basin, in consideration of the public health, safety, and welfare. Existing law requires the standards relating to health effects to be based upon the recommendations of the Office of Environmental Health Hazard Assessment. This bill would require ARB to determine if any adoption, amendment, revision, or extension of the standards adequately protects human health, including the health of infants, children, elderly, and other population categories and, if not, to take more stringent action.

Existing law requires ARB to adopt airborne toxic control measures to reduce emissions of toxic air contaminants from nonvehicular sources and to consider the adoption of revisions in the emission standards for vehicular sources. This bill would require ARB to determine if any adoption, amendment, revision, or extension of the standards adequately protects human health, including the health of infants, children, elderly, and other population categories and, if not, to take more stringent action, as specified. *[S. Appr]*

SB 668 (Hart), as amended June 9, would enact the Zero-Emission Vehicle Development Incentive Program, to be administered by ARB. The bill would, until January 1, 2001, exempt zero-emission vehicles from state (but not local) sales and use taxes, and establish a tax credit under the Personal Income Tax Law and the Bank and Corporation Tax Law for the development of zero-emission vehicle technologies and industries. The bill would impose a $1 motor vehicle registration fee, beginning on January 1, 1995 and terminating on December 31, 2000, to be deposited in the Zero-Emission Vehicle Development Incentive Fund, which the bill would create, to fund the exemption and the credit. *[A. Rev&Tax]*

SB 1113 (Morgan). Existing law establishes the Bay Area Air Quality Management District and the San Joaquin Valley Air Pollution Control District and imposes various duties on the districts regarding the control of air pollution. As amended August 17, this bill would, except as specified, prohibit any emission standard, rule, regulation, or other requirement from taking effect or being implemented prior to July 1, 1997, in those districts to require the owner or operator of any stationary source, which is required to make vehicular fuel composition modifications, to make any capital expenditure, as described, to reduce nitrogen oxide emissions. The bill would make related legislative findings and declarations. *[S. Floor]*

LITIGATION

In ***Hayden v. Browner, et al.***, No. CV-S-93-1977-EJG-GGH (U.S.D.C., E.D. Cal.) (filed Dec. 17, 1993), state Senator Tom Hayden filed suit against EPA under 42 U.S.C. section 7604(a)(2); the provision allows any person to commence an action against the EPA Administrator when he or she fails to perform any nondiscretionary act or duty under Chapter 85 of the federal Clean Air Act Amendments of 1990.

Under 42 U.S.C. section 7511(a), states must submit to EPA a revision to their state implementation plans to provide for an adequate Smog Check Program by November 15, 1993; California failed to comply with this statute, and thereby became subject to severe financial penalties under federal law. However, EPA Administrator Carol Browner agreed to delay sanctions against California so long as the state continued negotiations toward agreement on an acceptable Smog Check Program (*see* MAJOR PROJECTS). Senator Hayden claims that EPA has breached its nondiscretionary duty to commence sanction proceedings against the State of California. In addition, Hayden's lawsuit seeks a court order compelling Governor Wilson and ARB to prepare and submit to EPA a state plan which meets the vehicular emission standards and inspection, maintenance, and repair requirements of the federal Clean Air Act. At this writing, the first court hearing in the case is scheduled for March 4.

In ***California Air Resources Board v. Hart***, 21 Cal. App. 4th 289 (Dec. 22, 1993), the Second District Court of Appeal reversed the trial court and held that ARB has the power to prosecute an action for civil penalties for violations of the Health and Safety Code. In March 1991, the Board filed a complaint for civil penalties against Lawrence T. Hart for selling new motorcycles or engines which ARB had not certified as meeting California air pollution control standards. Hart challenged the Board's standing to sue, arguing that Health and Safety Code section 43154(b) requires the state Attorney General—not the Board—to initiate such actions. In reply, ARB noted that the Attorney General had delegated its prosecutorial power in the matter to the Board in writing, because the AG's Office was experiencing a staff shortage and was unable to review the matter before the required filing date. The trial court dismissed the case, finding that section 43154(b) provides for prosecution of the action exclusively by the AG.

The Second District reversed. Section 43154(b) provides that "[a]ny action to recover a penalty under this section shall be brought in the name of the People of the State of California...by the Attorney General on behalf of the state board...." However, the court found that section 43154(b) must be read in light of Health and Safety Code section 7 (which provides that whenever a power is generally granted to a public officer, that power may be exercised by "a deputy of the officer or a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise") and Government Code section 11040 (which pertains to the ability of state agencies to hire their own legal counsel "after first having obtained the written consent of the Attorney General"). After a de novo review of these "seemingly discordant" code sections, the court concluded that nothing prohibits the Attorney General from acting through agents as provided for in section 7; "[i]n fact, Government Code section 11040 specifically allows a State agency to employ counsel with the written consent of the Attorney General. From the Attorney General's letter to the Board, it is clear the Attorney General also is *inviting* the Board to proceed timely to prosecute Hart" (emphasis original). Thus, the court found that the AG's written delegation of prosecutorial discretion was appropriate.

In ***Coalition for Clean Air, et al. v. Air Resources Board***, No. 372697 (Sacramento County Superior Court), the court denied the Coalition's petition for writ of mandate after oral argument on October 18. In the lawsuit, the Coalition had challenged ARB's conditional approval of the South Coast Air Quality Management District's RECLAIM program (*see* RE-

CENT MEETINGS), and the Board's approval of SCAQMD's 1991 air quality management plan and 1992 amendments. *[13:4 CRLR 145; 13:1 CRLR 99–100]*

RECENT MEETINGS

On October 15, the South Coast Air Quality Management District (SCAQMD) approved the final draft of its Regional Clean Air Incentives Market (RECLAIM) proposal. The RECLAIM project, originally scheduled to be voted on last summer, is the nation's first program which creates a trading market for air pollution credits. *[13:4 CRLR 145–46; 12:4 CRLR 168–69]* As approved, RECLAIM applies to 390 stationary sources within the District which emit four tons per year of nitrogen oxides (NOx) and an overlapping 41 sources which emit the same level of sulfur oxides (SOx). Instead of setting emissions limits on individual pieces of equipment within a facility, RECLAIM sets individual facility caps on overall NOx and SOx emissions. The caps will drop each year through 2003, and the regulated company may decide how to stay within its cap. Each company is given an annual allotment of tradable credits equal to its emissions cap; by installing efficient emissions control equipment and staying under its cap, a company can sell excess credits for whatever the market will bear to companies which exceed their caps. RECLAIM, which is scheduled to become effective on January 1, must also be approved by ARB and EPA.

On November 9, ARB staff held a workshop to consider public comments on its development of a market-based "alternative control plan" (ACP) for use with the Board's existing statewide consumer product regulations. ARB has adopted a series of regulations to reduce the emissions of volatile organic compounds (VOCs) from the use of consumer products; these regulations employ traditional command-and-control type VOC limits on 27 product categories. *[12:2&3 CRLR 197]* To help maximize emission reductions, staff is developing a market-based ACP regulation for use with the consumer product regulations. The ACP regulation would allow manufacturers of consumer products to voluntarily enter into an emissions averaging program called an alternative control plan. ARB would enter into ACPs with eligible manufacturers on a product-by-product basis. Products designated as ACP products would be assigned a cumulative maximum level of permissible emissions during a specified reporting period; manufacturers who reduce product emissions below the set ACP limit could sell emission credits to manufacturers whose products exceed the ACP limit. The ACP regulation is currently in draft form, and ARB's November 9 workshop was the sixth such forum for public comment on the draft. At this writing, ARB staff hopes to publish the proposed regulation for a 45-day comment period and schedule a hearing on it before ARB in March 1994.

At its November 18 meeting, ARB approved some additions to its Mobile Source Emission Reduction Credits guidelines to be used by AQMDs in developing mobile source credit programs. Currently, some areas of the state may not allow further increases in emissions of regulated pollutants from new or existing stationary sources. To allow for added industrial and business expansion, many AQMDs have developed programs for allowing credits that are generated by reducing emissions from mobile sources to be applied to offset increases in stationary source emissions. In February 1993, the Board approved guidelines to the districts for three types of mobile source credit programs: the accelerated retirement of older vehicles, the purchase of low-emission buses, and the purchase of zero-emission vehicles. On November 18, ARB approved additional guidelines for credit programs based on retrofitting existing vehicles to low-emission configurations. The retrofit credit guidelines provide direction regarding hardware certification, credit calculation, enforcement, and credit life determination, for generating credits by retrofitting light-, medium-, and heavy-duty vehicles to low-emission configurations. The Board also decided that its Executive Officer may make future minor changes to the guidelines.

ARB's December 9–10 meeting was cancelled.

FUTURE MEETINGS

April 14–15 in Sacramento.

CALIFORNIA INTEGRATED WASTE MANAGEMENT AND RECYCLING BOARD

Executive Director:
Ralph E. Chandler
Chair: Michael Frost
(916) 255-2200

The California Integrated Waste Management and Recycling Board (CIWMB) was created by AB 939 (Sher) (Chapter 1095, Statutes of 1989), the California Integrated Waste Management Act of 1989. The Act is codified in Public Resources Code (PRC) section 40000 *et seq.* AB 939 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 nondisposal facility 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.

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