



Vol. 8, No. 2 (Spring 1988) p. 92; Vol. 8, No. 1 (Winter 1988) p. 85; Vol. 7, No. 4 (Fall 1987) pp. 80-81; and Vol. 7, No. 3 (Summer 1987) p. 106 for background information.)

RECENT MEETINGS:

At its March 24 meeting in San Diego, OSB granted permanent variances to the following entities: Terre Du Soleil, Northridge Park Development Company, the Shanti Project, Lewis Tanenbaum, MD, and Payless Cashways, Inc., from section 3000(c)(13), Title 8 (Elevator Safety Orders); First Interstate Bank of California and the County of Los Angeles from section 501(c), Title 8 (Unfired Pressure Vessel Safety Orders); and O'Connor Convent from section 3000(d)(11), Title 8 (Elevator Safety Orders). The Board denied a permanent variance requested by Gorman-Whitney Development Company, from section 3054(a)(5)(D), Title 8 (Elevator Safety Orders).

OSB was also updated on the current status of the 1988-89 Governor's budget.

OSB Executive Officer Steve Jablonsky stated that the Governor's budget proposes to reestablish five permanent positions with the OSB, in addition to the Board members and the Executive Officer. The Legislative Analyst's analysis of the Governor's budget, however, estimates that the ongoing workload of the OSB can be accomplished with 2.5 positions. On March 15, Jablonsky met with the Legislative Analyst, representatives from the Department of Finance, and DIR budget staff. Jablonsky stated that the Analyst did not seem to recognize that the transfer of enforcement to the federal government in the private sector will in itself have no major impact on OSB's workload and responsibilities, or that the first six months' workload after July 1, 1987, was not indicative of the ongoing workload.

FUTURE MEETINGS:

September 22 in Los Angeles.

October 13 in San Francisco.

November 17 in San Diego.

December 15 in Sacramento.

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 United States Environmental Protection Agency 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 activities of the Division of Administrative Services, which includes Departmental Services, Financial Services, Personnel Management and Training and Development.

The Board of Food and Agriculture consists of the executive secretary, assistant executive secretary and 14 members who voluntarily represent different localities of the state. The 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. 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



DEPARTMENT OF FOOD AND AGRICULTURE

DEPARTMENT OF FOOD AND AGRICULTURE

Director: Jack Parnell
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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 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.

The Department 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, one of whom serves as legislative liaison and as executive secretary of the Board of Food and Agriculture. In addition to the director's general prescribed duties, he 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



condition, acreage, production and value of the agricultural products in their county.

Acting Director Jack Parnell's appointment was confirmed in a 32-0 Senate vote on April 19. Parnell was appointed by Governor Deukmejian on June 1, 1987, after having served for several years as Director of the Department of Fish and Game.

MAJOR PROJECTS:

Proposition 65. In April, the Governor's Legislative Analyst issued a report admitting that the administration has been dragging its feet on implementation of Proposition 65, the Safe Drinking Water and Toxics Enforcement Act of 1986 (see CRLR Vol. 8, No. 2 (Spring 1988) p. 94 for background information.) Although funds have been allocated to staff 96 positions related to implementation of Proposition 65, the Analyst's office reported that the Deukmejian administration had hired only twelve people to fill those positions by the end of 1987.

The report also revealed that the Department of Health Services (DHS) is years away from issuing formal regulations to enable industry to assess the risk of birth defects caused by its chemicals. As of the end of 1987, DHS and the Water Resources Control Board (WRCB) had yet to hire anyone to conduct investigations of chemicals believed to pose the most hazardous health risks.

The administration admitted that only one-half to two-thirds of the budgeted positions will be filled by the end of the 1987-88 fiscal year. However, the administration blamed the lack of hiring on its difficulties in starting up a new program and denied any internal efforts to minimize expenditures.

Testifying before a Senate budget subcommittee on April 11, the Health and Welfare Agency's Mark S. Helmar (who is charged with coordinating the Proposition 65 implementation program) refused to tell legislators exactly when and how the program would be put back on schedule. He stated that any implementation commitment would be "strictly conjecture" considering the way the program has evolved to date.

Meanwhile, CDFA's efforts are focused on the drafting of regulations to define the terms "source of drinking water" and "discharge". (See *infra* agency report on WATER RESOURCES CONTROL BOARD for related discussion.) The Department maintains that the legal application of pesticides should not be considered a "discharge". A draft

regulation on the "discharge" definition is being reviewed by the Department of Water Resources and the Health and Welfare Agency at this writing.

Pesticide Residue. The Assembly Office of Research (AOR) recently issued a report charging that CDFA's pesticide residue testing program is inadequate because foods are not tested for two-thirds of the most dangerous carcinogens (see *supra* agency report on ASSEMBLY OFFICE OF RESEARCH). The report challenges conclusions reached in an earlier CDFA study which found that 99% of the samples taken for testing showed no unlawful levels of pesticide (see CRLR Vol. 7, No. 4 (Fall 1987) pp. 84-85).

AOR's report is the result of a request for a study made by Assemblymember Lloyd Connelly, who has introduced sweeping food-safety legislation (see *infra* AB 4097 in LEGISLATION). Assemblymember Bill Jones, speaking recently in opposition to the legislation, stated that the \$1 million expended annually in CDFA's food testing program adequately protects public health. Jones sponsored the legislation which expanded the testing program two years ago.

Concern over the health hazards caused by undetected pesticide residue on produce is supported by a study released last year by the federal Environmental Protection Agency (EPA). In its report, EPA calls pesticide residue the "third most important environmental problem in this county in terms of cancer risk to the public." EPA ranked the problem above air pollution and hazardous waste contamination.

Regulation Changes Approved. The Office of Administrative Law (OAL) has recently announced its approval of several regulatory packages discussed in detail in previous issues of the *Reporter*:

-On June 20, OAL approved the adoption, amendment, and repeal of numerous CDFA regulations pertaining to salad products. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 87 for background information.)

-On June 8, OAL approved section 3962(a), Title 3 of the California Code of Regulations (CCR), which changes the area of eradication for hydrilla verticillata. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 87 and Vol. 6, No. 4 (Fall 1986) pp. 70-71 for background information.)

-On May 31, OAL approved CDFA's proposed changes to its egg regulations (sections 1351, 1358, 1358.2, and 1358.4, Title 3 of the CCR). (See CRLR Vol. 8, No. 2 (Spring 1988) p. 95 for back-

ground information.)

Proposed Regulatory Changes for Use of Methyl Bromide and Chloropicrin. In April, CDFA proposed amendments to its regulatory section 6450, Title 3 of the CCR, which would establish more stringent requirements for the use of methyl bromide and chloropicrin in field fumigations. The changes would require the user to procure a written recommendation from a licensed agricultural pest control adviser before using these chemicals. The chemicals would have to be injected at least ten inches below the surface, and the soil must be tilled to a minimum depth of one foot prior to application of the chemicals. The requirements also provide guidelines for application; for example, release of the fumigant must be discontinued prior to raising injection shanks out of the ground.

The proposed requirements also state specific safeguards for use in residential areas. The chemicals are restricted to use in daylight hours, and must be discontinued by 2:00 p.m. when used within 100 feet of an occupied residence. The areas affected must be covered by tarps after chemical use, and an evacuation plan must be ready for use. The requirements also state specific fumigant amount limits when applied within 100 feet of an occupied residence.

A public hearing on the proposed amendments was held in Sacramento on June 13.

Proposed Scope Enlargement of Financial Responsibility Regulations. Food and Agriculture Code section 11701 requires applicants for an agricultural pest control business license to carry liability insurance against personal injury and property damage. In late March, CDFA proposed new section 6524, Title 3 of the CCR, which would require all pest control applicants (including small businesses) to provide proof of financial responsibility. Applicants would be required to file an original certificate of insurance with the CDFA Director; the proposed regulation sets forth specified amounts of coverage and the various ways in which the insurance requirements may be satisfied. These proposed requirements would be in addition to financial responsibility requirements set forth in Food and Agriculture Code sections 11931-11940.

Public hearings were held regarding the proposed regulations on June 6 in Sacramento and on June 9 in El Monte.

Tributyltin Release Rate Requirement Proposed. In its continuing effort to regulate the sale and use of tributyltin



(TBT), an active ingredient used in anti-fouling paints which have been designated restricted materials by CDFA (see CRLR Vol. 8, No. 2 (Spring 1988) pp. 94-95 for background information), the CDFA has proposed new section 6900, Title 3 of the CCR, which would set a maximum allowable release rate of organotin from TBT antifouling paints and coatings. Such paints shall have an average release rate of no more than five micrograms of organotin per square centimeter per day. The release rate shall be measured by using the testing procedure issued by the EPA in July 1986 (ASTM Draft 6). Once the maximum release rate has been set, CDFA intends to initiate administrative action to cancel the registration of any TBT antifouling paints and coatings which exceed the established release rate.

CDFA held no public hearings on the proposed regulations; the written comment period closed on June 13.

Honeybee Tracheal Mite Regulation Disapproved by OAL. Section 2992, Title 3 of the CCR, would have established certain counties as regulated areas with reference to the honeybee tracheal mite, and would have required shipments of honeybees to the regulated areas to be inspected and certified as being free from the mite. On February 11, the OAL rejected the proposed regulation because it failed to comply with the necessity, authority, clarity, and reference standards contained in Government Code section 11349.1. OAL also pointed out that "required documents in the file are defective...and language contained within the text is nonregulatory." CDFA resubmitted its revised regulation in June.

Contaminated Cucumbers. Pesticide-contaminated cucumbers grown in Redding and distributed to stores in Sacramento and the Bay area, as well as to Oregon and Washington, were ordered removed from markets in April. The cucumbers were tainted with aldicarb, the same pesticide unlawfully used on watermelons in California three years ago (see CRLR Vol. 5, No. 4 (Fall 1985) p. 57 for background information). Aldicarb is prohibited for use on most food crops, including cucumbers. At least one confirmed illness has resulted from consumption of the contaminated cucumbers, although the health problems are not expected to reach the magnitude of the 1985 watermelon contamination.

CDFA all but closed down the grower's operations during its investigation of the illegal pesticide use. It is feared that the discovery of the contamination

came too late to prevent the consumption of most of the tainted produce. At this writing, the Department has yet to announce the filing of charges against the grower.

LEGISLATION:

AB 1028 (Katz) relates to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), which prohibits any person in the course of doing business from knowingly discharging or releasing a chemical known to the state to cause cancer or reproductive toxicity into water, except as specified. This bill would include public agencies within the definition of "person", and would revise the definition of "person in the course of doing business" to exclude public agencies and public water systems which are water companies from the discharge prohibition, and to include public agencies and certain public water systems within the exposure prohibition. The bill would exempt an exposure by a public agency from the warning requirements of Proposition 65 if the exposure occurred before January 1, 1990, or twelve months after the chemical is listed, whichever is later. This bill is pending in the Senate Committee on Toxics and Public Safety Management.

AB 2714 (Jones), which would revise the definition of the term "significant amount" in Proposition 65, was amended on June 20. This bill would now revise the exposure exemption, and thus revise the definition of "significant amount" for purposes of the discharge exemption, to instead exempt exposures of reproductive toxins that will have no observable effect assuming exposure at the level in question multiplied by a safety factor. The bill would specify that 1,000 is the safety factor, unless the Health and Welfare Agency establishes a specific safety factor; and would authorize the Agency to adopt a specific safety factor pursuant to a specified procedure. This bill is pending in the Assembly Ways and Means Committee.

SB 269 (Kopp) would place language before the voters on the November 8 ballot requiring public agencies to conform to the provisions of Proposition 65. Existing law exempts government agencies from warning requirements, discharge prohibitions, and other provisions of Proposition 65. As of June, SB 269 had been amended ten times since its introduction. The version which was recently referred to the Assembly Ways and Means Committee would exempt from Proposition 65 prohibitions a number of types of discharges or releases,

including those discharges or releases (1) governed by federal law (to preempt state authority); (2) by public water systems, as specified; (3) of storm water runoff; (4) resulting from activities undertaken in response to a public emergency or for public health purposes; or (5) from watershed surface runoff. The bill would also exempt certain discharges, releases, or exposures by public water systems which are owned or operated by entities which are not public agencies.

AB 2691 (Johnston) would create the California Pepper Commission with prescribed membership and districts, and specified powers, duties, and responsibilities. The Commission will be authorized to implement and administer programs of production research relating to peppers and to levy an assessment on producers and handlers for purposes of carrying out the provisions of the bill. AB 2691 has been enrolled but has not been chaptered as of this writing, because its chaptering is contingent on the Governor's approval of a state budget.

SB 554 (McCorquodale) would authorize a county board of supervisors, upon making a finding that extraordinary circumstances have resulted in the need for inspection of imported fruits, nuts, or vegetables to enforce CDFA regulations, to establish fees to be charged the importer to cover the cost of such inspections. As of this writing, the bill is pending before the Assembly Committee on Agriculture.

The following is a status update on bills discussed in detail in CRLR Vol. 8, No. 2 (Spring 1988) at page 96:

AB 1142 (N. Waters) was substantially amended in June. The bill would revise and recast the authority of the Director of CDFA with regard to declaring a commodity to be a public nuisance and the resultant CDFA seizure of that commodity. Among other things, the bill would establish notice procedures; provide a means for contesting the seizure; authorize CDFA's pursuit of injunctive relief if seizure orders are violated; and prohibit harvesting, packing, shipping, selling, transporting, destroying, or disposing of any plant, crop, or commodity which is seized by CDFA. AB 1142 is pending in the Senate Appropriations Committee.

AB 2728 (Chandler) prescribes a hearing procedure for the Director of Food and Agriculture to employ in taking specified actions concerning any violation of laws relating to livestock drugs, commercial foods, and fertilizers. The measure also provides that first viola-



REGULATORY AGENCY ACTION

tions of specified laws are infractions punishable by fines, instead of misdemeanors. AB 2728 has been signed by the Governor (Chapter 238, Statutes of 1988).

AB 2642 (*W. Brown*) would require the Director of CDFA to become involved in negotiations between any bargaining association and food processors and to order conciliation if the Director determines, under a specified procedure, that conciliation will significantly assist the parties in negotiating an agreement. The measure would further provide a specified conciliation procedure and would establish refusal to submit to conciliation as an unfair trade practice, punishable as a misdemeanor. As of this writing, AB 2642 is pending before the Senate Appropriations Committee.

AB 1596 (*Cortese*), which would authorize the CDFA Director to levy a civil penalty of not more than \$500 against an imported produce handler for each violation of provisions relating to produce which is carrying pesticide residue, was placed in the inactive file on April 28.

AB 4097 (*Connelly*) would increase the economic poisons assessment paid to the CDFA Director by registrants of pesticides. The bill would also require that these funds be used by the CDFA and the DHS to enforce specific testing requirements involving the registration of pesticide products and to develop practical analytic testing methods for specified pesticides. This bill would specify priority pesticides for food monitoring and would require the departments to determine whether there is a practical analytical testing method for each priority pesticide. Registrants of pesticides for which a practical analytical testing method does not exist would be required to submit a method and pay an additional assessment, as specified. CDFA would be prohibited from registering or renewing the registration of a priority pesticide unless a practical analytical testing method is submitted. The measure would further require CDFA and the DHS to develop programs to detect and monitor raw produce and processed food for pesticide residues. At this writing, AB 4097 is pending in the Assembly Agriculture Committee.

SB 1838 (*Ayala*), which would have authorized the CDFA Director to establish the tolerance level at zero for any pesticide chemical on produce upon finding that a greater tolerance is not justified from the facts available, died in committee.

LITIGATION:

In *Menefee & Son, et al. v. California Department of Food and Agriculture*, No. C000765 (March 18, 1988), the Third District Court of Appeal struck down Food and Agriculture Code section 12648 as unconstitutional. The section empowered the CDFA Director to seize and destroy, without a hearing and under nonemergency circumstances, a crop or commodity that had been treated with an unauthorized economic poison. After seizure, the section shifted burden to the grower to bring suit within thirty days to contest the seizure. The court held that the statute "fails to provide the minimum due process protections required by the state Constitution," and invalidated the statute and the CDFA seizure orders issued pursuant to it.

RECENT MEETINGS:

At the Board's regular monthly meeting on April 7 in Sacramento, Director Parnell reported on his trip to Pacific Rim countries to promote California agricultural products. Parnell met with government officials and visited major supermarket chain stores.

Board members also heard comments from economist Kirby Moulton of the University of California's Cooperative Extension Center. Moulton discussed the effect of Mexico's "robust" frozen vegetable industry on California agriculture. He introduced a study on the subject sponsored by the Agricultural Issues Center of the University of California, entitled "Competitiveness at Home and

Abroad—Report of a 1986-87 Study Group on Marketing California Specialty Crops: Worldwide Competition and Constraints." The report concludes that California must maintain technological leadership if it is to retain a competitive edge.

David Gill, President of Nor Cal/Crosetti Foods, Inc., discussed setbacks suffered in California's broccoli industry due to competition from Mexico's frozen vegetable industry. He reported that California's market share has dropped almost 50% in the last five years due to imports. He stated that in some cases Mexico's packers can undersell California companies by 10-20% due to their lower labor costs and subsidized power and fuel. Gill suggested the need to enforce pesticide regulations on imports and for a point of origin label to inform consumers that they are buying imported produce.

On May 5, the Board again met in Sacramento. Board members discussed pending legislation of interest to the Department with the assistance of the Department's legislative coordinator. Members then heard a presentation by economist Jerome B. Siebert of the University of California at David regarding a recently released Agricultural and Natural Resources Marketing Study. The Board spent the afternoon touring the Department's Chemical Laboratory in Sacramento.

FUTURE MEETINGS:

To be announced.



RESOURCES AGENCY

AIR RESOURCES BOARD

Executive Officer: James D. Boyd
Chairperson: Jananne Sharpless
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The California legislature created the Air Resources Board in 1967 to control air pollutant emissions and improve air quality throughout the state. The Board evolved from the merger of two former agencies, the Bureau of Air Sanitation within the Department of Health and the Motor Vehicle Pollution Control Board. The members of the Board have experience in chemistry, meteorology, physics, law, administration, engineer-

ing and related scientific fields.

The Board regulates both vehicular and stationary pollution sources. The primary responsibility for controlling emissions from nonvehicular sources rests with local air pollution control districts (California Health and Safety Code sections 39002 and 40000).

The Board develops rules and regulations for stationary sources to assist local air pollution control districts in their efforts to achieve and maintain air quality standards. The Board oversees their enforcement activities and provides them with technical and financial assistance.