



# REGULATORY AGENCY ACTION

ary 17, affects existing law which authorizes the Savings and Loan Commissioner, if he/she believes that the public interest may be served by the appointment of a conservator, to appoint a conservator for a savings association, ex parte and without notice, if the Commissioner finds that the association is in an impaired condition, is engaging in practices which threaten to result in impaired condition, is in violation of an order or injunction, or where the association refuses to submit it books, papers, and affairs for inspection by the Commissioner. This urgency law instead authorizes that action whenever the Commissioner deems it necessary in order to conserve the assets of any association for the benefit of depositors and other creditors, and additionally specifies conditions when the assets of the association are substantially dissipated because of violations of law or regulation, unsafe or unsound practices, or when the association is in an unsafe or unsound condi-

tion to transact business. This bill was signed by the Governor on April 14 (Chapter 11, Statutes of 1989).

## LITIGATION:

In *Coit Independence Joint Venture v. Federal Savings and Loan Insurance Corp.*, 89 Daily Journal D.A.R. 3637, the U.S. Supreme Court reversed the Fifth Circuit Court of Appeals and ruled that Congress did not grant the Federal Savings and Loan Insurance Corporation (FSLIC) exclusive authority to adjudicate state law claims against a failed savings and loan association. Creditors of a failed savings and loan are entitled to judicial review of these claims. Moreover, they need not exhaust FSLIC's administrative claims procedures before suing because the lack of a clear deadline on FSLIC's consideration of claims makes its procedure inadequate. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 90 for background information on this case.)

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

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

## MAJOR PROJECTS:

*Implementation of Proposition 97.* At its March meeting, OSB staff announced that it had attended a special two-day training session on rulemaking conducted by the Office of Administrative Law (OAL). In an attempt to bring California's standards to a level at least as effective as federal OSHA's standards, staff is exploring ways to accelerate the process of adopting standards. Staff noted that because of the general interest in the restoration of Cal-OSHA's private sector enforcement and the need to reduce confusion on the part of the public as a result of dual enforcement that was present prior to Proposition 97, the adoption of some standards on an emergency basis may be possible.

*Regulatory Action Approved.* At its March meeting, OSB adopted proposed changes to Title 8, Boiler and Unfired Pressure Vessel Safety Orders, Article 5, section 779(a) and (b) of the California Code of Regulations (CCR). On December 23, OAL had disapproved previously adopted revisions to this section (see CRLR Vol. 9, No. 2 (Spring 1989) pp. 91-92 and Vol. 9, No. 1 (Winter 1989) p. 80 for background information). Existing subsections (a) and (b) of section 779 outline the qualifications and conditions under which a certificate of competency may be issued to a person employed as an inspector of boilers and pressure vessels. The purpose of this rulemaking action is to update the California regulations to be consistent with the rules of the National Board of Boiler and Pressure Vessel Inspectors, and to ensure that applicants with a certificate of competency have proper knowledge of the Boiler and Fired Pressure Vessel Safety Orders and Unfired Pressure Vessel Safety Orders in Title 8. OSB decided that the modifications made by staff to the proposed revisions since OAL's disapproval were adequate to meet OAL's standards. OAL approved these regulatory changes on May 12.

*Emergency Asbestos Regulations.* At its May meeting, staff provided OSB with advance notice that an emergency adoption of revisions to Cal-OSHA's asbestos standards would be scheduled



## DEPARTMENT OF INDUSTRIAL RELATIONS

### CAL-OSHA

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

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140-49. It is approved and monitored by, and receives some funding from, the federal OSHA.

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety orders which affect California government employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the

adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

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

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



for the June meeting. This emergency adoption would attempt to bring Cal-OSHA's standards in line with the present federal standards and would change the permissible exposure limit from 2 fibers to .2 fibers, with new sampling and analytical procedures, and establish a thirty-minute excursion limit as in the federal standards. Additionally, staff is preparing a 45-day notice of these proposed changes for a regulatory hearing on August 24, which would make these changes permanent.

## LEGISLATION:

**AB 1469 (Margolin).** Section 9004.5 of the Labor Code provides for the Occupational Carcinogens Control Act of 1976, under which standards are required to be adopted by OSB concerning the use of specified carcinogens in places of employment. The Act also defines the term "carcinogen" to include a list of certain recognized cancer-causing substances for which OSB has adopted standards.

This bill would require OSB, within a specified period of time, to revise the CCR to include any carcinogen on the Governor's list of those chemicals known to cause cancer or reproductive toxicity, unless a substance is covered by a separate comparable standard, or the OSB exempts a substance which presents no substantial threat to employee health pursuant to a specified provision. This bill passed the Assembly Committee on Labor and Employment on May 4, and was referred to the Ways and Means Committee suspense file on May 24.

**SB 1180 (Royce).** Section 60.9 of the Labor Code requires DOSH, in performing its responsibilities, to provide for laboratory services and service personnel for occupational health matters by interagency agreement with the state Department of Health Services (DHS). This bill would instead require DOSH to provide those services by interagency agreement with DHS or another public entity, by contract with a private sector laboratory, or by establishment of a laboratory within DOSH, or a combination thereof.

This bill would also require DOSH, if it contracts with the private sector for laboratory services, to enter into an interagency agreement with DHS for quality control and performance evaluation of the contract laboratory as well as analysis of nonroutine laboratory samples. This bill passed the Senate on June 1, and is pending in the Assembly Committee on Labor and Employment at this writing.

**SB 1371 (Petris)** would permit any

person to petition OSB to adopt a new occupational safety and health standard or modify an existing standard. It would also require OSB to follow prescribed procedures with regard to these petitions. This bill passed the Senate on May 18 and is pending in the Assembly Committee on Labor and Employment at this writing.

**AB 750 (Roos)** would require OSB to adopt occupational safety and health standards concerning work involving contact with bodily fluids so as to protect the safety of health care workers, and would require OSB, in developing these standards, to seek the advice of DHS and to assure that the standards developed are no less stringent than those developed by DHS for licensed health facilities. This bill is pending in the Assembly Committee on Labor and Employment at this writing.

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at pages 92-93 and Vol. 9, No. 1 (Winter 1989) at pages 80-81:

**SB 198 (B. Greene)** was substantially amended on May 18. This bill would now require every employer to establish, implement, and maintain an effective written injury prevention program including specified elements, and to provide specified training of employees in general safe and health work practices. This bill would also require OSB to adopt standards setting forth the employer's duties with regard to the injury prevention program, including, among other things, requiring an employer and employee occupational health and safety committee with specified duties for specified sizes and types of employers.

Existing law prohibits an employer from discharging or discriminating against an employee for making complaints, instituting proceedings, or testifying with regard to employee safety or health. SB 198 would also prohibit an employer from discharging or discriminating against an employee for participating in an occupational health and safety committee.

Existing law permits DOSH to investigate any place of employment whenever it learns or has reason to believe that the place of employment is not safe or is injurious to the welfare of any employee. This bill would require the DIR Director to establish a list of the 100 highest hazard industries in California, and would require DOSH to establish and maintain regional plans for allocating resources for enforcement activities and to set up an inspection

scheduling system for each region. This bill would also require that every inspection conducted by DOSH include an evaluation of the employer's injury prevention program using specified criteria, and an evaluation of other specified conditions.

Existing law provides that if, after inspection or investigation of a place of employment, DOSH issues a citation for a serious violation, it shall conduct a reinspection at the end of the period fixed for abatement of the violation or within a reasonable time thereafter, unless the violation is abated at the time of inspection or investigation. This bill would instead require DOSH to conduct a reinspection at the end of the period fixed for compliance with the order or abatement of the violation or within thirty days thereafter, under specified circumstances.

Finally, this bill would repeal the existing requirement that DOSH provide safety training programs, upon request, for employees and employers. At this writing, this bill is pending in the Senate Committee on Industrial Relations.

**SB 356 (Petris)** was amended on May 16 to repeal the existing law providing that compliance with regulations of the Department of Food and Agriculture (CDFA) relating to pesticides and worker safety shall be deemed compliance with the obligations of an employer toward his/her employees under the Hazardous Substances Information and Training Act. This bill would instead enact the Agricultural Hazard Communication Act, requiring OSB to adopt a standard setting forth an employer's duties towards its agricultural laborers, and requiring the Director of Occupational Safety and Health to enforce this standard.

This bill would also require employers, as defined, to compile and maintain a workplace chemical list containing specified information by crop for each chemical used and make these records available to specified interested parties, and to maintain the most current material safety data sheet (MSDS) received from manufacturers or distributors of chemicals or fertilizers.

This bill would prohibit CDFA from registering or renewing the registration of a pesticide unless the MSDS has been provided, and would require the Director of Occupational Safety and Health to develop crop sheets in English and Spanish for each labor intensive crop, as defined, which contain specified information regarding chemical and pesticide use, and to provide appropri-



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ate crop sheets to health care providers and employers.

SB 356 would require OSB, not later than June 1, 1990, to adopt rules regarding the provision of warnings to agricultural employees and other workers, and would revise the requirements with regard to the provision of MSDS by manufacturers and other persons relating to hazardous substances. At this writing, SB 356 is pending in the Senate Appropriations Committee.

SB 478 (Greene), which would require the licensing of crane operators, among other things, is pending in the Senate Committee on Industrial Relations at this writing.

AB 167 (Floyd), which would, among other things, prohibit DOSH from reducing the seriousness of a citation or the amount of a civil penalty for a violation cited as serious or willful unless the Division obtains an order of the Appeals Board, passed the Assembly on May 4 and is pending in the Senate Committee on Industrial Relations at this writing.

SB 1190 (Marks), which would specify that each campus of the California State University is an employer for purposes of classifying employers engaging in specified asbestos-related work who must register with DOSH and meet other specified criteria, passed the Senate on May 11 and is pending in the Assembly Committee on Labor and Employment at this writing.

AB 1564 (Connelly), which would, among other things, require the owner of any building constructed prior to 1979 to provide employees with a summary of asbestos-related inspections, passed the Assembly Committee on Labor and Employment on May 15 and is pending in the Committee on Ways and Means at this writing.

AB 138 (Floyd), regarding DOSH investigation of employee complaints and serious accidents, passed the Assembly on May 25 and is pending in the Senate Committee on Industrial Relations at this writing.

AB 147 (Floyd), regarding employer insurance coverage for asbestos-related activities, failed passage in the Assembly Committee on Labor and Employment.

AB 148 (Floyd), requiring owners of public buildings to make an effort to determine the presence of asbestos, passed the Committee on Labor and Employment on April 3 and is pending in the Assembly Committee on Ways and Means Committee at this writing.

## LITIGATION:

At this writing, *Ixta, et al. v. Rinaldi*,

No. C002805 (Third District Court of Appeal), remains pending before the California Supreme Court. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 92; Vol. 8, No. 3 (Summer 1988) pp. 98-99; and Vol. 8, No. 1 (Winter 1988) p. 85 for background information.)

## RECENT MEETINGS:

At its March 23 meeting in San Diego, OSB granted permanent variances from section 3000(c)(13), Title 8 (Elevator Safety Orders) to the following entities: E.R.E., Inc./D.S. Lai & Associates, Coast Community College District, City of Riverside, and Willows Memorial Hall.

At its April 20 meeting in Sacramento, OSB granted permanent variances to the following entities: Olhausen Billiard Manufacturing, Inc. from section 462(m)(3), Title 8 (Unfired Pressure Vessel Safety Orders); Mammoth/June Ski Resort from sections 3157(c)2.3.3.1.2 and 3157(c)2.3.3, Title 8 (Aerial Passenger Tramway Safety Orders); Kirk Henriksen and Los Angeles Central Library from section 3000(c)(13), Title 8 (Elevator Safety Orders); Dompe Warehouse Company from section 475(a), Title 8 (Unfired Pressure Vessel Safety Orders); Robert F. Jani, Rio Linda Masonic Temple Association, and Mountain View Masonic Temple Association from section 3000(d)(11), Title 8 (Elevator Safety Orders).

At its May 18 meeting in Los Angeles, OSB granted permanent variances to the following entities: Vlad Chernoguz and Feliz Braynin from section 3000(c)(13), Title 8 (Elevator Safety Orders); City of Belmont from section 3000(c)(13), Title 8 (Elevator Safety Orders); and Lift Truck Service Corporation from section 475(d)(1), Title 8 (Unfired Pressure Vessel Safety Orders).

Also at its May meeting, OSB heard

a proposed petition for regulatory changes requested by the Los Angeles County District Attorney's Office (LADA). LADA requested OSB to adopt a new standard regarding maintenance and repair of industrial trucks. LADA stated that no California regulation requires industrial trucks to be repaired by authorized personnel, and urged OSB to adopt federal regulation 29 C.F.R. section 1910.178(q)(1), which states that any power-operated truck not in safe operating condition shall be removed from service and requires that all repairs be made by authorized personnel.

DOSH acknowledged that Article 25 of the General Industry Safety Orders, concerning Industrial Trucks, Tractors, Haulage Vehicles and Earthmoving Equipment, does not specifically require that industrial trucks be repaired by authorized personnel, nor does it specifically require that unsafe industrial trucks be removed from service. However, DOSH stated that General Industry Safety Orders, Article 7, Miscellaneous Safe Practices, section 3328 is applicable to all machines and equipment with defective parts which create a hazard and states that such equipment shall not be used; machinery and equipment in service shall be maintained in safe operating condition; and only qualified persons shall be permitted to maintain or repair machinery or equipment. DOSH stated that not only would the requested regulation be duplicative, but any requirement that repairs be made by a "qualified person" would be more restrictive than the federal standard. Therefore, based upon DOSH's recommendation, OSB denied the petition.

## FUTURE MEETINGS:

August 24 in Sacramento.



## DEPARTMENT OF FOOD AND AGRICULTURE

### DEPARTMENT OF FOOD AND AGRICULTURE

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The Department of Food and Agriculture (CDFA) promotes and protects California's agriculture and executes the provisions of the Agriculture Code which

provide for the Department's organization, authorize it to expend available monies and prescribe 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.

The Department works to improve the quality of the environment and farm