



and whether further investigation of the incident is warranted.

FUTURE MEETINGS:

May 17 in San Francisco.

BUREAU OF AUTOMOTIVE REPAIR

Chief: James Schoning

(916) 366-5100

Toll Free Complaint Number:

1-800-952-5210

Established in 1971 by the Automotive Repair Act (Business and Professions Code sections 9880 *et seq.*), the Department of Consumer Affairs' (DCA) Bureau of Automotive Repair (BAR) registers automotive repair facilities; official smog, brake and lamp stations; and official installers/inspectors at those stations. The Bureau's regulations are located in Division 33, Title 16 of the California Code of Regulations (CCR). The Bureau's other duties include complaint mediation, routine regulatory compliance monitoring, investigating suspected wrongdoing by auto repair dealers, oversight of ignition interlock devices, and the overall administration of the California Smog Check Program.

The Smog Check Program was created in 1982 in Health and Safety Code section 44000 *et seq.* The Program provides for mandatory biennial emissions testing of motor vehicles in federally designated urban nonattainment areas, and districts bordering a nonattainment area which request inclusion in the Program. BAR licenses approximately 16,000 smog check mechanics who will check the emissions systems of an estimated nine million vehicles this year. Testing and repair of emissions systems is conducted only by stations licensed by BAR.

Approximately 80,000 individuals and facilities—including 40,000 auto repair dealers—are registered with the Bureau. Registration revenues support an annual Bureau budget of nearly \$34 million. BAR employs approximately 600 staff members to oversee the Automotive Repair Program and the Vehicle Inspection Program.

Under the direction of Chief James Schoning, the Bureau is assisted by a nine-member Advisory Board which consists of five public and four industry representatives. The terms of three of the Advisory Board members—Herschel Burke, Vincent Maita, and Alden Oberjuerge—expired in June 1991; they remain on the Board until replacements are appointed. The other

Advisory Board members are William Kludjian, Jack Thomas, Carl Hughett, Joe Kellejian, Louis Kemp, and Gilbert Rodriguez.

MAJOR PROJECTS:

Smog Check Program Examined at Interim Hearings. On December 16–18, the Senate Appropriations Committee and the Assembly Transportation Committee held joint interim hearings regarding the future of California's Smog Check Program. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 61; Vol. 11, No. 3 (Summer 1991) p. 60; and Vol. 11, No. 2 (Spring 1991) p. 58 for background information.)

Although California's program is considered by many to be the best in the nation, the state's severe air pollution problems persist. The federal government has addressed the issue in Congress' 1990 amendments to the federal Clean Air Act. During 1992, the U.S. Environmental Protection Agency (EPA) is slated to establish performance standards that all state smog check programs will be required to meet. Significant changes may have to be made to California's program; one purpose of the interim hearings was to formulate legislation to ensure that California meets EPA's new standards.

During the hearings, many experts testified that in order for California to meet the new, tougher standards, the state must require the use of more expensive and refined equipment able to diagnose increasingly sophisticated engines. According to Richard Wilson, director of EPA's Mobile Sources Division, only a "high-tech, high-volume, test-only" program will be able to afford the equipment and meet the standards. Whereas the BAR-90 test analyzer currently in use in California costs \$14,000–\$15,000 and is affordable by local gas stations participating in California's "decentralized" Smog Check Program, the equipment which EPA will probably require costs in excess of \$150,000. EPA believes that the new standards and testing equipment may require conversion of "decentralized" state smog check programs to "centralized" programs, in which the state operates the testing centers and runs the program (or contracts it out to a private company). The state-run program would simply test for emissions compliance; in contrast, existing California Smog Check Program stations test, repair, and retest. Proponents of a high-volume, test-only centralized program argue that the per-test cost will decrease to \$17, as opposed to California's existing \$32 per test average.

Although the per-test cost may decrease, the federal amendments require all states to adopt a cost limit of \$450 for emissions repairs on all vehicles, regardless of age or complexity. California's current repair limits range from \$50 for the oldest vehicles with simple emissions systems to a maximum of \$300 for newer, more complex vehicles. Further, the federal law requires vehicle owners to exceed the limit—not merely spend up to it—if necessary to achieve emissions reductions.

Other issues addressed by participants at the hearings include the following:

-Education of Mechanics. Participants noted that a major weakness of the California program (which would not be cured by a centralized program) is in its repair aspect. As vehicles become more sophisticated, the pool of expert mechanics who can accurately diagnose and fix them becomes smaller. Although SB 1997 (Presley) (Chapter 1544, Statutes of 1988) created a "second tier" of mechanics who are more qualified to work on high-tech vehicles, this alone has not solved the problem. The auto repair industry is calling for more emphasis on vocational training and educational programs for auto mechanics; thus, BAR may take a more active role in the precertification training of mechanics in the future.

-Tampering and Equipment Failures. Perhaps the biggest flaw in the California program is its lack of success in detecting vehicles which become high emitters between biennial inspections because their emission components either fail or are tampered with. Roadside inspection studies conducted by BAR show that there is a higher in-use rate of equipment malfunction and tampering than is found during the biennial inspection process. The legislature has directed BAR and the Air Resources Board (ARB) to study and report back on various methods of detecting high-emitting vehicles; that report is due in April.

SOR Reviews Smog Check Program. In late September, the Senate Office of Research (SOR) released *Reducing Automobile Pollution*, a report which focuses on BAR's Smog Check Program, identifying problems and making recommendations for improvement.

The report includes a brief overview of the current Smog Check Program. Federal law requires states to implement inspection and maintenance (I/M) programs in urban areas that fail to meet federal clean air standards. In response to this federal mandate,



REGULATORY AGENCY ACTION

California's Smog Check Program was established in 1982 by SB 33 (Presley) (Chapter 892, Statutes of 1982). The Program began operation in 1984, and calls for mandatory biennial smog inspections prior to vehicle registration. Vehicles which fail the smog test are subject to mandatory maintenance repairs up to a specified repair cost ceiling. The current ceiling ranges from \$50 to \$300, depending on the age of the vehicle.

Although California has the toughest emission standards in the country and the Smog Check Program appears to be cost-effective, the report states that the Program needs overhauling. California's air is the most polluted in the nation; 90% of Californians live in areas that violate state and federal air quality standards. Automobiles are the single largest contributor to the state's polluted air, with a small minority of cars of all ages producing the majority of auto emissions. According to SOR, random roadside checks performed in 1989 by ARB and the California Highway Patrol revealed that the cleanest 50% of the cars on the road produce only 3% of the tailpipe carbon monoxide emissions from cars. However, 7% produced 50% of the tailpipe carbon monoxide emissions; the report notes that both old and new cars were found to be among the worst polluters.

SOR offered the following recommendations to improve the Program:

-The legislature should authorize ARB and BAR to inspect vehicles more frequently than biennially and authorize the use of random roadside inspections and remote emissions sensing when it is more cost-effective to do so.

-The legislature should require ARB to evaluate the cost-effectiveness of remote emissions sensing to augment the Smog Check Program.

-The legislature should require ARB, BAR, and the I/M Review Committee to report to the legislature on options for creating a Smog Check Inspection and Repair Fund to help defray the costs of smog check tests and required repairs for economically needy vehicle owners.

-The legislature should require ARB, BAR, and the I/M Review Committee to research and present options for adjusting the current repair cost ceilings.

-The legislature should establish fines for owners of vehicles that have missing, modified, or disconnected emission control components. Further, BAR and ARB should explore ways to differentiate vehicle owner tampering from normal wear and tear of emission control components.

The report also recommends alternative pollution-reducing measures to supplement the Smog Check Program. First, SOR recommends that auto manufacturers be required to produce cars that emit lower levels of pollution. SOR notes that ARB regulations require automobile fuel refiners, blenders, and importers to distribute enough alternative fuels to fuel vehicles not dedicated to gasoline.

Finally, SOR recommends that the legislature enact SB 431 (Hart), which would create the Demand-based Reductions In Vehicle Emissions (Plus Reductions in Carbon Dioxide) (DRIVE+) Program. SB 431 would provide sales tax credits to consumers who purchase cars that pollute less than the average new vehicle; the credits would be financed by a sales tax surcharge on new vehicles that pollute more than average. According to SOR, SB 431 would encourage manufacturers to produce cleaner vehicles through market demand. (See *supra* agency report on AIR RESOURCES BOARD for more information on SB 431.)

In response to SOR's findings, BAR agreed that improvements are needed and acknowledged that a small percentage of cars cause a disproportionate amount of air pollution. However, BAR contended that the report, based on 1989 data, fails to take certain reform measures into account. For example, BAR notes that it lowered the percentage of cars exempted from making smog-related repairs because of the cost limit from 22% two years ago to 5.5% so far this year.

Rulemaking Changes Sought. On November 29, BAR published notice of its intent to amend section 3351.1, Division 33, Title 16 of the CCR. If approved, the amendment would increase the registration and renewal fee for automotive repair dealers from \$100 to \$200 for each place of business in the state. The proposed amendments would also specify a \$50 late renewal fee for registrations not renewed on a timely basis. The proposed changes would take effect on July 1. According to BAR, the increase is needed in order to effectively administer the Automotive Repair Act; registration and renewal fees have not increased since 1982. BAR was scheduled to hold hearings on the proposed changes on January 6 in El Monte and January 13 in Sacramento.

Regulatory Amendments Approved. On October 23, the Office of Administrative Law (OAL) approved BAR's adoption of sections 3340.22.2 and 3364 and amendments to sections 3309, 3316, 3321, 3340.15, 3340.16, and 3340.16.5,

Division 33, Title 16 of the CCR. The new sections specify sign requirements for Smog Check stations and prohibit automobile repair dealers from defacing labels which identify a vehicle's emission control requirements. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 61 and Vol. 11, No. 3 (Summer 1991) p. 61 for background information.)

BAR's amendments to sections 3340.35 and 3340.50.4 were approved by OAL on December 18. The amendments increase the fee for Smog Check certificates from \$6 to \$7. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 61 for background information.)

LEGISLATION:

AB 598 (Elder), as amended August 19, would require ARB to prepare a list of models of motor vehicles that are significant sources of air pollution, and require the Department of Motor Vehicles (DMV) to develop and implement a program to acquire and scrap the designated vehicles. The DMV would also be required to assess a pollution mitigation fee on an individual if the cost of repairing his/her vehicle in order to bring it into compliance with emission standards exceeds the prescribed cost limitations. This two-year bill is pending in the Senate Transportation Committee.

AB 624 (Bane) is aimed at deterring insurance fraud. Among other things, it would prohibit automobile repair dealers from offering discounts to offset auto insurance deductibles and provide that any person convicted of fraud with respect to a policy covering a motor vehicle shall be liable for up to ten times the amount of the fraudulent claim filed with an insurer. The bill, which includes a January 1, 1996 sunset provision, is pending in the Assembly Public Safety Committee.

AB 1828 (Areias), as amended May 20, would provide that in all instances where nonoriginal equipment manufacturer aftermarket crash parts are intended for use by an insurer in the repair of an insured's motor vehicle, a disclosure document containing specified information and printed in a specified type must be attached to the insured's copy of the estimate and be acknowledged by the insured. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 1989 (Baker), as amended April 23, would exempt, from provisions prohibiting the release of residence and mailing addresses by the Department of Motor Vehicles, persons engaged in the sale or marketing of services related to the state smog inspection program. This



bill is pending in the Assembly Transportation Committee.

SB 295 (Calderon), as amended April 8, would limit the cost of a smog check test only to \$50, exclusive of the charges for the certificate. It would require an additional \$1 charge for the certificate; the proceeds of this charge would fund a program for individuals to report vehicles which emit unusual amounts of pollutants. This bill is pending in the Senate Transportation Committee.

AB 691 (Hayden) would require the use of refrigerant recycling equipment approved by ARB on and after January 1, 1993, in the servicing of vehicle air conditioners and other specified activities. This bill is pending in the Assembly Committee on Environmental Safety and Toxic Materials.

SB 573 (Rosenthal), as amended May 8, would require BAR to establish a program for certifying a third party dispute resolution process used for arbitrating disputes relating to the warranties on used cars. This bill is pending in the Senate Committee on Insurance, Claims, and Corporations.

AB 1118 (Johnson), as amended May 1, would require DCA to publish the rules and regulations to be followed in order to suspend or revoke the license of a Smog Check station or mechanic. This bill is pending in the Assembly Transportation Committee.

LITIGATION:

In Long and Wood v. Van De Kamp, No. CV89-6488 SVW (Aug. 22, 1991), the U.S. District Court for the Central District of California held that Vehicle Code section 2805(a) is constitutionally defective and enjoined the California Attorney General from enforcing the statute, which authorizes warrantless searches without probable cause of automobile repair shops for the purpose of locating stolen vehicles. The court noted: "At first blush, section 2805 appears in a single stroke to offend every clause of the Fourth Amendment." The court held that the statute does not fall within the administrative search exception to the warrant requirement because section 2805 searches are conducted to gather evidence of criminal activity, not for administrative purposes, and because a valid warrantless administrative search may be conducted only on "business enterprises operating within certain pervasively regulated industries." The court noted that "[i]n California, automobile repair shops are subject only to a meager licensing statute, which cannot be stretched to take the place of a pervasive regulatory scheme."

RECENT MEETINGS:

At the Advisory Board's November 8 meeting in Burlingame, BAR Chief of Field Operations/Compliance Division Keith Smith outlined the new approaches to the Smog Check Program being implemented by his division. In addition to focusing on enforcement of the Smog Check Program (as is currently done), Smith said that BAR will begin to focus on recognition and education as well. BAR hopes to implement this new focus in its undercover car operations by recognizing the stations which do well in the tests and educating mechanics at the stations which do not perform up to standards. In addition, BAR will be examining its mediation and enforcement programs in the auto repair area.

Wendy Wohl-Shoemaker, BAR's Chief of Administrative and Technical Services Division, told the Board about the programs her division is working on to improve quality assurance in the Smog Check Program. For example, BAR has begun offering workshops for Smog Check technicians aimed at improving their knowledge of how to check and repair newer, technologically advanced cars.

FUTURE MEETINGS:

May 29 in Sacramento.

BOARD OF BARBER EXAMINERS

Executive Officer: Lorna P. Hill (916) 445-7008

In 1927, the California legislature created the Board of Barber Examiners (BBE) to control the spread of disease in hair salons for men. The Board, which consists of three public and two industry representatives, regulates and licenses barber schools, instructors, barbers, and shops. It sets training requirements and examines applicants, inspects barber shops, and disciplines violators with licensing sanctions. The Board licenses approximately 23,519 barbers, 5,855 shops, and 19 schools.

BBE's enabling act is currently found at Business and Professions Code section 6500 *et seq.*; the Board's regulations are located in Division 3, Title 16 of the California Code of Regulations (CCR).

On July 1, 1992, BBE and the Board of Cosmetology (BOC) will merge, pursuant to AB 3008 (Eastin) (Chapter 1672, Statutes of 1990). The Business and Professions Code sections which establish BBE and BOC will be repealed and replaced with an enabling act creat-

ing the Board of Barbering and Cosmetology (BBC), which will provide for the licensure and regulation of persons engaged in the practice of performing specified acts relating to barbering, cosmetology, and electrolysis.

MAJOR PROJECTS:

Merger Preparation Continues. On October 7 and 8, BBE and BOC held a strategic planning workshop aimed at facilitating the upcoming merger of the two boards. At the workshop, each board presented a proposed organizational chart for the new board. One of the major disagreements resulting from the merger negotiations involves BBE's concern that BOC has proposed unnecessary positions in upper-level management. For example, BBE believes that BOC's proposed creation of a Staff Services Manager and addition of three new Staff Service Analyst positions are unnecessary; however, BBE agrees that BOC's proposal to add four clerical positions is warranted. According to BBE, the emphasis should be on establishment inspections, and the new board should create additional inspector positions rather than staff management positions.

Following the merger, all existing positions at the two boards are scheduled to continue except for the boards' executive officers. Regarding the selection of BBC's EO, BBE has suggested that the current EOs of both BBE and BOC resign, and that the new board conduct a statewide recruitment process which would include both EOs as candidates.

BBE has retained System, a private consulting firm, to create a proposal for the organization of BBC. That proposal, which concerns only staffing requirements and structural recommendations, was scheduled to be submitted to the Department of Consumer Affairs on or before January 31. A December 5 interim report addressed the appointment of BBC's EO, and noted that a problem will arise if the new board's members are not appointed by July 1 and immediately begin selection of the new EO. The report recommended that, if possible, the DCA Director should appoint an interim manager pending appointment of the new board members and their selection of an EO.

On November 18 in San Francisco, BBE's merger task force held an open forum meeting. As was the case at the September open forum in San Diego, the most heated merger issue was whether the quality of barber shop inspections will be maintained after the merger. (See CRLR Vol. 11, No. 4