



-proposed amendments to section 3212(d), Title 8 of the CCR, and section 1711(h), Title 24 of the CCR, which would require that guardrail protection be provided for employees working within six feet of the edge of a roof and when employees are required to approach within six feet of the edge of the roof; and

-proposed new section 5191, Title 8 of the CCR, which would incorporate the provisions of a new federal regulation (29 C.F.R. Part 1910.1450) relating to control of occupational exposures to hazardous chemicals in laboratories.

LEGISLATION:

AB 42 (Hayden), as introduced in the Assembly on December 3, provides that whenever any local public fire agency has knowledge or reasonable suspicion that a place of employment where garment manufacturing operations take place contains fire or safety hazards for which fire or injury prevention measures have not been taken in accordance with local fire and life safety ordinances, it may notify DOSH. The bill further provides that when DOSH has knowledge of such conditions, it shall notify the appropriate local public fire agency. The bill also provides that when DOSH receives such a referral from a local fire agency, DOSH shall investigate; when a local fire agency receives such a referral from DOSH, the agency may investigate at its discretion. This bill, an urgency measure was signed by the Governor on December 13 (Chapter 7, Statutes of 1991).

Anticipated Legislation. Assemblymember Hayden may reintroduce AB 955, which would require that on or after July 1, 1992, every computer video display terminal and peripheral equipment used in any place of employment be in conformance with standards adopted by the American National Standards Institute. AB 955 was vetoed by the Governor last session (see CRLR Vol. 10, No. 4 (Fall 1990) p. 133 for background information).

LITIGATION:

On October 18, the California Supreme Court denied Cal-OSHA's petition for review of the First District Court of Appeal's ruling in *California Labor Federation, et al. v. Cal-OSHA*, No. A048574 (July 12, 1990). In that decision, the First District held that the Safe Drinking Water and Toxics Enforcement Act of 1986 (Proposition 65) is a state law governing occupational safety and health pursuant to the State Occupational Safety and Health Plan

Initiative (Proposition 97, passed in 1988). This holding requires OSB to incorporate into Cal-OSHA's State Plan for Occupational Safety and Health standards which provide for the protections of Proposition 65. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 133; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 154; and

Vol. 10, No. 1 (Winter 1990) p. 115 for extensive background information on this issue.)

FUTURE MEETINGS:

April 18 in Sacramento.
May 16 in Los Angeles.
June 20 in San Francisco.
July 25 in San Diego.



DEPARTMENT OF FOOD AND AGRICULTURE

DEPARTMENT OF FOOD AND AGRICULTURE

Director: Henry Voss
(916) 445-7126

The California Department of Food and Agriculture (CDFA) promotes and protects California's agriculture and executes the provisions of Food and Agricultural Code section 101 *et seq.*, which provides for CDFA's organization, authorizes it to expend available monies, and prescribes various powers and duties. The legislature initially created the Department in 1880 to study "diseases of the vine." Today the Department's functions are numerous and complex. Among other things, CDFA is authorized to adopt regulations to implement its enabling legislation; these regulations are codified in Chapters 1-7, Title 3, Chapters 8-9, Title 4, and Division 2, Title 26 of the California Code of Regulations (CCR).

The Department works to improve the quality of the environment and farm community through regulation and control of pesticides and through the exclusion, control, and eradication of pests harmful to the state's farms, forests, parks, and gardens. The Department also works to prevent fraud and deception in the marketing of agricultural products and commodities by assuring that everyone receives the true weight and measure of goods and services.

CDFA collects information regarding agriculture and issues, broadcasts, and exhibits that information. This includes the conducting of surveys and investigations, and the maintenance of laboratories for the testing, examining, and diagnosing of livestock and poultry diseases.

The executive office of the Department consists of the director and chief deputy director, who are appointed by the Governor. The director, the executive officer in control of the Department, appoints two deputy directors. In addi-

tion to the director's general prescribed duties, he/she may also appoint committees to study and advise on special problems affecting the agricultural interests of the state and the work of the Department.

The executive office oversees the activities of seven operating divisions:

1. Division of Animal Industry—provides inspections to assure that meat and dairy products are safe, wholesome, and properly labeled, and helps protect cattle producers from losses from theft and straying;

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

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

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

5. Division of Pest Management—regulates the registration, sale, and use of pesticides and works with growers, the University of California, county agricultural commissioners, state, federal and local departments of health, the U.S. Environmental Protection Agency (EPA) and the pesticide industry;

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

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



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

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

At the local level, county agricultural commissioners are in charge of county departments of agriculture. County agricultural commissioners cooperate in the study and control of pests that may exist in their county. They provide public information concerning the work of the county department and the resources of their county, and make reports as to condition, acreage, production and value of the agricultural products in their county.

In December, Governor-elect Pete Wilson announced that Henry Voss would continue as Director of the Department of Food and Agriculture. The Voss nomination must be confirmed by the Senate. In addition, Governor Wilson has also stated that he plans to remove CDFA's authority to register and monitor pesticides. Wilson hopes to create a new California Environmental Protection Agency responsible for the environmental regulation now handled by a variety of state agencies. The new agency, which must be approved by the legislature, will regulate pesticide use, but CDFA will continue to administer pest eradication programs.

MAJOR PROJECTS:

Medfly Eradication Update. On November 9, CDFA announced the end of its 16-month, \$52 million medfly eradication program. Quarantines on over 1,330 square miles of southern California were lifted. Roy Cunningham, a federal entomologist and chair of the state's Medfly Science Advisory Council, expressed confidence that, even if more medflies are found, there will never be such a large infestation of the pest in California again. Agriculture officials statewide declared victory over the medfly.

Some experts believe that this confidence is premature. James Carey and Richard Rice, both of whom are UC Davis entomologists, continue to warn state agriculture officials that the medfly may very well be permanently established in the southern California area. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 134-35 for background information.) A special panel created by the University of California supports their theory, and suggests that the medfly has been established in southern California for at least two years.

The state's past experience with the medfly also indicates that its claim of victory is inappropriate. This most recent long-term eradication project was prompted by the discovery of a single medfly near Dodger Stadium on July 20, 1989. That medfly was found only one month after state agriculture officials had declared victory after a previous ten-month battle with the medfly.

Indeed, on November 15—less than a week after CDFA's announcement, two wild female medflies were trapped in San Bernardino County within three miles of each other. However, state officials were undaunted. Los Angeles County Agricultural Commissioner E. Leon Spaugy said that, although the finding of the medflies is discouraging, he does not believe that the eradication program has failed. He suggested that these medflies could have been brought into California by fruit smugglers.

The state, unwilling to concede the failure of its most recent eradication program, indicated in late November that it will not begin aerial malathion spraying in San Bernardino County due to the November 15 trappings. Although doing nothing now may lead to the possibility of an explosion of the medfly population in the coming spring, CDFA believes that a recommencement of the spraying is not yet warranted. Because medflies have a lifespan of four months in the winter (as opposed to three weeks in the summer), an effective spraying program must last well into the spring. Such an extensive eradication campaign would be too expensive and controversial to justify on the grounds of discovery of two medflies, according to CDFA.

Medfly traps continue to be employed across southern California. After the November 15 discovery, scientists advocated increasing the number of traps, and rotating the existing ones. However, county officials continue to balk at such recommendations. On November 27, Orange County officials rejected a proposal to increase the number of traps, and actually decreased the number used at the end of November.

Orange County officials believe that an enhancement of medfly detection measures will only lead to more discoveries, and more spraying. Of course, avoidance of the issue now will only lead to more unwelcome medfly discoveries in the spring.

The future of the medfly and California's approach to its eradication remain uncertain. It is clear that no one wants more spraying of malathion over agricultural or residential areas. However, scientific studies and recent medfly discoveries indicate that the state has not yet triumphed over this pest, and that spraying may be the only answer. The debate over the medfly issue will likely continue through the spring, when CDFA will determine whether the pest has indeed been wiped out in southern California.

At the close of the recent 16-month eradication program, the total cost to the state reached \$52 million. Over fifty-two thousand gallons of malathion were sprayed over southern California; 49,715 medfly traps were used in the eradication effort; and, to date, 279 medflies were discovered. The medfly eradication program prompted thirteen different lawsuits against the State of California, and three lawsuits were filed by the State against local officials. Almost 300 private damages claims were filed, totalling over \$551,000. At this writing, no money damages have been paid in any of the causes of action.

Both Orange and Los Angeles counties have tested people who were directly exposed to the malathion spraying. A report of that study, released by the Los Angeles County Department of Health Services on December 11, is encouraging. Traces of dicarboxylic acid, a byproduct of malathion, were found in 12 of the 75 people tested, but the amounts were well below the toxic level. Kim Woloshin, who coordinated the County's malathion evaluation clinic, believes that those with detectable amounts of the chemical had to have been outdoors during the actual spraying.

Vision 2010: California Agriculture. At the request of Governor Deukmejian, CDFA recently published *Vision 2010: California Agriculture*, a special report addressing the role of agriculture in California over the next twenty years. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 98; Vol. 9, No. 1 (Winter 1989) p. 84; and Vol. 8, No. 4 (Fall 1988) p. 97 for background information.) The long-range report discusses issues which will increasingly challenge the state's agricultural capacity in the future, and focuses on seven major policy areas: land and water use, food safety and quality,



marketing, energy and transportation, labor, education and research, and the regulatory environment. Agriculture is the state's largest industry and, for 41 consecutive years, California has led the nation in terms of farm production and income by producing one-half of the nation's fruits, vegetables, and tree nuts. Statistics such as these are emphasized in the report to send the message that "maintaining the economic and environmental viability of agriculture is in the best interest of all Californians."

The report also stresses the difficulties which agriculture will face over the next two decades. Due largely to rapid population growth in the state, conversion of agricultural land is occurring at a rate of almost 72,000 acres per year; dwindling water supplies are increasing the struggle for control of water rights; and air pollution is costing the industry hundreds of millions of dollars per year in losses statewide. The detrimental effects of these and other factors are expected to increase in the future, presenting a potentially hostile environment for agriculture. The report states that "[n]o like period in the past has brought agriculture and its allied industries to confrontation with such a variety of complex and difficult issues," and that "agriculture's past successes in providing an abundant and safe food supply at reasonable cost to the consumer will not automatically assure similar benefits in the future."

The study concludes that the agricultural industry will adapt to change, develop new farming systems based on superior technology, and continue to furnish major support for the state economy by defending its own legitimate interests, while at the same time responding positively to the need for cooperation and collaboration with other segments of California society. Toward that end, the report is aimed at all segments of society in an effort to inform the public and mobilize support for viable solutions. The Governor, members of the legislature, county boards of supervisors, mayors, congressional members, business editors, and the agriculture media have received copies of the report.

Pink Bollworm Poses Threat to Future Cotton Crops. For the first time in 22 years, a significant larval infestation of pink bollworm has been found in the cotton-growing regions of the San Joaquin Valley. In addition, traps have caught a larger number of bollworm moths this year than at any time since 1977. If left uncontrolled, pink bollworm, which damages cotton fiber and seed, could become established in the Valley and cause a permanent threat to

cotton crops. A cooperative pink bollworm program comprised of county, state, and federal agencies, and the Cotton Pest Control Board representing cotton growers, was formed in 1968 to avoid such an occurrence. However, the lack of rain this year, combined with insufficient plowdown after harvest (due to hard, dry ground) and high nighttime temperatures in July and August, created an optimum environment for larval infestation.

In October, CDFA personnel monitored up to 1.5 million acres of cotton with pheromone (sex lure) baited traps. Once moths were discovered, areas were treated with pheromones containing a small amount of pesticide followed by the release of sterile moths. While this method of treatment is helpful, the most effective method of pink bollworm control is to destroy the habitat of overwintering insect populations through plowdown of cotton stubble after harvest. In the past, the combination of these two methods has kept pink bollworm from establishing in the Valley.

This year, full compliance with plowdown requirements is particularly imperative and noncompliance penalties are high, running at least \$500 per farm plus \$5 per acre, to as much as \$10,000 per day for serious violations. A quick harvest and complete plowdown assures the longest host-free period feasible. Plowdown occurred in December and CDFA is currently working with the U.S. Department of Agriculture (USDA) on next year's strategy. According to CDFA personnel, the best solution would be a heavy rainfall.

Lettuce Container Weight Requirements To Be Repealed. In September, CDFA announced its intent to amend or repeal several of its lettuce regulations in Title 3 of the CCR. CDFA proposes to repeal section 1380.19(u), which specifies the standard net weight units for salad products; delete the language in section 1438.42 which specifies that nonconsumer containers of salad products hold standard net weight units of five, ten, or fifteen pounds; and delete the language in section 1438.43 which specifies the weight requirements for consumer containers of salad products. In addition, this regulatory proposal would correct authority and reference citations for the sections cited above. The Department was scheduled to hold a public hearing on this proposed regulatory action on December 11 in Sacramento.

Economic Poison Registration Procedures. On December 21, CDFA published notice of its intent to renumber existing sections 6151, 6152, and 6153

to sections 6150, 6151, and 6152, respectively; amend new section 6152 and section 6154; and adopt new sections 6153, 6153.5, and 6155, Titles 3 and 26 of the CCR. Pursuant to sections 12811 and 12821 of the Food and Agricultural Code, these proposed regulatory changes would establish procedures to be followed by registrants when there is a change in the ownership of an economic poison, a change in the name of the registrant of an economic poison, or a change in the formulation of an economic poison. No hearing on these changes is currently scheduled; CDFA accepted written comments until February 6.

Bentazon To Be Added to Groundwater Protection List. On December 21, CDFA published notice of its intent to amend sections 6800(a), 6400(n)(10), 6416, and 6570(a), adopt section 6486.6, and repeal section 6484, Titles 3 and 26 of the CCR. These changes would add bentazon (also known as Basagran) to the Groundwater Protection List established under the Pesticide Contamination Prevention Act of 1985 (PCPA), Food and Agricultural Code section 13141 *et seq.*, and modify its use statewide.

The purpose of the PCPA is to prevent pesticide pollution of the groundwater aquifers of the state. The Act requires the CDFA Director to establish, by regulation, a Groundwater Protection List of chemicals with the potential to pollute groundwater and to regulate those chemicals under certain circumstances. The first regulations to implement the PCPA became effective in January 1989, and subsequent regulations became effective in April 1990. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 158; Vol. 9, No. 3 (Summer 1989) p. 96; and Vol. 9, No. 2 (Spring 1989) p. 94 for background information.)

Among other things, the proposed regulatory action would add bentazon to the list of chemicals that have leached to and been detected in groundwater as a result of legal agricultural use; preserve the "restricted material" status of bentazon; eliminate the use of bentazon on rice; eliminate the use of bentazon in Del Norte and Humboldt counties; and add limitations to the use of bentazon on other crops.

CDFA was scheduled to hold a public hearing on these proposed regulatory changes on February 8 in Sacramento.

Status Update on Other Proposed Regulatory Changes. The following is an update on the status of other regulatory changes proposed and/or adopted by CDFA and discussed in recent issues of the *Reporter*:



REGULATORY AGENCY ACTION

-Rulemaking Under the Pesticide Contamination Prevention Act. On October 19, the Office of Administrative Law (OAL) approved CDFA's proposed amendments to section 6804, Titles 3 and 26 of the CCR, which establish specific numerical values (SNVs) for pesticide active ingredients. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 135 and Vol. 9, No. 3 (Summer 1989) p. 96 for background information.)

-Regulations for the Prevention of Injurious Plant Diseases. CDFA received a large number of public comments on its proposal to adopt sections 3008 and 3553 and amend section 3407, Title 3 of the CCR, pertaining to psorosis-free citrus seed sources, citrus moving and cutting permits, and citrus tristeza virus interior quarantine. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 135 for background information.) At this writing, CDFA is modifying the proposed language of the regulatory changes, and hopes to reopen the proposal for an additional 15-day comment period in January.

-Direct Marketing. At this writing, CDFA's proposal to amend section 1392 and several of its subsections in Title 3 of the CCR, pertaining to direct marketing, has not yet been submitted to OAL for approval. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 136 for detailed background information.)

-Increased Fines. CDFA's proposed amendments to section 6130, Titles 3 and 26 of the CCR, were submitted to OAL on November 27 and approved on December 27. These changes increase the range of civil penalty fines which may be imposed by county agricultural commissioners in lieu of civil prosecution by the CDFA Director. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 136 for background information.)

LEGISLATION:

AB 104 (Tanner). Existing law provides for the eradication and control of pests by various methods, including the use of pesticides or economic poisons. As introduced December 4, this bill would prohibit the CDFA Director, on and after July 1, 1992, from using specified pesticides and economic poisons in an aerial application in an urban area unless the state Department of Health Services (DHS) first finds that the use of the material in the manner proposed by the Director will not result in a significant risk to the public health, and a scientific review panel established by this bill determines that the health risk assessment has been carried out in a scientifically acceptable manner. If the proposed application of the material is by a method other than aerial application to

eradicate designated pests, this bill would prohibit the use of the material in the manner proposed unless DHS finds that the use of the material will not result in a significant risk to the public health and those findings are evaluated by the panel. This bill would also require the CDFA Director to request DHS to begin health risk assessments on various pests according to a prescribed schedule. This bill is pending in the Assembly Committee on Environmental Safety and Toxic Materials.

SB 46 (Torres), as introduced December 4, would revise the definition of toxic air contaminant to delete an exclusion for pesticides. This bill is pending in the Senate Committee on Toxics and Public Safety Management.

Anticipated Legislation. Each year, 250 million pounds of pesticides are applied to the crops of California. Traditionally, the regulation of pesticide use has been handled by CDFA. Recently, much opposition to CDFA's regulation of pesticides has developed, and a vocal lobby advocating a shift of this authority to a different California agency (possibly the Department of Health Services) has emerged.

One of Pete Wilson's selling points in his successful campaign for Governor of California was his concern over this issue. He supports the creation of a new state agency—the California Environmental Protection Agency (CAL-EPA)—to take over regulation of pesticides.

The proposal has met with mixed reactions. CDFA supports such a change; it has been repeatedly criticized for its handling of pesticide issues, and seems eager to hand over the responsibility for such a politically controversial matter. Other supporters of the proposed CAL-EPA include California farmers, who believe that changes must be made in state pesticide policy to eliminate the future possibility of massive environmental initiatives such as "Big Green" (the unsuccessful Proposition 128 on the November 1990 ballot).

However, many of those who oppose

CDFA's handling of the pesticide issue argue that no real change will come from Wilson's proposed reorganization. The proposed CAL-EPA would team current CDFA pesticide specialists with toxics experts from the Department of Health Services. Some fear that a merger of personnel from the two agencies would eliminate the often beneficial tension that results when two separate agencies are involved in the resolution of an issue

LITIGATION:

Although the future of CDFA's medfly eradication program remains uncertain (see *supra* MAJOR PROJECTS), several local governments still have lawsuits pending against former Governor Deukmejian, CDFA, and the State of California for malathion-related incidents.

In the *Medfly Eradication Cases*, No. 2487 (Los Angeles County Superior Court), Judge John Zebrowski is handling several coordinated malathion cases, including *People v. Kizer*, No. BC005249 (Los Angeles County Superior Court); *City of San Bernardino v. Deukmejian*, No. 25663 (San Bernardino County Superior Court); *Natural Resources Defense Council v. Deukmejian*, No. C752978 (Los Angeles County Superior Court); *City of Los Angeles v. Deukmejian*, No. 753054 (Los Angeles County Superior Court); and *City of Pomona v. State of California*, No. EAC-078787 (Los Angeles County Superior Court). (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 137-38 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 160 for background information.) This coordinated action is presently on hold. The parties are seeking a six-week continuance to give the various city council members an opportunity to decide whether they want to continue with these causes of action.

FUTURE MEETINGS:

The State Board of Food and Agriculture usually meets on the first Thursday of each month in Sacramento.



RESOURCES AGENCY

AIR RESOURCES BOARD

Executive Officer: James D. Boyd

Chair: Jananne Sharpless

(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