passed both the Senate and the Assembly, but died before the Assembly concurred in Senate amendments.

AB 4006 (Cannella), which would have increased by 50% the civil penalties imposed on persons convicted of violating certain occupational safety and health provisions, was vetoed by the Governor on August 27.

AB 4259 (Epple) would have exempted county agricultural commissioners and their employees from existing state law which imposes an obligation on employers to furnish employees with information regarding hazardous substances used in the workplace. This bill was vetoed by the Governor on September 26.

SB 732 (Beverly), as amended August 27, provides for the certification of asbestos consultants and site surveillance technicians who meet qualifications specified by this bill and DOSH, including no financial or proprietary interest in an asbestos abatement contractor when they work on the same project within the same state; requires that state employees who perform asbestos consulting or site surveillance shall be certified; requires DOSH to propose, by July 1, 1991, additional regulations for the certification of asbestos consultants and site surveillance technicians for consideration and action by OSB; and requires OSB to adopt regulations by January 1, 1992. This bill was signed by the Governor on September 22 (Chapter 1255, Statutes of 1990).

AB 2537 (Burton), as amended August 14, would have created the Crane Operators Licensing Board consisting of three appointed members, and would have made it a misdemeanor for any employer to require any person to operate a crane without having a license issued by the board, with certain exceptions. This bill was vetoed by the Governor on September 13.

AB 2825 (Floyd), which would have required the Governor to appoint and the Senate to approve all new OSB members, was vetoed by the Governor on July 20.

AB 161 (Floyd), which, as amended June 25, would have imposed specific penalties on governmental entities for certain violations of occupational safety and health standards, was vetoed by the Governor on September 27.

AB 955 (Hayden, Bates), as amended June 14, would have required 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. This bill was vetoed by the Governor on September 13.

AB 1469 (Margolin), as amended June 25, would have required OSB to revise the CCR to include certain carcinogens or industrial processes, unless a substance or industrial process is covered by a separate comparable standard, or the OSB exempts a substance which presents no substantial threat to employee health pursuant to a specified provision. This bill was vetoed by the Governor on September 27.

The following bills died in committee: *AB 4263 (Johnson)*, which would have required DOSH to license operators of certain cranes; *SB 461 (Greene, B.)*, which would have modified existing law which requires the Industrial Welfare Commission to ascertain the wages, hours and conditions of labor and employment in various occupations, and consult with OSB before adopting new rules, regulations, or policies, to determine those areas and subject matters where the respective jurisdiction overlaps; *AB 138 (Floyd)*, which would have required immediate DOSH investigation of employee complaints of imminent hazards and serious accidents; *SB 478 (Greene, B.)*, which would have created a Crane Operators Licensing Board and would have made it a misdemeanor for any employer to require any person to operate a crane without a license; *AB 167 (Floyd)*, which would have provided that only qualified electrical workers, as defined, shall work on energized conductors or equipment connected to energized high voltage systems; and *SB 356 (Petris)*, which would have enacted the Agricultural Hazard Communication Act.

LITIGATION:

On July 12, in *California Labor Federation, et al. v. Cal- OSHA*, No. A048574, a panel of the First District Court of Appeal reversed OSB's July 1989 decision and unanimously 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). Thus, the court ordered Cal-OSHA to incorporate into its California State Plan for Occupational Safety and Health (State Plan) standards which provide for the protections of Proposition 65. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 154; Vol. 10, No. 1 (Winter 1990) p. 115; and Vol. 9, No. 4 (Fall 1989) pp. 101-02 for extensive background information on this case.)

In this suit brought by a coalition of labor, environmental, and public interest groups challenging OSB's determination (and the Deukmejian administration's persistent refusal to implement Proposition 65), the court held that "Proposition 65 requires that warnings be given to individuals. All employees are individuals and thus are entitled to Proposition 65 warnings in the workplace absent an exemption in [Proposition 65]....We cannot accept the premise that Proposition 65 is not a state law governing occupational safety and health within the meaning of Proposition 97 simply because it also applies outside the workplace and exempts certain employers from its requirements." The court also held that Cal-OSHA's State Plan is not consistent with Proposition 65, because it does not include all the protections of the initiative.

FUTURE MEETINGS:

January 24 in Los Angeles.
February 21 in San Francisco.

DEPARTMENT OF FOOD AND AGRICULTURE

DEPARTMENT OF FOOD AND AGRICULTURE
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:

Medfly Eradication Update. Although CDFA has not engaged in aerial malathion spraying since July 23, the controversy over the state's pest eradication program is by no means over. On September 8, CDFA Assistant Director Isi A. Siddiqui stated that if no more flies are detected by November, the eradication program will be terminated. Board members have expressed optimism over the fact that most medfly findings were in primarily urban rather than agricultural areas. There is general agreement within the Board and the Department that the medfly problem may be contained.

However, James Carey, an entomologist at UC Davis and a member of the state's scientific panel advising CDFA on the yearlong eradication project, stated that there is "a lag of several years between the time [medflies] arrive and the time they're detected." He believes that the medfly is now established in southern California, and that CDFA's difficulty in permanently eliminating the pests is proof of this fact. Carey feels that the reasons his theory has not been accepted are essentially economic and political. If the medfly is shown to be endemic to California, quarantines will be imposed on state agriculture. Federal aid for eradication programs would also be terminated. Although Carey advocates aerial spraying, he believes that state goals should focus on long-term eradication rather than random emergency measures. He suggests intensive sweeps over infested zones over a five-year period. He stated that recent medfly eradication steps have merely allowed the state to "dodge a bullet."

The state of Florida agrees. It recently attacked CDFA's eradication program as highly inefficient. Florida believes that it has solved its pest problems with intensive, systematic spraying, and that California's random eradication techniques pose a risk to its own crops and contribute to the lack of support by many California residents and local governments. In May, Florida attempted to quarantine all California agriculture, but the U.S. Department of Agriculture (USDA) denied its petition.

Health concerns over aerial malathion spraying have also intensified in recent months. In July, the City of Los Angeles claimed that it found traces of heavy metals in independent samplings of the malathion mixture. City Council member Joel Wachs said that lead, chromium, and nickel were present in levels exceeding the acceptable level specified in Proposition 65. However, the state is exempt from claims under Proposition 65, and the City of Los Angeles was subsequently unable to prove its claim or secure a restraining order while further tests were completed. The City of Los Angeles has since amended its complaint to include a nuisance claim. (*See infra* LITIGATION for further information.)

This case and others have contributed to the escalating fears of local citizens as to health risks from exposure to malathion spraying. Los Angeles County's chief epidemiologist, Dr. Paul Papanek, reports that there have been 1,850 spray-related health complaints in the county so far. In the recent case of *Talevich v. Voss* (*see infra* LITIGATION), homeless persons complained of numerous health problems after exposure to one spraying.

In September, the state Department of Health Services (DHS) published a preliminary report claiming that malathion does not pose a serious health risk, but that more testing is needed. DHS found no significant evidence demonstrating that malathion causes cancer or permanent genetic damage in humans. Dr. James Stratten, the state epidemiologist in charge of the review, stated that based on his knowledge of pesticides and general exposure levels, "there would appear to be an adequate margin of safety."

At the August 2 meeting of the State Board of Food and Agriculture, Siddiqui outlined his ideas for handling the medfly issue in the future. First, he stressed the importance of deterring potential fruit smugglers; he suggested increasing civil penalties to a maximum of $1,000 for each violation. Second, in light of mounting opposition to the aerial spraying, he suggested a massive research effort into safety and property rights issues, and alternatives to malathion spraying. He stated that this should be a cooperative effort between the USDA's Agricultural Research Service and the University of California. Finally, he informed the Board that USDA and the Mexican government are both interested in achieving a "pest-free zone" in border areas and Baja California. Siddiqui suggested that the construction of a sterile fruit fly facility in Mexico would accomplish this goal, and would provide a much-needed supplement to California's supply of sterile flies during infestation crises. Paul B. Engler, executive secretary of the California Citrus Quality Council, suggested the creation of a public awareness program. He believes that emphasizing "job stake" and food supply issues will stimulate greater public acceptance of the eradication programs.

Over the last thirteen months, CDFA's aerial malathion spray program has covered 536 square miles and cost taxpayers $44 million.

Rulemaking Under the Pesticide Contamination Prevention Act. In July, CDFA proposed amendments to section 6804, Titles 3 and 26 of the CCR, which establishes specific numerical values (SNVs) for pesticide active ingredients. The purpose of SNVs is to predict which active ingredients are likely to leach to groundwater by quantifying the mobility and longevity of an active ingredient in the soil. Section 13144 of the Food and Agricultural Code authorizes CDFA to revise SNVs in section 6804 as more data becomes available. This proposed amendment would revise the values for water solubility, soil adsorption, and hydrolysis based on additional data which would make them more accurate predictors of a pesticide's potential to migrate to groundwater.

When an active ingredient exceeds the established SNV for water solubility, it indicates that the active ingredient has the potential to dissolve in water and be carried through soil and into the aquifer. This amendment would reduce the water solubility value from 4 ppm to 3 ppm, with the effect that the new SNV would select pesticide active ingredients as contaminants that are less soluble in water than before. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 96 for background information.)

Soil adsorption represents how readily molecules of the active ingredient adhere to soil particles. If an ingredient's soil adsorption coefficient is less than the SNV, the chemical is more likely to leach to groundwater due to its weak adherence to soil particles. Amending the value from 2400 cm^3/gm to 1900 cm^3/gm means that the new SNV will select pesticide active ingredients as non-contaminants that adhere less to soil particles than before. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 96 for background information.)

Hydrolysis is the splitting of chemical bonds by water molecules and is generally measured by the amount of time required for a chemical to break down to one-half of the original amount present. Exceeding the SNV for hydrolysis indicates that the active ingredient is stable enough in water that it may not break down before reaching groundwater. Although an October 1989 amendment to this section decreased the half-life value from 13 to 9 days (see CRLR Vol. 9, No. 3 (Summer 1989) p. 96 for background information), this amendment would increase that value back up to 14 days. This means that the new SNV will select pesticide active ingredients as contaminants that exceed 14 days half-life instead of 9 days half-life.

The public comment period for this amendment package closed on August 13, and it is now awaiting approval within CDFA. According to David Duncan of the Department's Environmental Monitoring and Pest Management Branch, CDFA anticipates that the changes will become effective in December.

CDFA Proposes Amendments to Regulations for the Prevention of Injurious Plant Diseases. This fall, the Department proposed 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.

Section 3008 would require that all citrus seed used in California originate from trees tested to the satisfaction of the CDFA Director every six months and found to be free from psorosis; it will also define the testing required. The purpose of this section is to prevent the artificial spread of psorosis, a virus disease of citrus which may spread through the planting of infected seed.

Section 3553 would require that all citrus moving and citrus cutting permits issued pursuant to section 3407, *infra*, include a testing for all citrus virus or virus-like organisms known to occur in the plant or parent plant. This requirement would prevent the artificial spread of those citrus virus diseases which are not restricted by section 3407, but are currently occurring in much of the state.

The amendment to section 3407 would remove the present exemption allowing unbudded seedling rootstocks to move until June 30 in the second calendar year after planting the seed without testing for the tristeza virus; require that citrus-producing nurseries in a quarantined area maintain a record of all budwood sources; and provide for movement of budwood from top-worked trees which have been tested within the three-year period prior to and after top-working, and for movement of budwood from top-worked trees tested as described when both the top-worked trees and propagative stocks are free of tristeza. The intent of this amendment is to prevent the artificial spread of the citrus tristeza virus within the protected area where the virus is not apparent or its natural spread is slow.

Although CDFA did not schedule a public hearing, this regulatory package was open to written public comment until September 17. A number of comments were received and the Department is currently incorporating those comments into the proposal.

Emergency Carbofuran Regulations. On March 29, 1990, the Office of Administrative Law (OAL) approved CDFA's emergency amendments to section 6400(f)(3), Titles 3 and 26 of the CCR, which made all products containing carbofuran restricted materials and, therefore, subject to regulations pertaining to restricted materials. In May, CDFA gave notice of its proposal to permanently adopt these amendments.

Currently, all products containing carbofuran are federally restricted pesticides, but an exemption in California previously allowed products containing less than 10% carbofuran to remain unrestricted. The new restrictions were prompted by reported bird kills over the last few years which have resulted from

carbofuran use. Carbofuran is the only registered pesticide used in the rice-growing industry to control rice water weevil, and waterfowl are attracted by the appearance, shape, and texture of carbofuran granules. In 1989, 2,007 ducks were poisoned by carbofuran in two incidents in the rice-growing area of northern Sacramento Valley. The revision makes formulations of carbofuran used on rice (two of the seven products containing carbofuran registered for use in California) restricted materials. As a restricted material, applicators wishing to use carbofuran in rice fields will be required to obtain a permit from the county agricultural commissioner, who may place conditions on carbofuran use to mitigate any possible hazard to waterfowl.

The permanent amendment to section 6400(f)(3) was approved by OAL on August 23.

Direct Marketing. CDFA recently published in the *Notice Register* a proposed change to section 1392 and several of its subsections in Title 3 of the CCR, pertaining to direct marketing.

Specifically, an amendment to section 1392 would establish that CDFA's direct marketing regulations apply only to California producers who have agricultural products for direct sale to consumers. The proposal would also amend section 1392.1, which describes the conditions under which direct marketing is authorized for products as defined under existing section 1392.2(h); amend section 1392.2, to add definitions of relevant terms used in the direct marketing regulations; repeal existing section 1392.3, which describes where products may be sold under direct marketing; amend section 1392.4, which establishes the conditions under which direct marketing is permitted and specifies container labeling requirements for all containers intended for use by consumers; amend section 1392.5, which establishes procedures and requirements for the certification of a producer; amend section 1392.6, which establishes procedures and requirements for the certification of a certified farmers' market; amend section 1392.7, which establishes the procedures and requirements for the issuance of certified producers' and farmers' market certificates by the county agricultural commissioner; amend section 1392.8, which allows agricultural commissioners to charge a fee for issuing, modifying, or renewing any certificate; repeal section 1392.9, which describes violations of this article; amend section 1392.10, which describes penalties for violations of this article; and amend section 1392.11, which describes procedures for appealing the denial, suspension, or cancellation of a certificate.

One of the more notable changes proposed in this regulatory action is the addition of new section 1392.4(b), which would require that all agricultural products sold at certified farmers' markets or at the point of production must comply with all applicable requirements of the California Uniform Retail Food Facilities Law and the California Sherman Food, Drug, and Cosmetic Law. Another important change is the proposed addition of section 1392.10, which would authorize an agricultural commissioner, who determines that a violation of this article has occurred, to suspend and/or refuse to issue a certificate to the violator for up to eighteen months, or suspend participation privileges for up to eighteen months to the person whose action resulted in the violation.

CDFA scheduled three public hearings on these proposed regulatory changes—October 10 in Sacramento, October 11 in Redondo Beach, and October 12 in Visalia. The public comment period was scheduled to close on October 12.

Fines to be Increased. In August, CDFA announced its intent to amend section 6130, Titles 3 and 26 of the CCR. Section 12999.5 of the Food and Agricultural Code currently authorizes county agricultural commissioners to levy civil penalty fines in lieu of civil prosecution by the Director. Section 6130 specifies the fine guidelines that county agricultural commissioners are required to use when determining the types of violations and the amount of fines to be assessed.

This proposed regulatory action would amend subsections 6130(a)(1)-(3) to increase the range of fines allowed to $400-$1,000 for "serious" violations, $150-$400 for "moderate" violations, and $50-$250 for "minor" violations.

Subsection 6130(b) would be renumbered to subsection 6130(c); new subsection 6130(b) would require the county agricultural commissioner to consult with the Department prior to notifying each person being charged with a violation.

Existing subsection 6130(c) would be renumbered to subsection 6130(d), and require CDFA to inform county agricultural commissioners, on an annual basis (instead of on a quarterly basis), of all violations and fines that have been assessed.

The public comment period on this proposed regulatory action ended on September 17; this action awaits CDFA and OAL approval.

Status Update on Other Proposed Regulations. 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:*

-Pesticide Worker Safety and Minimal Exposure Pesticides Regulations. CDFA's proposed amendments to sections 6400, 6724, 6738, 6770, and 6772, its repeal of sections 6410 and 6482, and its adoption of new sections 6790-6793, Titles 3 and 26 of the CCR, regarding pesticide worker safety and minimal exposure pesticides, were modified and approved by OAL on August 20. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 157; Vol. 10, No. 1 (Winter 1990) pp. 121-22; and Vol. 9, No. 4 (Fall 1989) pp. 104-05 for detailed information on these regulatory changes.) The revisions include the deletion of a proposed amendment to section 6400 which would have made the temporary restricted status of propargite, bromoxynil, and folpet permanent; the deletion of proposed new sections 6794-6795 pertaining to minimal exposure training requirements (these sections were incorporated into other sections); and the addition of new section 6772(r), which requires employees entering cotton fields treated with propargite after termination of the reentry interval to wear protective clothing.

-Juice Grape Regulations. This amendment to section 1437.10, Title 3 of the CCR, which prohibits the use of stick-on labels on juice grape containers to indicate varietal designation and requires all variety labels to be printed or embossed on each container, was approved by OAL on August 7. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 157-58 and Vol. 9, No. 4 (Fall 1989) p. 105 for background information.)

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 158-60:

AB 4209 (Allen), as amended August 28, requires the CDFA Director, when engaging in aerial application of an economic poison pursuant to a pest eradication program, to notify local broadcast and print media and cities and counties in the affected area prior to the application and requires that the notice be given in both English and any other language if over 5% of the persons in the area receiving that notice speak only that other language. This bill was signed by the Governor on September 29 (Chapter 1678, Statutes of 1990).

AB 4161 (Katz), as amended August 24, enacts the University of California Pest Research Act of 1990; declares the intent of the legislature that the Regents of the University of California establish the University of California Center for Pest Research to review and prioritize pest-related research conducted through the university; and declares legislative intent that the Center award pest research funds. This bill was signed by the Governor on September 29 (Chapter 1642, Statutes of 1990).

AB 3390 (Areias) increases the maximum limits of civil liability to $2,500 for violations of the California Marketing Act or the Agricultural Producers Marketing Law and specifies that each violation during any day is a separate offense. This bill was signed by the Governor on August 10 (Chapter 500, Statutes of 1990).

AB 3719 (Chandler), as amended August 28, makes it unlawful to refuse or neglect to comply with any lawful order of the CDFA Director issued under provisions regulating pest control operations. This bill was signed by the Governor on September 21 (Chapter 1192, Statutes of 1990).

SB 1798 (Rogers). Under the Birth Defect Prevention Act of 1984, the CDFA Director is required to monitor compliance with the timetable for the filling of all data gaps on all pesticide active ingredients which are registered or licensed in California. This bill, which was signed by the Governor on July 25 (Chapter 432, Statutes of 1990), requires the Director to also review the timetable established by the U.S. Environmental Protection Agency for the accelerated registration program under amendments effective in 1989 to the Federal Insecticide, Fungicide, and Rodenticide Act.

AB 2776 (Waters), as amended August 16, requires the CDFA Director to establish and administer a research program to control vertebrate pests, as defined, which pose a significant threat to the welfare of the state's agricultural economy and the public; and requires the Director to establish the Vertebrate Pest Control Research Advisory Committee, with a prescribed membership, to recommend to the Director priorities for conducting various vertebrate pest control research projects. This bill was signed by the Governor on September 11 (Chapter 757, Statutes of 1990).

AB 2665 (Seastrand) requires county agricultural commissioners to include, in their annual reports to the Director, information on what is being done to manage rather than destroy pests, and actions taken relating to the exclusion of pests. This bill was signed by the Governor on July 13 (Chapter 252, Statutes of 1990).

AB 4176 (Bronzan). Under existing law, CDFA is required, commencing in 1990, to expand and maintain its pesticide residue monitoring program beyond the 1988 level. That program is required to be prioritized to consider pesticides of greatest health concern and contribution to dietary exposure, and for various sensitive subpopulations, including children. As amended August 28, this bill requires the program to be prioritized for various subpopulations which may be uniquely sensitive to pesticide residues, with special emphasis on infants in addition to children. This bill also repeals existing law which requires commercial laboratories conducting pesticide residue analyses on produce or plant tissues to register annually with CDFA. This bill was signed by the Governor on September 20 (Chapter 1129, Statutes of 1990).

AB 563 (Hannigan). Existing law requires hazardous waste to be handled and disposed of pursuant to the provisions regulating hazardous waste, including the requirement that each person producing a hazardous waste provide the person transporting the waste with a manifest and that persons storing hazardous waste obtain a hazardous waste facilities permit. As amended August 23, this bill authorizes a county to develop and establish a program for the collection of banned, unregistered, or outdated agricultural waste from eligible participants, as defined. This bill was signed by the Governor on September 21 (Chapter 1173, Statutes of 1990).

The following bills died in committee: *AB 2644 (Waters, N.)*, which would have revised the procedures to be followed by the CDFA Director when initiating an aerial pest eradication project; *AB 3067 (Murray)*, which would have required DHS to conduct an epidemiological study of possible long-term health effects related to the aerial application of pesticides in urban areas, including cancer, birth defects, and respiratory illnesses; *SB 415 (Torres)*, which would have required the DHS Director, prior to the establishment of a pest eradication plan by the CDFA Director, to prepare a health risk assessment which considers the health effects of pesticide use on the public; *SB 2831 (Petris)*, which would have enacted the Child Cancer Prevention Act of 1990, requiring the CDFA Director, not later than July 1, 1992, to refuse to register any new economic poison and cancel the registration of any previously registered economic poison for use in homes, gardens, or schools which contains ingredients for which health effects studies are incomplete or inadequate; *SB 356 (Petris)*, which would have enacted the Agricultural Hazard Communication Act, requiring the CDFA Director to adopt regulations setting forth an employer's duties towards its agricultural laborers, and to develop crop sheets for each labor intensive crop to be printed in English and Spanish; *SB 970 (Petris)*, which would have enacted the Child Poisoning Prevention Act of 1990 and prohibited the CDFA Director from renewing the registration of a household pesticide after December 31, 1991, if there is an acute effects data gap for the product; *SB 952 (Petris)*, which would have required CDFA to report pesticide active ingredient data gap and other specified information to the legislature by February 1, 1991; and *AB 618 (Speier)*, which would have provided that any packaged food distributed on or after January 1, 1991, is misbranded unless it bears a label disclosing specified nutritional information on the fat and cholesterol content of the food.

LITIGATION:

CDFA's aerial malathion spraying program has prompted many lawsuits by local governments in California, most of which have been unsuccessful in stopping scheduled spraying. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 160 for background information.) Because—at this writing—no spraying has occurred since July 23, many of the lawsuits, including *Huntington Beach v. CDFA*, No. 363384 (Sacramento County Superior Court), and *City of El Cajon v. State of California*, No. EC-002333 (San Diego County Superior Court), are at a standstill and will probably not be pursued unless spraying recommences.

The City of San Bernardino's motion for temporary restraining order banning aerial malathion spraying was denied in *City of San Bernardino v. Voss*, No. C256105 (San Bernardino County Superior Court). However, the city attorney's office recently filed a new case, *City of San Bernardino v. Deukmejian*, No. 25663 (San Bernardino County Superior Court), which broadens the alleged causes of action and names multiple defendants, including the State of California, Governor Deukmejian, CDFA, and CDFA Director Henry Voss.

Several related cases have been filed and are still pending, including *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), *City of Pomona*

v. State of California, No. EAC-078787 (Los Angeles County Superior Court), and *People v. Kizer*, No. BC005249 (Los Angeles County Superior Court). On August 22, these cases were coordinated into the *Medfly Eradication Cases*, No. 2487, before Los Angeles County Superior Court Judge John Zebrowski.

People v. Kizer was prompted by CDFA's announcement that it intended to spray downtown Los Angeles starting on July 5. On the morning of July 5, Los Angeles City Council member Joel Wachs called a press conference to announce that city scientists had discovered that the bait in which the malathion is mixed contains unacceptable levels of heavy metals, including chromium, lead, and nickel contaminants, in violation of Proposition 65, the Safe Drinking Water and Toxics Enforcement Act of 1986. That afternoon, CDFA called off the spraying scheduled for that night, but later stated that the postponement was due not to the city's alleged findings but to procedural testing delays caused by the July 4 holiday. CDFA then announced it would resume spraying the week of July 9.

The city went to court on July 9, suing the private helicopter company with which CDFA contracted to spray the pesticide (because the state is exempt from Proposition 65), and arguing that its test findings shifted the burden of proving compliance with Proposition 65 to the state. However, by that time, the city's laboratory had amended its report to delete its most damaging findings, and the city was left arguing that it needed more time to complete more research. The court denied the city's motion for a temporary restraining order, but allowed it to amend its complaint to add a claim that aerial malathion spraying is a public nuisance.

On September 10, Judge Zebrowski overruled the state's demurrer to the nuisance claim, and ordered additional discovery for all the cases in the coordinated action.

On February 13, 1990, several homeless persons living in Orange County filed a class action lawsuit entitled *Talevich v. Voss*, No. SA-CV-90-92, in the U.S. District Court for the Central District of California, alleging injury from CDFA's January 25 malathion spraying. They alleged that they and other persons in the vicinity exposed to the spray experienced flu-like symptoms, including chills, nausea, vomiting, diarrhea, fatigue, loss of appetite, watering eyes, and shortness of breath. Additionally, they alleged that their bedding, clothes, and personal belongings were damaged by the spray. Some plaintiffs admitted seeing signs posted in the spray area notifying them of the spraying, but nonetheless were outside during the spraying.

Plaintiffs brought suit under various constitutional guarantees, and sought: (1) notice tailored to reach the homeless at least 48 hours prior to aerial malathion spraying; (2) the provision, at state expense, of shelter during the evening applications and transportation thereto; and (3) a post-spray outreach program to provide persons who come into direct contact with malathion a place to bathe and wash their clothes, money for the replacement of clothing and other personal articles soiled by the spray, and any medical attention necessary. Plaintiffs' motion for a temporary restraining order was denied on February 13; plaintiffs' motion for preliminary injunction was heard on March 6, and denied in this order issued April 10.

The court found that parts (2) and (3) of the requested relief were beyond a federal court's jurisdiction, and focused on (1). Interpreting plaintiffs' action as one alleging a deprivation of a liberty or property interest without due process, the court first examined whether there had been such a deprivation. In response to plaintiffs' contention that the continued aerial spraying threatened their right to personal security, the court examined declarations by various plaintiffs as to the health problems experienced after the spraying occurred. Because all such problems were temporary and plaintiffs presented no evidence of any case of permanent malathion poisoning, the court found no deprivation of this interest. Nor did the court find a deprivation of any property interest, as it noted that the homeless plaintiffs could simply wash their clothes and personal property to cleanse them of malathion.

In response to plaintiffs' argument that the state has endangered plaintiffs—thus creating a special relationship with plaintiffs and a duty to protect them, the court found that the state has not been shown to be responsible for plaintiffs' homeless condition; and that the plaintiffs have not made a showing of harm resulting from state action sufficient to "shock the conscience." Thus, under this constitutional analysis, plaintiffs' allegations fail to rise to the level of a constitutional violation.

In other litigation, an environmental coalition consisting of Assemblymember Lloyd Connelly, the California Rural Legal Assistance (CRLA), the Natural Resources Defense Council (NRDC), and residents of two Central Valley towns with childhood cancer clusters filed two lawsuits against CDFA Director Henry Voss for his failure to discontinue use of two pesticides which have leached into groundwater in violation of the Pesticide Contamination Prevention Act of 1985 (which was written by Connelly). The suits, filed in Sacramento County Superior Court on September 5, challenge the continued use of aldicarb, a widely used pesticide and one of the most toxic pesticides known to exist, and atrazine, a carcinogenic herbicide found in numerous wells in Los Angeles and Tulare counties and other areas of the state. The suits are *Salinas, et al. v. Voss*, No. 364935 (atrazine), and *Ramirez, et al. v. Voss*, No. 364936 (aldicarb).

Under the Act, when a pesticide is found contaminating the state's groundwater, the pesticide registrant must demonstrate to a scientific review committee and the Director that any one of three criteria is met: (1) the amount of contamination is below a level which can cause adverse health effects; (2) use of the pesticide can be modified to assure a high probability that no further pollution will occur; or (3) cancellation of the pesticide will lead to severe economic hardship to the agricultural industry of the state. The scientific review committee which considered aldicarb use determined that none of the criteria applied, and voted to ban its use throughout the state. However, on October 30, 1989, CDFA Director Henry Voss overruled the committee's decision after certain tests failed to reveal contaminated wells. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 122 for background information.) The aldicarb suit contends that the Director's decision was an abuse of discretion and seeks a writ of mandate to compel the Director to cancel aldicarb registration.

In the atrazine case, the committee recommended a ban on the use of the chemical for more than 300 square miles around any site where groundwater contamination is discovered. Instead, the Director adopted regulations prohibiting its use for one square mile around a contaminated site. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 94 and Vol. 9, No. 1 (Winter 1989) p. 82 for background information.) The atrazine suit contends that this approach is in clear contradiction to the express purpose of the Act, because it does not prevent contamination, but rather bans the pesticide's use only after contamination occurs. The coalition seeks a writ of mandate compelling the Director to cancel the registration of the pesticide, unless (1) the Director adopts regulations which will prevent atrazine from polluting ground-

water in any region of the state, and (2) the Director issues a determination of the carcinogenic danger of atrazine pollution of groundwater.

CDFA has denied the charges and asserts that the suits are politically motivated. The Department contends that the suits were filed in an effort to boost Proposition 128, the "Big Green" environmental initiative on the November ballot.

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 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:

Amendments to Criteria for Designation of Areas as Attainment, Nonattainment, or Unclassified for State Ambient Air Quality Standards. At its June 15 meeting, the Board approved three amendments to sections 70303 and 70304, Title 17 of the CCR, which set forth the regulatory criteria used to specify areas as attainment, nonattainment, or unclassified for state ambient air quality standards set forth in section 70200, Title 17 of the CCR. Section 70200 specifies standards for nine air pollutants: ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, suspended particulate matter (PM10), sulfates, lead, hydrogen sulfide, and visibility reducing particles.

In June 1989, ARB adopted criteria for designating areas pursuant to these requirements. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 108 for background information.) These criteria delineate which data to use, how to determine the geographic extent of the designation area for the various pollutants, and how to determine attainment, nonattainment, or unclassified status. The criteria also require ARB to conduct an annual review and update of the area designations and to consider any person's request for revision of a designation or review of any decision made pursuant to that designation. These criteria are codified in sections 60200-60209, Title 17 of the CCR.

In adopting the criteria, the Board responded to public comments by directing ARB staff to form a working group comprised of representatives from ARB staff, districts, industry, and concerned citizens to examine possible alternatives to the definitions and standards in the adopted criteria. This work group met monthly through January 1990, and identified and prioritized eight issues relating to designating areas. These issues include (1) the test for nonattainment; (2) designation of areas with limited or no air quality data; (3) consideration of transport in the designation and planning processes; (4) redesignation when monitoring at a high concentration site is discontinued; (5) incentives to encourage monitoring in unclassified areas; (6) responsibility for monitoring; (7) location and representativeness of monitoring sites; and (8) geographic extent or size of designated areas.

In light of the issues identified by the work group and developed by ARB staff, the Board approved three amendments to the original regulatory criteria at its June 15 meeting. One amendment adds subsection (c) to section 70303, which defines the conditions which an area must meet to be classified as "nonattainment-transitional," a status which recognizes progress toward attainment of the standards. This subcategory could apply to areas having three or fewer days violating the standard for a particular pollutant during the previous year. The second amendment adds subsection (d) to section 70304, identifying conditions under which a nonattainment area may be redesignated as attainment when monitoring at the site with the highest concentration is discontinued. The third amendment defines methods for identifying extreme concentration events as highly irregular or infrequent violations that should not be considered in the designations. At this writing, these regulatory changes have not yet been submitted to the Office of Administrative Law (OAL) for review and approval.

The Board staff is also currently conducting its annual review of the area designations. According to a July 10 public consultation notice, staff is proposing seventeen revisions to the existing area designations. These proposed revisions were scheduled for presentation to ARB at its November meeting.

Amendments to Emission Inventory Criteria and Guidelines Pursuant to the Air Toxics "Hot Spots" Information and Assessment Act of 1987. The Air Toxics "Hot Spots" Information and Assessment Act of 1987 ("the Act") created a statewide program to inventory site-specific air toxic emissions of about 400 substances listed in the Act, to assess the risk to public health from exposure to these emissions, and to notify the public of any significant health risk associated with exposure to these emissions. Pursuant to the Act, ARB—in cooperation with the air pollution control districts—established Inventory Criteria and Guidelines for preparing air toxics emission inventories. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 99 for background information.) The regulations'