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'

three main functions are: (1) to specify the information a facility operator must include in the facility's air toxic emission inventory plan and report; (2) to state requirements for source testing and specifications for acceptable emission estimation methods, including the reporting forms to be used; and (3) to establish two groups of substances to be inventoried—those for which emissions must be quantified and those which require reporting of production, use, or other presence. The Criteria and Guidelines became effective on an emergency basis on June 1, 1989, and became permanent in October 1989.

The emission inventory plans were due by August 1, 1989 for those facilities which make, use, or release any of the listed substances, and which release 25 tons per year or more of total organic gases, particulate matter, nitrogen oxides, or sulfur oxides. That deadline also applied to any facilities listed in any current toxics use or air toxics emission survey, inventory, or report compiled by an air pollution control district. Facilities which release from 10 to 25 tons per year of any of these four pollutants (referred to as "less than-10-tpy facilities") and which make, use, or release a listed substance or precursor were required to submit inventory plans by August 1, 1990. The Act required ARB to prepare a report by July 1, 1990, identifying classes of less-than-10-tpy facilities to be included in the program and specifying a timetable for their inclusion.

Thus, at its June 14 meeting, ARB approved staff's report to the legislature entitled *Inclusion in the Air Toxics "Hot Spots" Program of Facilities that Emit Less than 10 Tons Per Year (tpy) of Criteria Pollutants.* The Board also adopted amendments to the Guidelines (sections 93300-93347, Titles 17 and 26 of the CCR) to identify the classes of facilities into two groups in a new Appendix to the regulations. Appendix E-I includes those facilities which must submit complete emission inventory plans and reports to the appropriate air pollution control district. Appendix E-II includes facilities which must submit a one-time survey pertaining to production, use, or other presence of listed substances at the facility. The Board also adopted amendments which specify the types of information to be updated and the ability to use prior source test results in the required biennial updates of emission inventories. At this writing, these regulatory changes have not yet been submitted to OAL for review and approval.

On September 13, the Board conducted a hearing and adopted amendments to sections 90700-90704, Title 17 of the CCR. These regulations, also adopted pursuant to the Act, include both a list of substances that present a chronic or acute threat to public health, and a fee schedule. The fee schedule assesses a fee upon the operator of any facility which (1) manufactures, formulates, uses, or releases any of the listed substances, and releases emission of total organic gases, particulate matter, nitrogen oxides, or sulfur oxides, or (2) is listed on a current toxic inventory, survey or report released or compiled by an air pollution control district. The fees are collected annually by local air pollution control districts to recover the reasonable anticipated costs to the districts, ARB, and DHS.

For fiscal year 1990-91, the fee regulation was amended to include updated state and district program costs and fees. 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 flat fee for facilities which manufacture, formulate, use or release any listed substance, and which release less than 10 tpy of each criteria pollutant and are subject to emission inventory requirements. (Many districts do not have a comprehensive listing of these facilities and will need to expend resources towards developing this inventory.) A separate provision is included to allow the Bay Area Air Quality Management District to continue to base fees on emission of toxic pollutants. The amendments also update the list of substances by adding 66 substances, moving three to a new category, and removing one, and additions/revisions to district toxic inventories. Lastly, the amendments allow for other fee changes for recovery of fiscal year 1990-91 program costs. These regulatory changes also await OAL review and approval.

Amendments to Exhaust Emissions Standards, Certification and Compliance Test Procedures, and Durability Requirements for Light-Duty Trucks, Medium-Duty Vehicles, and Light Heavy-Duty Vehicles and Engines. Typically, medium-duty vehicles (MDVs) are light utility vans and medium-sized pick-up trucks. Light heavy-duty vehicles (LHDVs) consist of larger vans, heavy pick-up trucks, small schoolbuses, and motorhomes. These vehicles currently comprise less than 6% of the total vehicle population, but emit 9% of all on-road hydrocarbons (HCs), 13% of carbon monoxide (CO), and 8% of nitrogen oxides (NOx) released into the air. Because of this disproportionate contribution to air pollution, the Board was specifically mandated by the California Clean Air Act (Chapter 1658, Statutes of 1988) to consider more stringent emission requirements for MDVs and LHDVs.

Within the last year, the Board has adopted a more stringent HC standard that will significantly reduce emissions from passenger cars and light-duty trucks beginning in the 1993 model year. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 90 for background information.) The Board has also mandated the use of electronic diagnostic controls to provide instant consumer awareness of nearly all emission-related problems. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 107-08 for background information.) Finally, in August 1990, the Board decided on a control measure for the virtual elimination of evaporative emissions from light-duty vehicles, and will soon consider establishing standards for low and ultra-low emission passenger cars (*see infra* for details).

At its June 14 meeting, the Board approved further amendments designed to ensure that light-duty trucks, MDVs, and LHDVs have the most advanced emission control systems which are technologically feasible, and that the systems are properly designed to last for the useful life of the vehicle. The Board amended regulations regarding HC, CO, and NOx exhaust emission standards for light-duty trucks, MDVs and LHDVs (Title 13, sections 1956.8 and 1960.1). The Board also approved amendments to the definition of MDVs and the test procedures for current MDVs and LHDVs (Title 13, section 1900). Finally, the Board approved amendments to the in-use enforcement and on-board diagnostic regulations to make these regulations applicable to and more practical for MDVs and LHDVs (Title 13, sections 1968.1, 2061, 2112, and 2139).

The approved amendments included modifications from previously proposed language, which resulted after consultations between ARB staff and EPA officials. Because the modifications were introduced at the meeting, the Board reopened the public comment period until August 23. The modified amendments await OAL review and approval.

Sulfur Content of Motor Vehicle Diesel Fuel. Section 2255, Title 13 of the CCR, establishes a statewide maximum sulfur content standard of 500 parts per million (ppm) for motor vehicle diesel fuel, starting October 1, 1993. This regulation includes a provision which substitutes a 1,500 ppm sulfur content limit for the 500 ppm limit where the person selling, supplying, or offering the diesel fuel demonstrates that reasonable precautions have been taken

to assure the fuel will be dispensed only to motor vehicles at altitudes above 3,000 feet and between November 1 and March 31. This provision was included because some refiners indicated it was necessary for them to blend higher sulfur content jet fuel into diesel fuel sold at higher elevations in the wintertime to achieve acceptable cloud/pour characteristics.

On June 21, the Board conducted a hearing and adopted a proposed amendment to section 2255 which deletes the less stringent sulfur content standard for higher altitude wintertime diesel fuel. Most jet fuel produced by California refiners has a sulfur content below 500 ppm and, in cases where jet fuel is not available, cloud/pour point depressancy additives appear to be an available alternative. Therefore, most California refiners will be able to comply with the regulation without any additional costs. This regulatory change was submitted to OAL for approval on September 7.

Inorganic Arsenic Identified as a Toxic Air Contaminant (TAC). At its July meeting, ARB held a public hearing and adopted a proposed amendment to section 93000, Titles 17 and 26 of the CCR, which adds inorganic arsenic to ARB's list of TACs with no identified threshold exposure level below which no significant adverse health effects are anticipated.

Inorganic arsenic is emitted from several types of sources in the state and has been identified and quantified in the ambient air. It is highly mobile in the environment and is not naturally removed or detoxified at a rate that would significantly reduce public exposure.

ARB considered a report prepared by the Department of Health and Human Services (DHS) which evaluated the health effects of inorganic arsenic, and stated that there is strong evidence of carcinogenicity due to inhaled inorganic arsenic. DHS staff further found that there is not sufficient scientific evidence to support the identification of an exposure level below which carcinogenic effects would not have some probability of occurring. Thus, DHS recommended that inorganic arsenic be treated as having no identified threshold.

No control measures were proposed for adoption at this hearing. However, a report on the need and appropriate degree of control measures to reduce inorganic arsenic emissions will be developed. At this writing, ARB is awaiting DHS' completion of its part of the rulemaking file before submitting it to OAL for approval.

Dioxin Emissions From Medical Waste Incinerators. On July 13, ARB adopted new section 93104, Titles 17 and 26 of the CCR, an airborne toxic control measure for dioxin emissions from medical waste incinerators. The language of the new section was modified at the hearing, and was released for a 15-day public comment period ending on September 5.

Dioxins have been listed as TACs for which there is not sufficient available scientific evidence to identify a threshold exposure level below which no significant health effects are anticipated. Staff's original proposal recommended the following requirements for all medical waste incinerators: a reduction in dioxin emissions by at least 99% from uncontrolled levels or to a level not greater than ten nanograms of dioxin per kilogram of waste burned; combustion operating parameters; continuous emission monitoring; emission source tests; and operator training. The modified version imposes less stringent requirements on small facilities posing a lower near-source risk. The modified proposal recommends operator training only for incinerators which burn up to 10 tpy; operator training and an initial source test only for incinerators burning 10-25 tpy; and the full complement of requirements for incinerators burning more than 25 tpy. The staff also recommended that the Board direct the Executive Officer to request district evaluation of cadmium control on a case-by-case basis, and to evaluate the need for a further control measure to reduce cadmium emissions through source minimization and segregation.

Once the new section becomes effective, the districts must propose regulations enacting a control measure within 120 days and must adopt the regulations not later that six months following the effective date. The adopted measure requires all facilities which continue incineration to obtain authority from the districts to construct, and to conduct periodic source tests to demonstrate compliance. Additionally, all incinerators within a district must comply with the control measure no later than 15 months after adoption by the district. An owner or operator who intends to permanently shut down must notify the district no later than ninety days after district adoption.

At this writing, new section 93104 has not yet been submitted to OAL for approval.

Emission Reduction Accounting Procedures. On July 12, the Board conducted a hearing and adopted new sections 70700-70704, Title 17 of the CCR, which set forth emission accounting procedures to be employed by nonattainment districts in demonstrating adherence to state ambient air quality standards. Because the language of the new provisions was modified at the hearing, the regulations were released for a 15-day public comment period ending on September 24.

The California Clean Air Act requires ARB and local air pollution control districts to perform certain tasks designed to reduce emissions to provide for attainment of air quality standards by the earliest practicable date. Chapter 10 of the Act specifically requires "that districts shall endeavor to achieve and maintain state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide...." As part of this effort, each district which has been designated as a nonattainment area for each and any of the above pollutants is required to prepare and submit a plan for attaining and maintaining the state ambient air quality standards.

The new emission accounting regulations apply to every nonattainment district plan. Under section 40914 of the Act, districts must reduce districtwide emissions by 5% or more per year or, with Board approval, employ an alternative emission reduction strategy or use an air quality indicator to measure progress. Under the newly adopted regulations, district plans are required to use the emission accounting procedures outlined in the regulations regardless of the method by which the plan seeks to attain the state standards.

New section 70700 specifies districts designated as nonattainment for the state ozone, carbon monoxide, nitrogen dioxide or sulfur dioxide, as subject to the accounting regulations. Section 70701 defines terms used throughout the regulation. Section 70702 delineates the information required in each district plan to account for emission reductions. Each district plan must include an analysis of emission changes from 1987 through at least 2000; the baseline emission inventory for each nonattainment pollutant or precursor; the baseline emission inventory forecast for the last year of each reporting interval for each nonattainment pollutant; calculated emission inventory targets (unless the Board has approved an alternative strategy or air quality related indicator for district use); identification of credited emission reductions for each reporting interval; and, for each control measure anticipated to be implemented within ten years of district plan adoption, the district shall specify the date of adoption, total emissions reduced by the measure, and date of implementa-

tion (including the reporting intervals) within which the emission reductions shall occur.

Section 70703 provides that districts may estimate emission changes on the basis of new data or methods, if the baseline emission inventory has first been backcast and the inventory forecast has been revised to reflect those changes. However, all changes are subject to the approval of the ARB Executive Officer.

Section 70704 requires where two or more local plans are incorporated, cited, or appended to a district plan, the district plan shall ensure that assumptions for population, employment, industrial growth, transportation activities, energy use, and other critical factors are consistent throughout the plans.

At this writing, the modified version of these new regulations awaits OAL approval.

Transport Mitigation Regulations. At its August 10 meeting the Board adopted new sections 70600 and 70601, Title 17 of the CCR, which require specified districts to adopt and implement emission control measures to abate the impact of transported pollutants on downwind receptor areas.

As part of its regulatory mandate under the California Clean Air Act, the Board is required to "assess the relative contribution of upwind emissions to downwind ambient pollutant levels" and to "establish mitigation requirements commensurate with the level of contribution." Health and Safety Code section 39610(b). Staff's report included ARB's identification of several "transport couples" (a source of upwind emissions and a downwind receptor area) (see CRLR Vol. 10, No. 1 (Winter 1990) p. 126 for background information), and staff's assessment of the level of transport on a day-to-day basis for each transport couple. "Significant" transport occurred on days when the upwind source of emissions contributed measurably to a violation of the state ozone standard in the downwind area. If a downwind violation was caused independently by the upwind source, it was deemed "overwhelming." Transport was considered "inconsequential" on days when the state ozone standard was violated in the downwind area without substantial contribution from the upwind air basis.

New section 70600 identifies five upwind areas that are sources of "significant" or "overwhelming" transport. These five areas include: (1) the Broader Sacramento Area; (2) the San Francisco Bay Area Air Basin; (3) the San Joaquin Valley Air Basin; (4) the South Central Coast Air Basin; and (5) the South Coast Air Basin. Section 70600 requires that districts within the five "significant" upwind air basins include in their air quality plans measures to mitigate the impact of pollution sources within their jurisdictions on downwind areas. Specifically, they must: (1) adopt and implement control measures for existing sources that represent the Best Available Retrofit Control Technology; (2) establish a permitting program that requires no net increase in emissions of ozone precursors; and (3) if under the "overwhelming" transport category, the control measures adopted must be sufficient to attain state ambient air quality for ozone by the earliest practicable date.

Staff's originally proposed language for these regulations was modified in response to public comments and new technical information presented at the August 10 hearing. Thus, ARB released the modified regulatory language for an additional public comment period which ended on October 8.

Amendments to Regulations Regarding Evaporative Emissions Standards, Test Procedures, and Durability Requirements Applicable to Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, and Heavy-Duty Vehicles. At its August 9 meeting, the Board approved staff-recommended amendments to section 1976, Title 13 of the CCR, and the incorporated *California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Liquefied Petroleum Gas or Gasoline- or Methanol-Fueled Motor Vehicles.* These regulations specify standards for running losses and extend the durability requirements for evaporative emission control systems to be the same as those for exhaust hydrocarbon systems. For passenger cars and light-duty trucks, the durability requirement is 100,000 miles. For medium-duty vehicles and heavy-duty vehicles, the durability requirements are 120,000 miles.

All vehicle classes currently required to comply with evaporative emission standards, except motorcycles, would be affected by the amendments. The amendments change the evaporative test procedures to be more representative of the conditions experienced by vehicles on high temperature, high ozone days. Since the modifications have been chosen to simulate extreme conditions, the standards would provide control of the upper limit of vehicle evaporative hydrocarbon emissions. Unlike exhaust emissions, evaporative HC emissions would be substantially lower under temperatures less extreme than those found in the new test procedure.

The new test procedure and standards will be implemented through a phased four-year compliance schedule. The new standards would have to be met by 10% of a manufacturer's estimated sales of each vehicle classification in 1995, 30% in model-year 1996, 50% in model-year 1997, and 100% in 1998. This phased-in implementation will allow a rapid emissions benefit to be realized while minimizing the engineering and certification burden on vehicle manufacturers. It will also allow manufacturers additional lead time to build and modify the evaporative testing facilities needed to perform the procedures.

At this writing, these regulatory changes have not yet been submitted to OAL.

Evaluation of Programs for the Reductions of Chlorofluorocarbon (CFC) Emissions from Motor Vehicle Air Conditioning Systems. Stratospheric ozone depletion is inherently a global problem, and each state, county, or locality has a limited ability to deal with the problem. In addressing this dilemma, most of the industrialized world has agreed to gradually phase out the production of CFCs by 2000. This unprecedented international environmental agreement is embodied in the 1990 amendments to the "Montreal Protocol," which the United States is expected to adopt in federal regulations. The original Protocol provisions have already been adopted as federal regulations. It is likely that these regulations will eventually be implemented by state or local agencies. This likelihood prompted an ARB evaluation discussed and approved at the Board's August 9 meeting.

Recognizing the serious global problem of ozone depletion caused by chemicals such as CFCs, AB 1736 (Friedman) (Chapter 1321, Statutes of 1989) required ARB to evaluate existing state programs designed to check the manufacture and release of CFCs within the state, particularly as they relate to vehicle air conditioners. The Board's report reviews the current state of knowledge regarding the destructive effect that chlorine atoms from CFCs have on the upper atmosphere, and outlines some of the possible dangers that upper-level ozone depletion will present to the world below. It also addresses the contribution that California is currently making to the problem and the solution.

California presently accounts for 2.8% of the total global "ozone depletion potential" associated with CFC emissions. CFC emissions from vehicle air conditioners alone account for 12.4% of the current California ozone depletion contribution. The report implies that this

source should be a major target in a statewide effort to restrict and eventually eradicate CFCs.

In an economic analysis of the interplay between the Montreal Protocol production limits and market forces, the report concludes that mandating CFC use restrictions in California at the chemical production level will have little impact on the threat of ozone depletion. Instead, the report suggests that California adopt measures to: (1) eventually ban the sale of motor vehicles equipped with CFC-based air conditioners; (2) immediately ban the sale of small-container refrigerants and encourage the recycling effort of those containers currently on the market; (3) require recycling of the refrigerant during the servicing of all vehicle air conditioners; (4) pass a resolution phasing out new production of CFCs as soon as is technologically feasible (accelerated from the amended Montreal Protocol); and (5) encourage "drop-in replacements" for CFC-driven air conditioners. Some of these policies were recently addressed by the legislature (*see infra* LEGISLATION).

The rationale behind these policies is to prevent the introduction of any new CFCs in the state by using and reusing the CFCs that have already been introduced. ARB staff will be reviewing other uses of CFCs in order to determine whether the findings in this report are applicable to these uses. A report on these other uses is expected in June 1991.

Update on Other ARB Regulatory Changes. The following is a status update on regulatory changes approved by ARB and discussed in detail in previous issues of the *Reporter*:

-ARB's February 1990 amendments to sections 1900(b)(2), 2222(e), and 2224(b), Title 13 of the CCR, its Criteria for the Evaluation of Add-on and Modified Parts, were approved by OAL on July 17. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 161-63 for background information.)

-The Board's April 1990 adoption of new section 93106, Titles 17 and 26 of the CCR, which sets forth an airborne toxic control measure regulating permissible levels of asbestos-content serpentine rock used in surfacing applications, has not been submitted to OAL at this writing. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 163 for background information.)

-ARB's May 1990 adoption of new section 90800.1 and amendments to sections 90800, 90802, and 90803, Title 17 of the CCR, which require the collection of permit fees from specified nonvehicular source facilities, has not been submitted to OAL at this writing. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 163-64 for background information.)

-The Board's May 1990 adoption of new section 90621.1 and amendments to sections 90620, 90621, 90622, and 90623, Title 17 of the CCR, which require local air pollution control and air quality management districts to collect permit fees from major nonvehicular sources of sulfur oxides and nitrogen oxides to fund the Board's Atmospheric Acidity Protection Program for fiscal year 1990-91, has not been submitted to OAL at this writing. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 164 for background information.)

-ARB's January 1990 adoption of new sections 94146-94149, Title 17 of the CCR, which establish a new test method for determining emissions from nonvehicular sources, was submitted to OAL for approval in September. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 167 for background information.)

-The rulemaking file on ARB's December 1989 adoption of amendments to sections 2035-2041, Title 13 of the CCR, concerning emission control system warranty requirements, still awaits review and approval by OAL. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 124 for background information.)

-On September 12, OAL rejected ARB's November 1989 adoption of new sections 94500-94506, Title 17 of the CCR, which would reduce volatile organic compounds from aerosol antiperspirants and deodorants. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 124 for background information.) OAL found that the rulemaking record failed to satisfy the clarity and necessity standards in Government Code section 11349.1. Specifically, OAL found the terms "existing product," "annual information reporting requirement," and "full atmospheric models" insufficiently defined in the regulations; further, the rulemaking record did not demonstrate the necessity for the presumption created in section 94506(b) concerning conflicting results of scientific tests. The Board plans to modify the language of these proposals to satisfy OAL's objections, and release it for an additional 15-day comment period.

-ARB's September 1989 adoption of new section 1968.1, Title 13 of the CCR, which requires vehicle manufacturers to equip 1994 and later model vehicles with advanced on-board diagnostic systems, was approved by OAL on August 27. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 107-08 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 165-67:

AB 3153 (Tanner), which applies criminal and additional civil penalties to violations of toxic air contaminant (TAC) provisions, was signed by the Governor on September 9 (Chapter 660, Statutes of 1990).

AB 3555 (Sher), as amended August 21, deletes the September 30, 1989 due date in existing law which requires ARB to classify each air basin according to whether it has or has not attained state ambient air quality standards, and makes conforming changes to those provisions. Existing law requires ARB to establish, by regulations, maximum standards for the volatility of gasoline; this bill requires ARB to establish that maximum level at or below nine pounds per square inch. This bill was signed by the Governor on September 14 (Chapter 932, Statutes of 1990).

AB 3783 (Campbell), as amended August 15, would have authorized ARB to impose a civil penalty for violation of a rule or regulation of an air pollution control district or air quality management district limiting emission of a TAC identified by ARB. This bill was vetoed by the Governor on September 30.

AB 3898 (Brown, W.), as amended July 3, provides that it is the policy of the state that state agencies implementing small business assistance programs, in cooperation with air pollution control districts and ARB, are encouraged to require the Office of Small Business to assist businesses to comply with environmental requirements and regulations. This bill was signed by the Governor on September 9 (Chapter 666, Statutes of 1990).

SB 1905 (Hart), as amended August 23, would have enacted a program known as the Demand-Based Reduction in Vehicle Emissions (Plus Reductions in Carbon Monoxide) (or "Drive-Plus") Program of 1990; increased the state sales tax on new vehicles which produce more pollutants than average; and decreased the sales tax on cleaner vehicles. This bill was vetoed by the Governor on September 30.

SB 2330 (Killea), as amended August 27, requires ARB, if it determines that heavy-duty diesel motor vehicles, or a class of those vehicles, cannot be modified to achieve compliance with applicable emissions standards, to report thereon to the legislature by January 1, 1994.

This bill was signed by the Governor on September 29 (Chapter 1453, Statutes of 1990).

SB 2521 (Davis), as amended August 27, requires motor vehicle fuel distributors to provide certain information to ARB and maintain certain records; prohibits various acts relative to transport or sale of fuel; and prescribes penalties for violations. This bill also makes the violation of any ARB regulation relating to motor vehicle fuels a misdemeanor, requires the dismissal of a civil action if the ARB Executive Officer refers a violation to a prosecutor for criminal prosecution, and prohibits criminal prosecution if civil penalties have been recovered. This bill was signed by the Governor on September 22 (Chapter 1252, Statutes of 1990).

SB 1764 (Roberti). Existing law requires ARB to evaluate programs to reduce CFC emissions from motor vehicle air conditioners. As amended August 23, this bill would have made a statement of legislative intent and would have required the California Energy Commission to adopt a program to reduce CFC emissions. This bill was vetoed by the Governor on September 28.

SB 1817 (Roberti), as amended August 29, would have enacted the Toxic Air Pollution Prevention Act of 1990, and would have required specified facilities to prepare a pollution prevention audit and plan, and plan summary, which would be submitted to the appropriate air pollution control district or air quality management district initially, as specified, and to conduct an audit and establish a plan every four years thereafter. The bill would have imposed various duties on ARB relating to the reduction of toxic air emissions, including the adoption of regulations by October 1, 1992, and the adoption of a fee schedule by January 1, 1992. This bill was vetoed by the Governor on September 29.

SB 1874 (Presley), as amended August 21, requires ARB to request the Bureau of Automotive Repair (BAR) to implement the Smog Check Program in districts which are nonattainment for ozone or carbon monoxide, in which it is not already being implemented, unless ARB determines that the problem is predominantly caused by transport and the program would not mitigate or resolve the problem. This bill was signed by the Governor on September 30 (Chapter 1433, Statutes of 1990).

SB 2400 (Marks) would have prohibited the manufacture, distribution, or sale on and after January 1, 1991, of any polystyrene foam for food service products or food packaging made with specified CFCs. This bill was vetoed by the Governor on July 30.

SB 1770 (McCorquodale), as amended August 31, would have created the San Joaquin Valley Air Quality Management District to include all of the counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare. The districts would have assumed the functions of the county air pollution control districts in those counties on July 1, 1992. This bill was vetoed by the Governor on September 30.

AB 4070 (Connelly), as amended August 21, requires ARB to request BAR to implement the Smog Check Program in all districts, except in the Lake Tahoe Air Basin, designated as nonattainment for ozone or carbon monoxide, in which it is not already implemented, unless the problem is caused by transport or the program would not mitigate or resolve the problem. This bill was signed by the Governor on September 29 (Chapter 1432, Statutes of 1990).

SB 1790 (Rosenthal), as amended July 23, would have stated legislative intent, defined terms, and required any owner or operator of a retail store, cold storage warehouse, or commercial or industrial building, when servicing or removing from service a refrigeration system containing CFCs, and any person who installs, replaces, or services those refrigeration systems, to reuse or recycle the CFCs. This bill also would have prohibited intentionally venting or disposing of CFCs, and required the owner or operator of these refrigeration systems to establish and revise an inventory of the systems, containing specified information, and to make the inventory available to specified public agencies. This bill was vetoed by the Governor on September 21.

AB 2532 (Vasconcellos), as amended August 28, would have required ARB to adopt regulations to provide for the enforcement of provisions requiring specified reductions in the percentage of new motor vehicles equipped with air conditioners which utilize CFC-based products. This bill was vetoed by the Governor on September 29.

AB 911 (Katz), which, as amended July 2, increases the fines for discharging, below an elevation of 4,000 feet, air contaminants from a vehicle with a gross weight rating of 6,001 or more pounds, was signed by the Governor on July 18 (Chapter 367, Statutes of 1990).

SB 907 (Vuich), as amended July 3, would have provided for a 10% reduction in the vehicle license fee for specified low-emission motor vehicles, commencing with the 1992 model year. This bill was vetoed by the Governor on September 30.

The following bills died in committee: *AB 3152 (Tanner)*, which would have required ARB, in consultation with other agencies and designated persons, to report to the Governor and the legislature by January 1, 1992, with recommendations for a plan to reduce or prevent public exposure to indoor air pollutants; *SB 2331 (Killea)*, which would have allowed districts designated by ARB as nonattainment area for state ambient air quality standards for ozone or carbon monoxide to adopt regulations to require operators of public and commercial light- and medium-duty fleet vehicles to purchase low-emission motor vehicles, under specified circumstances; *AB 1332 (Peace)*, which would have prohibited the certification by ARB of a 1995 or later model year motor vehicle which has an air conditioning system that uses chlorofluorocarbons (CFCs); *AB 2727 (Waters, N.)*, which would have authorized ARB to conduct studies to evaluate the acute and chronic adverse health effects of agricultural burning; *AB 4093 (Roybal-Allard)*, which would have made it a misdemeanor to deny right of entry to an official of an air pollution control district or air quality management district; *AB 1718 (Hayden)*, which would have required ARB to prepare and implement a specified plan as provided by the Environmental Protection Act of 1990, an initiative that appeared as Proposition 128 on the November 6 general election ballot; *SB 1677 (Garamendi)*, which would have required local air pollution control districts to designate persons as voluntary clean fuel consumers by virtue of their use of clean fuels rather than fuel oil in the combustion process; *SB 718 (Rosenthal)*, which would have appropriated funds for allocation to specified air pollution control districts and air quality management districts to ensure that offshore oil operations conform to federal and state air pollution requirements; and *AB 2203 (Cortese)*, which would have required ARB to prepare guidelines for cities and counties to use in developing the air quality elements included in their general plans.

LITIGATION:

A May 7 order in *Citizens for a Better Environment, et al., v. Deukmejian*, No. C89-2044-TEH, and *Sierra Club v. Metropolitan Transportation Commission, et al.*, No. C89-2064-TEH, addresses the last three remaining issues raised by plaintiffs' extensive motions for summary judgment: MTC's compliance with the Conformity Assessment

provisions of the 1982 Bay Area Air Quality Plan (1982 Plan), and the liability of Governor Deukmejian and the Association of Bay Area Governments (ABAG). (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 167 for extensive background information on these consolidated Clean Air Act section 304 citizens' suits against ARB, MTC, and the Bay Area Air Quality Management District.)

The Sierra Club's third claim for relief concerns the "Transportation Conformity Assessment" provisions set forth in Appendix H of the 1982 Plan. It seeks a summary judgment that MTC has failed to carry out the assessments required by those provisions. MTC counters that the Conformity Assessment requirements are not enforceable in a citizens' suit, and even if they are, MTC has fulfilled them in a satisfactory manner.

The Conformity Assessment provisions at issue require MTC to annually review the Bay Area's Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) to assess their compliance with the 1982 Plan. With respect to the RTP, this assessment "will include...a determination of the air quality impacts of the RTP amendments." With respect to the TIP, this assessment "will include:...an assessment of major highway projects to determine if they will adversely affect emissions."

These provisions are designed to assist MTC in complying with section 1765(c) of the Clean Air Act, which prohibits entities such as MTC from approving any project which does not conform to an approved State Implementation Plan (SIP)—in this case, the 1982 Plan. The Environmental Protection Agency's (EPA) SIP approval policy also requires inclusion of conformity assessment provisions.

The court first found that the Conformity Assessment provisions of the 1982 Plan are fully enforceable in a citizens' suit, and that the Sierra Club had standing to enforce them. MTC than claimed that it had satisfied the requirements by broadly evaluating highway-related projects in both the TIP and RTP. However, the court evaluated MTC's analyses and found that MTC's approach did not comply with the statute. Although it found liability, the court found the record deficient with respect to an appropriate remedy, and deferred ordering any remedy pending receipt of supplemental submissions from the parties.

With respect to the liability of ABAG, plaintiffs argued that it should be held "jointly liable" with the other defendants, and that it should be ordered to cooperate with the other agency defendants by providing them with data, analysis, and other assistance. However, the court denied this motion on grounds that plaintiffs did not demonstrate that ABAG had been uncooperative, and because plaintiffs cited no authority for their argument.

The court also denied plaintiffs' motion with respect to Governor Deukmejian, because "the basis for CBE's motion...is not readily apparent from the motion papers." Plaintiffs sought an order requiring the Governor to ensure that a revised SIP is submitted to EPA in a timely manner; however, the court denied the motion because a citizens' suit is not the appropriate vehicle to compel preparation of a SIP, and because EPA has already directed the Governor to submit a revised SIP by September 30, 1991.

On August 28, in response to plaintiffs' motion for reconsideration, the court additionally found defendants ARB, MTC, and Bay Area Air Quality Management District liable for violating the 1982 Plan's "contingency plan" with respect to stationary sources of pollution. Plaintiffs had previously argued that the 1982 Plan's contingency plan required defendants to adopt, absent a showing of "reasonable further progress" (RFP) toward national ambient air quality standards (NAAQS) each year, sufficient additional stationary source control measures to attain NAAQS for ozone. The court rejected this argument in an earlier ruling as being unsupported by the language of the 1982 Plan. In their motion for reconsideration, plaintiffs argued that while the 1982 Plan may not require sufficient contingency measures to attain NAAQS, it does require sufficient contingency measures to make RFP; the court found this argument more meritorious, and proceeded to analyze how RFP should be measured.

After analyzing RFP measurement methods proffered by both plaintiffs and defendants, the court concluded that defendants had failed to achieve RFP even under their own definition: "the RFP the 1982 Plan promised to make by 1987 has still not been achieved in 1990—regardless of which yardstick we use." Thus, the court ordered defendants to implement the contingency plan with respect to stationary sources by December 31, 1991.

RECENT MEETINGS:

On September 13, ARB adopted proposed revisions to the Air Pollution Emergency Plan for Ozone Episodes. California's Air Pollution Emergency Plan (APEP) is meant to protect public health. The APEP provides a general framework which may be used by air quality management districts and air pollution control districts in drafting their emergency plans and regulations. The district plans identify actions to be taken when air pollutants reach or are predicted to reach specified levels (episode stages). Presently, there are three stages for ozone levels for a one-hour average concentration in parts per million (ppm): Stage 1 (0.20 ppm); Stage 2 (0.35 ppm); and Stage 3 (0.50 ppm).

The Board approved changes in terminology (to refer to "ozone" rather than "oxidant"); a reduction in the Stage 1 criterion level from 0.20 ppm to 0.15 ppm; and allowing the option of forecasting Stage 1 episodes in districts with five or fewer exceedances per year at a level greater than or equal to 0.15 ppm ozone. The proposed change from 0.20 to 0.15 ppm was based on DHS' conclusion that exposure to 0.15 ppm ozone is associated with adverse respiratory effects in children or adults who are vigorously exercising for more than one hour. The impact on most districts will be an increase in the number of episode days, required modifications of their emergency plans, and an increase in forecasting—including forecasting capabilities such as increases in staff and monitoring systems. Regional air pollution districts have until next summer to implement the new guidelines.

On September 19, ARB staff conducted a workshop to provide manufacturers of locomotives an opportunity to discuss regulatory options with ARB staff and to supply any data and information which might be pertinent. Areas of specific interest include: (1) changes in railroad operating practices; (2) locomotive shutdown policy; (3) injection timing retard systems; (4) general information regarding current fleet size and maintenance; and (5) alternative emissions control technologies. The workshop was conducted pursuant to a legislative mandate included in the California Clean Air Act of 1988. The Act also requires that ARB consider the adoption of emission regulations for off-road mobile sources, such as trains, that are currently unregulated. The workshops are the first step toward drafting these regulations.

FUTURE MEETINGS:

To be announced.