



REGULATORY AGENCY ACTION

Elevator Safety Orders to be more consistent with current ASME/ANSI rules, which no longer require stop switches in passenger elevators. Swerrie proposed that section 3040(b)(5) be amended to make the requirement for an emergency stop switch in passenger elevators permissive rather than mandatory. OSB adopted staff's recommendation to grant the petition to the extent that DOSH convene an advisory committee and, if appropriate, develop proposed amendments.

At its September 26 meeting, ConVault, a manufacturer of above-ground steel storage tanks installed within special enclosures which serve as an overflow protection system for the storage of flammable and combustible liquids, petitioned OSB to amend section 5595 of the General Industry Safety Orders to allow the use of aboveground tanks and to recognize recent technology improvements in aboveground tank design with new overflow protection systems instead of drainage, dikes, or walls as currently required in section 5595. OSB staff found that aboveground storage methods greatly reduce the possibility of insidious leakage or leaching of contaminants into groundwater aquifers; however, staff noted that aboveground storage tanks which rely on special enclosures and overflow protection in lieu of drainage/diking systems need to be protected from mechanical damage, if safety to personnel and property damage prevention is to be achieved. Following discussion, OSB adopted staff's recommendation to grant the petition to the extent staff convene an advisory committee for the purpose of developing suitable regulations.

Also at its September 26 meeting, the Associated General Contractors of America petitioned OSB to adopt standards associated with the hazards of skylights and skylight assemblies. DOSH's report on this issue documents numerous accidents where workers have fallen through skylights which were inadequately protected. OSB adopted staff's recommendation to grant the petition to the extent that Board staff convene an advisory committee to consider the Petitioner's proposal and, if appropriate, develop proposed amendments to existing regulations to be presented to the Board at a future meeting.

FUTURE MEETINGS:

January 16 in Los Angeles.
February 27 in San Francisco.
March 26 in San Diego.
April 16 in Sacramento.
May 28 in Los Angeles.



DEPARTMENT OF FOOD AND AGRICULTURE

DEPARTMENT OF FOOD AND AGRICULTURE

Director: Henry Voss
(916) 654-0433

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 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 six 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 Measurement Standards—oversees and coordinates the accuracy of weighing and measuring goods and services; and

6. 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.

MAJOR PROJECTS:

Cal-EPA Takes Pesticide Regulation from CDFA. On July 17, the California Environmental Protection Agency (Cal-EPA) was officially born. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 145; Vol. 11, No. 2 (Spring 1991) p. 134; and Vol. 11, No. 1 (Winter 1991) p. 112 for background information.) Pursuant to his "executive reorganization" authority under Government Code section 12080 *et seq.*, Governor Wilson established Cal-EPA and placed within it the cabinet-level Office of the Secretary for Environmental Protection and six distinct units:

- three existing agencies from the Resources Agency—the Air Resources Board, the California Integrated Waste Management and Recycling Board, and the Water Resources Control Board (including the regional water quality control boards); these boards will retain their existing memberships, jurisdiction, and autonomy;

- the Department of Toxic Substances Control (transferred intact from the Department of Health Services), which handles responsibility for the regulation and clean-up of hazardous waste;

- the Department of Pesticide Regulation (DPR) (transferred intact from CDFA); and

- the Office of Environmental Health Hazard Assessment (functions transferred from DHS), which oversees risk assessment and the implementation of the Safe Drinking Water and Toxics Enforcement Act of 1986 (Proposition 65).

Generally, all jurisdiction over pesticide regulation and registration was removed from CDFA and transferred to DPR. Pest eradication activities (including aerial malathion spraying, quarantines, and other methods of eliminating and/or preventing pest infestations) remains with CDFA. Several of the important statutes whose implementation and administration was transferred to DPR include the Birth Defect Prevention Act (Food and Agricultural Code section 13121 *et seq.*), the Pesticide Contamination Prevention Act (section 13141 *et seq.*), and laws relating to pesticide residue monitoring (section 12501 *et seq.*), registration of economic poisons (section 12811 *et seq.*), assessments against pesticide registrants (section 12841 *et seq.*), pesticide labeling (sec-

tion 12851 *et seq.*), worker safety (section 12980 *et seq.*), restricted materials (section 14001 *et seq.*), and qualified pesticide applicator certificates (section 14151 *et seq.*). DPR also took the Agricultural Pest Control Advisory Committee established in section 12042 *et seq.* (See *infra* agency report on DPR for related discussion.)

Proposed Establishment of a Specified Minimum Maturity Standard for Granny Smith Apples. In mid-September, CDFA scheduled an October 29 public hearing on its proposed adoption of section 1400.9.1 and amendments to section 1400.11, Title 3 of the CCR. Under new section 1400.9.1, Granny Smith apples would be considered mature when attaining a numerical value of 2.5 on the "Granny Smith Apple Starch Scale." This section would also set forth sampling and testing procedures to determine the apples' maturity, including a requirement that the above numerical value be based on a mathematical average of 30 sample apples.

Section 1400.9.1 was proposed at the request of the California Granny Smith Association, which is trying to combat the practice of picking apples too early in the season for economic gain, as fruit is sold at high prices early in the season when demand is high. According to a study conducted by the University of California's Pomology Department at Davis, the establishment of a maturity standard would result in higher customer satisfaction, more repeat sales, and a better yield by waiting to harvest at optimum maturity.

Existing section 1400.11 provides that apples need only comply with the maturity standards where the county agricultural commissioner establishes maturity release dates. The proposed amendments would make editorial changes to provide that apples harvested prior to the release date without certification as to compliance with applicable maturity standards for such apples must comply with such standards at all times after harvest or shipment.

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*:

- Commercial Weighing and Measuring Devices. On August 1, OAL approved CDFA's amendments to numerous provisions relating to commercial weighing and measuring devices. These amendments align California's regulations with the 1991 tolerances and specifications recommended by the National Institute of Standards and Tech-

nology. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 147 for background information.)

- Regulations for the Prevention of Injurious Plant Diseases. Due to a new outbreak of tristeza, CDFA recently decided that drastic revisions to section 3407, Title 3 of the CCR, pertaining to the quarantine of citrus with this disease, are necessary. At this writing, CDFA plans to revise its proposed amendments to section 3407 and release a new regulatory proposal by the end of 1991. It may include the addition of sections 3008 (psorosis-free citrus seed sources) and 3553 (citrus moving and cutting permits), which were previously considered but not adopted by CDFA. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 148; Vol. 11, No. 2 (Spring 1991) p. 135; and Vol. 10, No. 4 (Fall 1990) p. 135 for background information.)

- Direct Marketing. On July 26, OAL approved CDFA's new direct marketing regulations, which authorize the sale of agricultural products from producers and certified producers within the state directly to consumers, under specified circumstances. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 148 and Vol. 10, No. 4 (Fall 1990) p. 136 for background information.)

- Cotton Pests Host-Free Districts. On June 19, CDFA held a public hearing on its proposed changes to section 3595, which establishes host-free districts and periods for the control of pink bollworm and cotton boll weevil. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 147 for background information.) Following the hearing, CDFA adopted the proposed changes as published. The Department planned to submit the rulemaking file to OAL by early November so the changes can take effect on January 1, 1992.

- Lettuce Container Weight Requirements. On June 20, OAL approved CDFA's amendment of section 1438.42, which specifies that nonconsumer containers of salad products hold standard net weight units of five, ten, or fifteen pounds; its repeal of section 1380.19(u), which specifies the standard net weight units for salad products; and its repeal of section 1438.43, which specifies the weight requirements for consumer containers of salad products. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 111 for background information.)

LEGISLATION:

- AB 20X (Bronzan)**, as amended July 11, requires the Public Utilities Commission to require every electrical cor-



poration which furnishes electricity to an agricultural producer, as defined, to provide citrus and avocado producers with an electrical energy payment deferral program. This bill was signed by the Governor on September 3 (Chapter 8X, Statutes of 1991).

AB 2203 (Costa), as amended April 30, authorizes the CDFA Director to provide for a temporary increase in the minimum prices of milk for certain classes of milk in an emergency. This bill was signed by the Governor on August 2 (Chapter 311, Statutes of 1991).

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 148-50:

AB 1454 (Jones), as amended May 1, increases the fines for violations of cotton plowdown requirements from \$500 to \$1,000, and allows a violation fine of \$10 for each acre not in compliance. This bill also increases the fines for violation of cotton planting dates from \$500 to \$1,000, with a \$100 per-acre fine. This urgency bill was signed by the Governor on July 29 (Chapter 255, Statutes of 1991).

AB 207 (Jones), as amended August 22, declares legislative findings relating to Mexican fruit flies, and authorizes the CDFA Director to establish and operate a facility outside California to produce sterile Mexican fruit flies or enter into an agreement with any other public or private entity to jointly establish and operate such a facility. This bill was signed by the Governor on October 4 (Chapter 489, Statutes of 1991).

SB 539 (Alquist), as introduced February 28, provides that it is a misdemeanor violation for any person to refuse to comply with any plant quarantine regulation adopted by the CDFA Director or to possess, propagate, plant, process, sell, or take any other action with regard to a plant or thing subject to a quarantine which has been imported or moved in violation of the quarantine. This bill was signed by the Governor on October 5 (Chapter 513, Statutes of 1991).

AB 2165 (Floyd), as amended May 28, would require any person engaged in business in this state as a game fowl breeder, as defined, to register with the CDFA Director and pay an annual registration fee. This bill would require the Director to revoke the certificate of registration of any person who is convicted of violating designated Penal Code provisions relating to cock fighting and would specify a procedure for the reissuance of the certificate of registration to that person. This two-year bill is pending in the Assembly Ways and Means Committee.

AB 1122 (Sher) and **SB 51 (Torres)**. The Governor's Reorganization Plan No. 1 of 1991, which took effect on July 17, creates the California Environmental Protection Agency (Cal-EPA), accomplishing the original goals of these bills. SB 51 was amended on September 5 and is no longer relevant to CDFA. AB 1122 is pending in the Senate Governmental Organization Committee.

AB 1213 (Jones), as introduced March 6, would require the CDFA Director to commence a statewide survey of food consumption among children, taking into account variations in consumption based on age, ethnic origin, socioeconomic, and geographic location. This two-year bill is pending in the Assembly Agriculture Committee.

AB 936 (Areias), as introduced March 4, would require CDFA to establish demonstration projects in Sacramento and Santa Clara counties, and would authorize the issuance of nutrition coupons for use by recipients, as defined, to purchase fresh agricultural products from certified farmers' markets. This two-year bill is pending in the Assembly Agriculture Committee.

AB 884 (Areias), as amended April 25, would recast and transfer existing provisions regarding the use of the "California-grown seal" to an area of the law which authorizes the Director to provide various marketing services to improve, broaden, and extend the distribution and sale of products of this state throughout the world market. This two-year bill is pending in the Senate Agriculture and Water Resources Committee.

SB 536 (Alquist) and **SB 535 (Alquist)**. The Budget Act of 1990 appropriated \$7,586,000 for the support of CDFA's plant pest disease prevention program. As introduced February 27, SB 536 would appropriate \$2,000,000 to CDFA in augmentation of that amount for the program. As introduced February 27, SB 535 would require the Controller to augment the budgeted amount in accordance with a specified formula. Both two-year bills are pending in the Senate Committee on Budget and Fiscal Review.

AB 104 (Tanner), as introduced December 4, 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 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. This two-year bill is pending in the Assembly Committee on Environmental Safety and Toxic Materials.

LITIGATION:

The consolidated *Medfly Eradication Cases*, No. 2487 (Los Angeles County Superior Court), in which numerous California cities have challenged CDFA's 1989-90 aerial malathion spraying as a public nuisance, are currently on hold because CDFA has not sprayed since July 1990. Both sides have submitted briefs with Judge John Zebrowski; if CDFA contemplates further spraying, plaintiffs will file a motion for a temporary restraining order, and the court can rule immediately. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 150; Vol. 11, No. 1 (Winter 1991) p. 112 and Vol. 10, No. 4 (Fall 1990) p. 137 for background information.)

Judge Zebrowski has stayed all discovery and motions while both sides are preparing environmental impact reports (EIRs) on aerial malathion spraying. CDFA is preparing the EIR for defendants, and the U.S. Department of Agriculture is preparing an EIR for plaintiffs. Both EIRs are tentatively scheduled for release during the spring of 1992.

Macias v. State of California, No. BC024501, in which a 15-year-old boy claims he became permanently blind from direct exposure to CDFA's aerial malathion spraying, is pending in Los Angeles County Superior Court. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 150 for background information.)

RECENT MEETINGS:

At the June 6 meeting of the State Board in Sacramento, a great deal of discussion centered on the impact of the state budget crisis on CDFA. Chief Deputy Director Bob Fox reported that CDFA is looking at a \$21 million reduction in general fund monies. CDFA delayed the construction of the Plant Industry Laboratory in order to save \$14.7 million; the Department is also considering a reduction in services and an increase in fees to come up with the balance.

At the Board's August 1 meeting, Dr. Isi Siddiqui, Assistant Director, Division of Plant Industry, reported that no medflies have been found in California since October 1990. He noted that CDFA has approved \$2.5 million for increased medfly trapping, and strongly urged the building of a new sterile Mexican fruit fly facility.



Also in August, the Board again discussed the worsening state budget crisis. Staff reported that all CDFA managers were required to take a 5% pay reduction, effective July 1. Director Henry Voss reported that additional funding cuts would affect all CDFA programs, with some taking a percentage cut while others will be eliminated.

At the Board's September 5 meeting, Board President John Kautz established four committees to study the

significant problems facing agriculture—water, pest control, pollution, and land use. Each committee will be comprised of a cross-section of Board members, and will make recommendations to the Director and the Governor.

FUTURE MEETINGS:

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

of Substances, and Emission Inventory Criteria and Guidelines. Pursuant to Health and Safety Code section 44380, ARB is required to adopt a regulation which recovers the cost of implementing the Air Toxics "Hot Spots" Identification and Assessment Act. These costs are recovered through fees paid by facilities subject to the Act. The Board is also required to maintain a list of substances subject to the "Hot Spot" Act's reporting requirements, which is appended to the Fee Regulation. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 153 and Vol. 10, No. 4 (Fall 1990) pp. 139-40 for background information.)

On June 13, the Board approved amendments to sections 90700-90705 and 93334, Titles 17 and 26 of the CCR, which reflect changes in the state and district costs which must be recovered for the 1991-92 fiscal year, and changes in the emission inventories which are used to determine applicability and establish fees. The approved amendments require local air pollution control districts to adopt rules which assess sufficient fees to cover state agency and district costs to implement the Act. The Board also adopted amendments which subject landfill facilities to the Act's emission inventory reporting requirements, and to facility prioritization and risk assessment requirements. Additional clarifying amendments reference Appendix E of the Emission Inventory Criteria and Guidelines Regulation as the criteria for determining whether a facility which emits less than ten tons of criteria pollutants is subject to the Fee Regulation.

For fiscal year 1991-92, the fee regulation was amended to include updated state and district costs and fees. As was done last year, districts must choose either a cost-per-facility fee or a cost-per-ton fee based on the amount of criteria pollutant emissions. The amendments also include the addition of a three-tiered fee schedule for sources that emit no more than ten tons per year each of any criteria pollutant, and are subject to the "Hot Spots" Program because they fall into one of the classes listed in Appendix E of the Emission Inventory Criteria and Guidelines Regulation. The approved amendments delete fee schedules for districts choosing to adopt district rules to recover costs of implementing the Act, and specify the amount each district must remit to the Board to recover state costs. Finally, the list of substances contained in the Air Toxics "Hot Spots" Fee Regulation was updated by the addition of 190 new substances recognized by the Board as presenting a chronic or acute threat to

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY (CAL-EPA)

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 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. 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.

MAJOR PROJECTS:

ARB Included in Cal-EPA. Governor Wilson's plan to establish the California Environmental Protection Agency (Cal-EPA), a California counterpart to the federal EPA, went into effect on July 17. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 151; Vol. 11, No. 2 (Spring 1991) p. 134; and Vol. 11, No. 1 (Winter 1991) p. 112 for background information.) Creation of the new agency fulfills a Wilson campaign promise to consolidate some of the state's major environmental programs and streamline their management, including ARB. Both critics and supporters say additional legislation will be required to define the agency's authority and give its secretary the clout needed to make a significant difference.

A July 14 train wreck near Dunsuir in Shasta County that dumped 19,500 gallons of toxic pesticide into the Sacramento River posed an immediate challenge for the new Cal-EPA. Southern Pacific railroad undertook an ambitious clean-up plan, under which a flotilla of vessels bearing giant water pumps drew the contaminated water from the north end of the Shasta Lake reservoir and sprayed it into the air. The aerial dispersal was intended to accelerate the breakdown of the potent toxin, metam sodium, into harmless elements. When exposed to the air, however, metam sodium releases toxic gases that cause nausea, eye irritation, and headaches. The clean-up proceeded despite ARB's serious concerns about the effects that the aerial dispersal could have on clean-up crews, area residents, and tourists. (See *infra* agency report on DEPARTMENT OF PESTICIDE REGULATION for related discussion.)

Amendments to the Air Toxics "Hot Spots" Program Fee Regulation, List