



REGULATORY AGENCY ACTION

associates linked to the failure of Lincoln Savings & Loan. Last August, OTS filed a complaint against Keating seeking \$40.9 million in restitution. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 105 and Vol. 10, No. 4 (Fall 1990) pp. 128-29 for background information.) The agency increased the amount sought after amending its complaint to include allegations of an illegal tax-sharing plan between Lincoln and its parent company, American Continental Corporation. A hearing on OTS' complaint was scheduled for April 29 in Los Angeles.

On January 11, Los Angeles Superior Court Judge Lance Ito threw out 12 of 46 state securities fraud counts against Charles Keating and other officials of the bankrupt Lincoln Savings & Loan. Judge Ito ruled that six counts stemming from Lincoln officials' allegedly fraudulent securities sales were "internally inconsistent." Another six counts alleging that Lincoln officials made untrue statements were dismissed because they differed in the prosecutors' amended indictment from the indictment the grand jury originally brought. Judge Ito also warned prosecutors that securities charges against Lincoln may be dismissed later, because the charges in the amended indictment differ from those voted on by the grand jury.

Deputy District Attorney William Hodgman requested reconsideration of Judge Ito's January 11 ruling. But on February 25, Judge Ito refused to reinstate five of the counts and denied the prosecution's motion for additional time to amend the other seven counts because Hodgman had not made his request to amend them within ten days of the January 11 ruling. Hodgman maintains the case is still strong, and said that in order to get the maximum penalty against the defendants (ten years in prison), he needs a conviction on only six of the remaining counts.

Meanwhile, Raymond C. Fidel, Lincoln's former President, plead guilty on March 11 to two counts of federal securities fraud in what could be a prelude to an indictment of Charles Keating on federal criminal charges. Fidel admitted he continued to supervise the sale of worthless junk bonds issued by Lincoln's parent company, ACC, even after he learned the firm was involved in risky foreign currency trading and faced sale or bankruptcy. On March 12, Fidel plead guilty on six state fraud counts resulting from the same bond sales. Keating is also named in the state case but, at this writing, he has not yet been charged under federal securities fraud statutes. According to his plea bargains, Fidel will be sentenced under federal law, with his state sentence running concurrently. Fidel will not be sentenced until the end of the criminal trials, which are expected to take at least a year. Authorities refuse to say whether Fidel will testify against Keating in either state or federal cases. (See *supra* agency report on DEPARTMENT OF CORPORATIONS for information on other litigation resulting from the Lincoln scandal.)

In *Feldman v. San Mateo Financial Corporation*, No. A049724 (Dec. 20, 1990), the First District Court of Appeal advised the state legislature to allow increased access to the corporate records of savings and loan associations. The recommendation came in a reversal of a trial court order that granted a shareholder in a parent company access to records of a subsidiary savings and loan. Although the court concluded that Financial Code section 6050 requires denial of access to the records, it commented, "In light of recent failures and costly government bailouts in the savings and loan industry, greater scrutiny [of corporate activity] by stockholders would seem to be a better legislative policy."

review, amend, and repeal health and safety orders which affect California employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of two members from management, two from labor, one from the field of occupational health, one from occupational safety, and one from the general public.

The duty to investigate and enforce the safety and health orders rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citation and abatement orders (granting a specific time period for remedying the violation), and levies civil and criminal penalties for serious, willful, and repeated violations. In addition to making routine investigations, DOSH is required by law to investigate employee complaints and any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.

The Cal-OSHA Consultation Service provides on-site health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

The Appeals Board adjudicates disputes arising out of the enforcement of Cal-OSHA's standards.

MAJOR PROJECTS:

Excavation Standard. In October 1989, federal OSHA amended its standard concerning excavations; as amended, the standard (29 C.F.R. Part 1926, Subpart P) establishes requirements for the protection of employees engaged in excavations and is intended to increase worker safety. The revised federal standard uses performance criteria rather than specification requirements; consolidates and simplifies many of the existing provisions; adds and clarifies definitions; reformats the standard to eliminate duplicate provisions and ambiguous language; provides a consistent method of soil classification; and gives employers



DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

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California's Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers California's programs ensuring the safety and health of California workers.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140-49. It is approved and monitored by, and receives some funding from, the federal OSHA. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt,



added flexibility in providing protection for employees.

OSB staff subsequently prepared proposed revisions to the California regulations in order to comply with the new federal OSHA standard. During its January 24 meeting, OSB heard public comment regarding proposed amendments to sections 1504, 1539, 1540, 1541, 1542, 1544, 1547, 1624, and Appendix C of the Construction Safety Orders and section 5156 of the General Industry Safety Orders, Title 8 of the CCR. At the public hearing, OSB heard testimony from over fifteen representatives of various organizations, including federal OSHA, the California Department of Transportation, Associated General Contractors of California; and GTE Telephone Operations of California. The majority of witnesses expressed concern that OSB's proposed regulations were more ambiguous than that of OSHA, and recommended that OSB simply adopt the federal standard. Some of the audience members noted that California would be the only state with standards not identical to the federal regulation; thus it may be difficult for companies outside California to conduct business in the state. Due to the overwhelming support for the federal standard, OSB Chair Mary-Lou Smith directed staff to prepare proposed language identical to the federal standard. A public hearing on the revised proposal was scheduled for May.

Hydraulic Elevators Brought Up to Standard. At its February 21 meeting, OSB held a public hearing on proposed amendments to sections 3041 and 3071, Title 8, and section 7-3071, Title 24 of the CCR (Elevator Safety Orders). The proposed amendments would extend the photoelectric tube by-pass switch and medical emergency elevator requirements to hydraulic elevators. The purpose of a by-pass switch is to render ineffective the photoelectric tube device, which controls the closing of elevator doors in the event smoke density at the elevator entrance prevents closing the doors. The purpose of medical emergency elevators is to ensure that at least one elevator in a building is large enough to accommodate an ambulance gurney or stretcher so persons requiring emergency medical services may be transported without difficulty. No public comment was offered at the hearing. At this writing, OSB has not yet adopted the changes.

Asbestos Regulations Finally Approved. At its January 24 meeting, OSB again modified its regulatory action amending section 5208 and adopting sections 1529 and 5208.1, Title 8 of the CCR. Twice before, OSB has submitted

modified versions of these proposals to the Office of Administrative Law (OAL); OAL rejected both proposals. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 106-07; Vol. 10, No. 4 (Fall 1990) p. 131; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 152 for background information.) On February 4, OAL approved OSB's new Appendix A and amendments to subsections 5208(a)(1), (2), and (g)(1)(B); on February 14, OAL approved OSB's further amendments to section 5208 and the adoption of new sections 1529 and 5208.1.

Sanitation for Mobile Employees. At its January 24 meeting, OSB heard public comment on proposed amendments to sections 3360, 3364, and 3366, Article 9, Title 8, requiring the availability of toilet facilities for employees. In September 1987, OSB determined that this requirement applies only to permanent places of employment maintained by employers; OSB's decision had the effect of excluding from the regulatory provisions those employees whose jobs require movement throughout a territory or geographical area. In June 1988, Samuel Firestone, a Los Angeles Department of Water and Power meter reader for 13 years, petitioned the Board to amend Article 9 to require employers of mobile crews to provide transportation to toilet facilities for such employees. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 155 and Vol. 8, No. 4 (Fall 1988) p. 92 for background information.)

The proposed revisions, developed by Board staff, would require employers to provide toilet facilities on location or readily available transportation to such facilities. At the January 24 hearing, Mr. Firestone made numerous comments regarding staff's proposed language. The Board advised Mr. Firestone that his comments would be taken under consideration; at this writing, OSB has not yet adopted the proposed changes.

Update on Regulatory Changes. On January 16, OAL approved OSB's amendments to Title 8, section 1509(a) of the Construction Safety Orders, and section 3203 of the General Industry Safety Order, which implement SB 198 (B. Greene) (Chapter 1369, Statutes of 1989). (See CRLR Vol. 11, No. 1 (Winter 1991) p. 107; Vol. 10, No. 4 (Fall 1990) p. 131; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 152 for background information.) SB 198 requires OSB to adopt standards requiring every employer to establish, implement, and maintain an effective injury prevention program with specified elements, including substantial compliance criteria for use in evaluating an employer's injury

prevention program. Amended section 1509(a) is now titled "Injury and Illness Prevention Program" (IIPP), and requires employers to comply with requirements for injury and illness prevention programs contained in section 3203 of the General Industry Safety Orders. Revised section 3203 requires employers to establish, implement, and maintain a written IIPP as mandated by Labor Code section 6401.7. These amendments go into effect on July 1.

At its February 21 business meeting, OSB adopted proposed amendments to section 3212(d), Title 8, and section 1711(h), Title 24, 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 a roof. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 109 and Vol. 10, No. 4 (Fall 1990) pp. 131-32 for background information.) These amendments await approval by OAL.

Also at its February 21 meeting, OSB adopted proposed new section 5191, Title 8 of the CCR, to 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. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 109 and Vol. 10, No. 4 (Fall 1990) p. 132 for background information.) However, Elizabeth Treanor of Organization Resources Counselors, Inc., raised concern about the standard's scope of coverage, especially regarding the definition of the term "laboratory use of chemicals." OSB directed its staff to review the clarity of the term as it is used in the section, and report its findings to the Board at its June meeting.

On November 26, OAL approved OSB's proposed amendments to sections 3000, 3001, and 3009, and repeal of Appendix 8, Title 8 of the CCR. These amendments revise the requirements for elevator inspections and for obtaining a permit to operate an elevator. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 108 and Vol. 10, No. 4 (Fall 1990) p. 132 for background information.)

On November 26, OAL approved OSB's proposed amendments to section 3657, Title 8 of the CCR (General Safety Orders). The amendments require that all industrial trucks used to hoist employees be equipped with a means to prevent the raised platform from lowering at a rate in excess of 135 feet per minute, in case of hydraulic system failure. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 132 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 155 for background information.)



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On December 11, OAL approved OSB's changes to sections 3275, 3276, 3278, and 3279, Title 8 of the CCR, regarding the use of scaffolding and ladders. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 108 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 155 for background information.)

At its February 21 business meeting, OSB adopted proposed revisions to Title 8, sections 3000, 3001, 3002, 3009, 3021, 3022, and 3041 (Elevator Safety Orders); Title 24, sections 7-3000, 7-3001, 7-3002, 7-3009, 7-3021, and 7-3041 (State Elevator Safety Regulations); and Title 24, section 5103 (California Building Code). These proposed revisions have not yet been submitted to OAL for approval.

At its January 24 business meeting, OSB adopted proposed adoption of Title 8, section 4554 (General Industry Safety Orders), imposing guarding requirements for hand-fed food patty forming machines. On February 25, OAL approved OSB's adoption of section 4554.

The following regulatory proposals reported in CRLR Vol. 11, No. 1 (Winter 1991) at pages 107-09, have yet to be adopted by OSB and/or submitted to OAL for approval:

- proposed amendments to Title 8, section 1596 of the Construction Safety Orders, and section 6309(h) of the Logging and Sawmill Safety Orders, regarding the use of seat belts in certain types of equipment outfitted with rollover protective structures;

- the proposed adoption of Title 8, section 5192 of the General Industry Safety Orders, regarding hazardous waste operations and emergency response;

- proposed amendments to Title 8, section 336 (regarding civil penalties and assessments); and

- proposed amendments to sections 341, 341.1, 341.3, Title 8, regarding permits for excavations, trenches, construction, and demolition, and sections 344(a) and 344.1, Title 8, regarding boiler and tank permit inspection fee schedules.

LEGISLATION:

AB 2110 (Friedman), as introduced March 8, would declare that it is the public policy of this state to provide employees who work on video display terminals (VDTs) with a safe and healthy work environment; require employers to implement certain minimum VDT equipment safeguards, and to modify existing employee workstations so as to protect the safety and health of employees who operate VDTs; require employers to provide VDT operators

with a 15-minute aggregate alternative work break after every two hours of otherwise continuous VDT work, unless alternative work cannot be practicably provided, at which time the employer must provide the employee with a written explanation of the reason for not providing alternative work; and require employers to provide pregnant employees, or those planning to become pregnant, with the choice of a transfer to a non-VDT related work or a leave of absence for the term of the pregnancy.

This bill would also require OSB to adopt regulations requiring employers to maintain certain records and to furnish VDT operators and their supervisors, on an annual basis, with certain information and training regarding the health effects of VDTs, and precautions with respect to the safe use of VDTs.

This bill would prohibit any employer from discharging, threatening with discharge, demoting, suspending, or otherwise discriminating against any employee in the terms and conditions of employment because the employee has filed any oral or written complaint with DOSH, instituted or caused to be instituted or testified in any proceeding, or exercised any other right afforded the employee under these provisions.

This bill would permit OSB to adopt and amend rules and regulations that are consistent with the purposes of the bill's provisions, which shall be approved by DOSH at a public hearing. This bill is pending in the Assembly Committee on Labor and Employment.

AB 644 (Hayden), as introduced February 21, would require that every computer VDT and peripheral equipment acquired or placed into service in any place of employment, on or after January 1, 1993, be in conformance with all applicable design standards adopted by the American National Standards Institute; provide that these provisions apply only to equipment manufactured on or after January 1, 1993; and provide that these provisions shall be operative only during any period that standards for VDT use which meet or exceed the requirements of these provisions, as determined by the DIR Director, either have not been promulgated by the OSB, or have been revoked or otherwise do not meet the requirements of these provisions. This bill is pending in the Assembly Labor and Employment Committee.

AB 2104 (Bane), as introduced March 8, would require OSB, on or before July 1, 1992, to review existing research studies and other information on the effects of continuous exposure to low-frequency magnetic radiation, and to promulgate standards for safe levels of exposure to

radiation emitted from VDTs, including personal computer screens and all other computer display monitors. This bill would also require that any of those types of VDTs sold or manufactured in this state after January 1, 1993, be in conformance to the standards promulgated by OSB. This bill is pending in the Assembly Labor and Employment Committee.

AB 1723 (Bane). Existing law requires any employer or contractor who engages in asbestos-related work to register with DOSH, and requires the employer or contractor to provide specified information under penalty of perjury and meet specified criteria in order to receive the registration. As introduced March 8, this bill would provide that any contractor not required to take a specified asbestos certification examination shall not be required to register with DOSH with respect to any operation which is not anticipated to result in asbestos exposures for the contractor's employees in excess of the permissible exposure limits established by specified state regulations. This bill is pending in the Assembly Labor and Employment Committee.

AB 147 (Floyd). Existing law provides that nothing in the California Occupational Safety and Health Act shall have any application to, nor be considered in, nor be admissible into evidence in any personal injury or wrongful death action, except as between an employee and his/her own employer. As introduced December 14, this bill would repeal that provision, and would instead provide that evidence of citations for violations of any provision of the Act shall not be admissible in any wrongful death or personal injury action, except as between an employee, as specified, and his/her own employer. This bill is pending in the Assembly Labor and Employment Committee.

AB 581 (Floyd), as introduced February 19, would require every person, including a flag person, flagger, construction traffic controller, and supervisor, who directs and controls moving traffic or who immediately supervises the selection, placement, and maintenance of traffic control devices on any public street or highway where construction work is occurring, to complete a specified training course and be registered by DOSH in accordance with specified registration procedures. This bill would require OSB to promulgate safety standards, orders, rules, and regulations for the safe control of moving traffic on a public street or highway where construction work is occurring. This bill would also prescribe administrative



penalties for violation of these provisions and would provide that any employer who permits an unregistered person to perform any duties for which a registration is required shall be issued a warning notice for the initial violation and shall be assessed a civil penalty of between \$250 and \$2,000 for each subsequent violation. This bill, which would also exclude various governmental entities and any employee thereof from its coverage, is pending in the Assembly Labor and Employment Committee.

AB 1184 (Floyd). Existing law imposes specified civil penalties on employers, except those that are governmental entities or any employer for first-instance violations of occupational safety and health provisions (other than serious, willful, or repeated violations) resulting from the inspection of the employer's establishment or workplace, unless the establishment or workplace is cited, on the basis of the inspection, for ten or more violations. As introduced March 6, this bill would repeal the above exception.

AB 1495 (Tanner). SB 198 (B. Greene) (Chapter 1369, Statutes of 1989) requires every employer to establish, implement, and maintain an effective written injury prevention program including specified elements, and to provide specified training of employees in general safe and health work practices. As introduced March 7, this bill would additionally require an employer's injury prevention program to contain specific provisions that include, among the employees covered by an injury prevention program, the employees of a contractor whose employees perform work for the employer under the first-line supervision of the employer at his/her worksite or premises. This bill is pending in the Assembly Labor and Employment Committee.

AB 1545 (Friedman). Existing law imposes various civil penalties on persons convicted of violating certain occupational safety and health provisions. As introduced March 7, this bill would increase by 50% the amount of these civil penalties. This bill is pending in the Assembly Labor and Employment Committee.

AB 1718 (Boland). Existing law prohibits an elevator from being operated in this state unless a permit for its operation is issued by DOSH, and unless the permit remains in effect and is kept posted conspicuously in the elevator car. It also permits DOSH to issue elevator permits based upon a certificate of inspection by any qualified elevator inspector of any municipality, upon proof of its satisfaction that the safety requirements of the

municipality equal the minimum safety requirements for elevators adopted by OSB. As introduced March 8, this bill would permit the operation of an elevator if a permit for its operation is either issued by, or in behalf of, DOSH, in conformance with these provisions. This bill is pending in the Assembly Labor and Employment Committee.

AB 1980 (Horcher). Existing law provides that a petition for reconsideration is deemed to have been denied by OSB if the Board does not act upon the petition within 30 days from the date of filing. As introduced March 8, this bill would extend to 45 days from the date of filing the time within which OSB is to act upon a petition for reconsideration before the petition is deemed to have been denied. This bill is pending in the Assembly Labor and Employment Committee.

AB 198 (Elder), as introduced January 7, would require the Division of Labor Statistics within DIR to include in its 1992 annual report an analysis of the rate and frequency of injuries to oil refinery and chemical plant workers as

compared to other industrial occupational categories. This bill is pending in the Assembly Labor and Employment Committee.

AB 383 (Tucker). Existing law imposes criminal penalties on every employer or employee having direction, management, control, or custody of an employee or place of employment who is convicted of a willful violation of an occupational safety or health order that causes the death or prolonged impairment of any employee. As introduced January 30, this bill would instead impose those specified penalties on any person who has direction, management, control, or custody of any employment, place of employment, or other employee. This bill is pending in the Assembly Labor and Employment Committee.

FUTURE MEETINGS:

July 25 in San Diego.

August 22 in Sacramento.

September 26 in Los Angeles.

October 24 in San Francisco.

November 21 in San Diego.

December 19 in Sacramento.



DEPARTMENT OF FOOD AND AGRICULTURE

DEPARTMENT OF FOOD AND AGRICULTURE

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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 addition 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