



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 government employees at the state and local levels.

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.

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety orders which affect California government 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. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

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 citations and abatement orders (granting a specif-

ic 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:

Emergency Asbestos Regulations. OSB's emergency revisions to its asbestos regulations in Title 8, Article 4, section 1529, and Article 110, section 5208 of the General Safety Orders, adopted by OSB on June 22, 1989, expired on November 7, 1989. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 101 and Vol. 9, No. 3 (Summer 1989) pp. 92-93 for background information.) OSB seeks to adopt the emergency regulations, which bring Cal-OSHA's asbestos standards in line with the current federal asbestos standards, as permanent regulations, and held a public hearing to receive public comments during its August 24 meeting. Since the regular rulemaking action would not conclude before the emergency regulations expired on November 7, OSB readopted the emergency regulations at its October 26 business meeting. OSB staff are currently reviewing the numerous public comments on the permanent regulations received on August 24, and was expected to issue a fifteen-day notice in January.

Proposition 65 Rulemaking. Initiative sponsors are attempting to qualify "The California Environmental Protection Act of 1990" for the November 1990 ballot. Among other things, this initiative would declare that the Safe Drinking Water and Toxics

Enforcement Act of 1986 (Proposition 65) is, in fact, an occupational safety and health law, requiring OSB to adopt regulations concerning the labeling of pesticides by January 1992. Voter approval of the environmental initiative—also known as "Big Green"—would reverse and overrule OSB's decision that Proposition 65 is not a law governing occupational safety and health. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 102 for background information.) On the same subject, OSB staff has prepared a decision in Petition No. 268 indicating the Board's position that there is no inconsistency between OSB's occupational safety and health standards and Proposition 65's "clear and reasonable warning" requirements.

Special Order Regarding VDT Exposure. Cal-OSHA recently issued a special order to the Fresno Bee newspaper, requiring it to install special video display terminal (VDT) workstations by February 15, 1990 for all employees who work at a VDT for more than sixty minutes per day. The order also required the Bee to institute a training program within thirty days of the special VDT station installation which includes a health warning of the potential dangers of VDT exposure. The special order was issued after 33 of the Bee's 100 Newspaper Guild members suffered repetitive eye strain injuries. OSB, which has no VDT exposure standards because it refused to consider them even after a majority of its Ad Hoc Expert Advisory Committee concluded they are necessary (see CRLR Vol. 9, No. 4 (Fall 1989) p. 102 for background information), is expected to initiate VDT exposure regulations early next year.

Implementation of SB 198. SB 198 (B. Greene) (Chapter 1369, Statutes of 1989), which was signed by the Governor on October 2 (see CRLR Vol. 9, No. 4 (Fall 1989) p. 102 for background information), requires OSB to adopt standards before January 1, 1991, setting forth an employer's duty to establish and maintain an injury prevention program, and to develop a form for post-inspection employer certification that a serious violation has been abated, among other things. To comply with the January 1991 deadline, OSB's technical advisory committee must finalize the draft standards by May 1990, in order to allow for a 45-day notice period, public comment, and Department of Finance and Office of Administrative Law (OAL) review.



REGULATORY AGENCY ACTION

LEGISLATION:

The following is a status update on bills described in detail in CRLR Vol. 9, No. 4 (Fall 1989) at pages 102-03:

AB 161 (Floyd) would impose specific penalties on governmental entities for certain violations of occupational safety and health standards. This bill is pending in the Senate Industrial Relations Committee.

AB 955 (Hayden, Bates) would require that every computer video display terminal used in any place of employment be in conformance with the American National Standards Institute standards. This bill is pending in the Senate Appropriations Committee.

AB 138 (Floyd), which would require immediate DOSH investigation of employee complaints of imminent hazards and serious accidents, is pending in the Senate Industrial Relations Committee.

SB 478 (B. Greene), which would create the Crane Operators Licensing Board and require all crane operators to be licensed under penalty of misdemeanor, is pending in the Senate Industrial Relations Committee.

AB 167 (Floyd) would provide that only qualified electrical workers, as defined, shall work on energized conductors or equipment connected to energized high voltage systems. This bill is pending in the Senate Industrial Relations Committee.

SB 356 (Petris) would enact the Agricultural Hazard Communication Act, requiring the Director of Food and Agriculture, in cooperation with the Department of Industrial Relations, to adopt regulations setting forth an employer's duties towards its agricultural laborers and requiring the Director to enforce these regulations. This bill is pending in the Assembly inactive file.

AB 1469 (Margolin) would require OSB, within a specified period of time, to revise the California Code of Regulations to include any carcinogen on the Governor's list of those chemicals known to cause cancer or reproductive toxicity, unless a substance is covered by a separate comparable standards, or the OSB exempts a substance which presents no substantial threat to employee health pursuant to a specified provision. This bill is pending in the Senate Industrial Relations Committee.

AB 750 (Roos) would have required OSB to adopt occupational safety and health standards concerning work involving contact with bodily fluids so

as to protect the safety of health care workers. This bill died in the Assembly Labor and Employment Committee.

LITIGATION:

In *Salwasser Manufacturing Co., Inc. v. Occupational Safety and Health Appeals Board*, No. F011506 (Oct. 2, 1989), the Fifth District Court of Appeal affirmed the superior court's issuance of a warrant authorizing Cal-OSHA to inspect a manufacturing facility based on "a reasonable belief that a violation has been or is being committed." Cal-OSHA obtained the warrant after being contacted by an employee of the manufacturing facility who alleged personal knowledge of various safety violations at the facility. Based on this specific information, Division personnel formed the belief that safety violations existed at the facility and obtained a warrant from the superior court. In ruling on Salwasser's challenge to the validity of the search warrant, the court of appeal affirmed the trial court's issuance, rejecting the facility's contention that searches by administrative agencies require compliance with the criminal standard of probable cause. Rather, when a regulatory agency's search warrant application is based on specific evidence of safety violations, it need only be established that a violation is likely to be found.

In *County of Los Angeles v. Department of Industrial Relations*, No. C005023 (Oct. 23, 1989), the Third District Court of Appeal held that Cal-OSHA's 1975 modifications to sections 3014, 3015, 3030, 3032, 3034, 3041, 3053, and 3111, Title 8 of the California Code of Regulations, which added numerous elevator fire and earthquake safety requirements, is not a state-mandated "program" which requires state reimbursement for local costs of compliance.

Proposition 4, enacted in 1979, added Article XIII B to the California Constitution, which provides that "whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program...." In *County of Los Angeles v. State of California*, 43 Cal. 3d 46 (1987), the California Supreme Court held that "programs" are reimbursable under Article XIII B only if they are programs that "carry out the govern-

mental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." The appellate court, applying the County of Los Angeles standard, found that since the Cal-OSHA elevator regulations apply equally to all elevators, public and private, they do not impose a unique requirement on local government and thus are not "programs" for which the local government may obtain reimbursement from the state.

RECENT MEETINGS:

During its September 21 business meeting, OSB granted permanent variances to the following entities: Grandview Methodist Church of San Pedro from Title 8, section 3000(c)(13) of the Elevator Safety Orders (installation of a vertical wheelchair lift with a rise of approximately nine feet); and Kanaka Creek Joint Venture of Sierra County from Title 8, section 7133(a) and (b) of the Mine Safety Orders (mine shaft conveyance without shaft guides to prevent derailment and without a device to stop the conveyance should the hoisting rope fail).

Also during its September business meeting, OSB granted CalTrans' petition to amend Title 8, sections 1566(d) and 1567(c) of the Construction Safety Orders (Petition File No. 272), permitting the modification of existing highway closure requirements and the use of alternate warning signals during the loading and detonation of explosives on highway projects. This petition was referred to an advisory committee to be studied on a priority basis. OSB also referred a petition to develop workplace air quality standards relative to tobacco smoke (Petition File No. 273) to an advisory committee, in order to study the necessity and feasibility of OSB regulation of work environment nicotine exposure levels.

OSB received extensive public and industry comments at its September 21 public hearing on a proposed amendment to Title 8, General Industry Safety Orders, Article 107, section 5155, regarding employee exposure to airborne contaminants. The proposed amendment would set new limits on employee exposure to certain airborne contaminants, in line with federal OSHA standards enacted in March 1989. Numerous comments were



received from the fiberglass reinforced plastics industry regarding the proposed exposure limits for styrene. In general, the industry representatives expressed the opinion that the proposed standard is not feasible for certain open-mold manufacturing processes.

At its October 26 business meeting, OSB adopted an amendment to Article 110, section 5220 of the General Industry Safety Orders, providing for a new short-term exposure limit (STEL) for ethylene oxide of 5 ppm as averaged over a sampling period of 15 minutes, similar to federal standards adopted on April 6, 1988. No oral testimony was offered on this amendment at an August 24 public hearing. The rulemaking file on this amendment was submitted to OAL on December 13.

During its October 26 business meeting, OSB granted permanent variances to the following entities: Sierra Ski Ranch from Title 8, section 3157(c)2.3.3.1.2 of the Aerial Passenger Tramway Safety Orders (installation of a chairlift with haul rope sheaves of less than eight times the diameter of the haul rope and with rope-catching devices extending less than two cable diameters beyond the sheave); Robert D. May from Title 8, section 3000(d)(11) of the Elevator Safety Orders (continuance of variance No. 85-V-013, permitting the use of a private residence elevator in violation of the Elevator Safety Orders subject to nineteen conditions); and Savage Coal Services of Wasco from Title 8, section 3737(b) of the General Industry Safety Orders (coal storage and transfer building with minimum side clearances of less than eight feet, six inches from the center line of tangent standard gage industrial railroad tracks).

Also during its October 26 business meeting, OSB granted a petition (Petition File No. 276) to study in committee the possibility of amending Title 8, sections 1592 and 1593, to permit the use of discriminating back-up alarm systems which incorporate infrared, ultrasonic, microwave, or radar technologies on heavy construction equipment, in lieu of the conventional audio back-up alarm systems now required.

During its November 16 business meeting, OSB granted permanent variances to the following entities: Friends Christian School of Yorba Linda from Title 8, section 3000(c)(13) of the Elevator Safety Orders (installation of two vertical wheelchair lifts with rises of ten feet and twelve feet); Anaheim

Union High School District from Title 8, section 3000(c)(13) of the Elevator Safety Orders (installation of a vertical wheelchair lift with a rise of seventy-one inches); Saint Joseph Medical Center of Burbank from Title 8, section 3000(c)(13) of the Elevator Safety Orders (installation of a vertical wheelchair lift with a rise of five feet, eight inches); and Antelope Valley Union High School District in Lancaster from Title 8, section 3000(c)(13) of the Elevator Safety Orders (installation of a vertical wheelchair lift with a rise of six feet). OSB denied the Los Angeles Unified School District's request for a permanent variance to Title 8, section 5162(a), which requires installation of an emergency eyewash station in all school science rooms, laboratories, and auto shops. The School District proposed to install deck-mounted emergency spray units in lieu of the required dual-eye bubblewash units required by section 5162(a). OSB granted the school district's request for rehearing of the petition, and was scheduled to reconsider the matter in January 1990.

Also during its November 16 business meeting, OSB adopted an amendment to Title 8, sections 5161 and 5178 of the General Industry Safety Orders, providing safety standards designed to prevent grain dust fires and explosions at grain handling facilities, similar to federal regulation 29 C.F.R. Part 1910.272, adopted on March 31, 1988. As no public oral testimony or written comments were offered on this amendment at an October 26 public hearing, OSB adopted it unanimously in November. The rulemaking file on this amendment was scheduled to be submitted to OAL in January.

Also on November 16, OSB referred Petition File No. 277 to an advisory committee to study the feasibility of amending Title 8, section 5144(h) of the General Industry Safety Orders, and section 1531(h) of the Construction Safety Orders, to permit the use of gas-permeable and soft contact lenses while wearing full-face respirators.

During OSB's November business meeting, OSB Executive Officer Steven Jablonsky explained that the staff intends to include a \$500,000 budget line item in OSB's 1990-91 budget to be submitted to the Department of Finance, for reimbursement of local government expenses in complying with proposed mandatory testing of fire department aerial ladders (see CRLR Vol. 7, No. 2

(Spring 1987) p. 83 for background information). The Administrative Procedure Act requires that before a state agency may adopt a regulation imposing a local mandate, provisions to pay the local governments' claims for reimbursement must be made by the state, either by obtaining the Department of Finance's approval that the item be included in the next Governor's budget, or by sponsoring legislation to appropriate funds from which the Controller could pay claims for reimbursement. OSB has elected to begin rulemaking on the testing program, and will ask the Department of Finance to include the cost of reimbursement of local agencies in the 1990-91 Governor's budget.

During its December 14 business meeting, OSB granted permanent variances to the following entities: Il Fornaio Corporation of San Francisco, Los Rios Community College District, Placer County, and Oakland Portside Associates from Title 8, section 3000(c)(13) of the Elevator Safety Orders (installation of a verticle wheelchair lift with excessive rise); Alpine Meadows Ski Area from Title 8, section 3157(c)2.3.3 and 2.3.3.1.1 of the Aerial Passenger Tramway Safety Orders (installation of a ski lift with diameters of elastomer haul rope sheaves less than eight times the rope diameter); Alpha Resins Corporation from Title 8, section 475 of the Unfired Pressure Vessel Safety Orders (location of a 30,000-gallon propane storage tank within fifty feet of an electrical switch gear building); and Squaw Valley Ski Corporation from Title 8, section 3157(d)2.4.1.1 of the Aerial Passenger Tramway Safety Orders (installation of two haul ropes with static factors of safety of 4.84 and 4.53).

Also during its December 14 business meeting, OSB adopted an amendment to section 1717(d) of Title 8 (Construction Safety Orders), to permit employees to work underneath concrete formwork if other required safeguards are provided. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 103 for background information.) OSB also amended section 453 of the Unfired Pressure Vessel Safety Orders; sections 1504 and 1505 of the Construction Safety Orders; sections 3206, 3207, 3319, and 3649 of the General Industry Safety Orders; and sections 6248 and 6249 of the Logging and Sawmill Safety orders, to conform with federal regulation 29 C.F.R. Part 1910.7, which provides definitions and



requirements for nationally recognized testing laboratories. Finally, OSB amended section 8603 of the Title 8 Telecommunication Safety Orders to conform with federal regulation 20 C.F.R. Part 1910.268(c), to provide

more specific recordkeeping requirements regarding training of telecommunications workers.

FUTURE MEETINGS:
To be announced.



DEPARTMENT OF FOOD AND AGRICULTURE

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Director: Henry Voss
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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 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.

MAJOR PROJECTS:

CDFA Declares War on Medfly. Following the discovery of a Mediterranean fruit fly (medfly) in Los Angeles County on July 20, 1989, CDFA commenced an aerial attack against the pest by spraying a 156-square-mile section of Los Angeles with the pesticide malathion. In addition to spraying, CDFA has ordered produce quarantines, attempted to trap the pests, released sterile flies to prevent breeding, ordered the clearing of fruit from trees, and directed the application of malathion directly on soil where infested fruit was found. At this writing, the Department's efforts have not been successful; flies have been trapped in Santa Clara County, San Bernardino County, and in widely scattered locations in Los Angeles and Orange counties. Between December 5 and 14, several additional localities were found to be infested, bringing the total area to 277 square miles. Malathion spraying, which was originally confined to Los Angeles, has been expanded to approximately 50 cities; some have been