



REGULATORY AGENCY ACTION

except discharges or releases which are exclusively governed by federal law; certain discharges or releases by public water systems; discharges or releases or surface runoff from a watershed; and releases of stormwater runoff.

SB 921 (Rosenthal) would have required motor vehicle fuel storage tanks to meet specified requirements concerning the containment and transportation of methanol fuel, depending upon the date of the tank's installation and the capacity and location of the tank. The bill would have prohibited a local agency from issuing a permit for the operation of a motor vehicle fuel storage tank which does not meet the specified requirements. WRCB would have been authorized to adopt regulations to implement this provision. The bill was vetoed by the Governor.

SB 1335 (McCorquodale) would allow the Department of Fish and Game and the WRCB to enter and inspect timber lands during harvesting. The bill is in the Assembly, pending before the Natural Resources Committee. No date has been set for a hearing.

LITIGATION:

In *In Re Water of Hallett Creek Stream System*, No. SF 25133 (Feb. 18, 1988), the California Supreme Court held that the federal government has riparian rights on federal lands reserved for national forest purposes, and that these rights are no more defeasible than the riparian rights of other California landowners.

The dispute focused on control of Hallett Creek, a system of streams in Lassen County which flow from Honey Lake into the Plumas National Forest north of Lake Tahoe. The United States claimed a "reserved" water right under federal law for "primary" forest purposes, such as firefighting. That right was not seriously disputed and the Water Resources Control Board authorized the U.S. Forest Service to use up to 95,000 gallons of water per year for firefighting.

The federal government also claimed riparian rights for "secondary" forest purposes such as "wildlife enhancement." The Forest Service asked to draw 1,500 gallons per day to supply water ponds for wildlife, but the WRCB rejected that request on grounds that the federal government does not have riparian rights.

California recognizes both riparian rights, under which owners of land adjacent to a stream have rights to divert and use the water, and appropriative rights, under which those who have first diverted and used the water continue to

have rights to it even though their land does not adjoin the stream. Generally, riparian rights are superior but appropriators still have a chance for priority when water is put to "reasonable and beneficial" use.

In an opinion by Justice Kaufman, the court held that the federal government does have riparian rights. Federal riparian rights may, however, be limited in that the WRCB may decide when a riparian water claim loses its priority because it has not been exercised. "Thus the United States must apply to the Board whenever it proposes to exercise its riparian right, so that the Board may evaluate the proposed use in the context of other uses and determine whether the riparian use should be permitted in light of the state's interest in promoting the most efficient and beneficial use of the state's waters."

According to Assistant State Attorney General Roderick Walston, this decision could have a destabilizing effect on California water rights law since it opens the door for the federal government to claim riparian rights which may be paramount to rights being used by private appropriators.

RECENT MEETINGS:

At its January 21 meeting, the Board approved a resolution extending a multi-site cooperative agreement (MSCA) deadline from January 1988 to June 1988. The deadline requires that by June 1988, a community development project in Santa Clara County must be functioning to the satisfaction of the Board or the project will be terminated. Originally approved in May 1985 (Resolution No. 85-35), this South Bay MSCA between the WRCB, the Santa Clara Regional Board (Regional Board), the Santa Clara Valley Water District (SCVWD), and the EPA is critical to the Santa Clara

groundwater basin, which provides approximately 50% of the water supply for the 1.5 million residents in the area. The complexity and extent of groundwater contamination requires all four agencies to participate.

Although the EPA funding of this program has accelerated the groundwater investigation and clean-up (at the November meeting, the Board was informed that 12 of 16 task sites identified in the original workplan were completed), the Board commented on the EPA's uncooperative spirit. The state and regional boards were placed in a difficult position when the Inspector General of the EPA was critical of the program in a final audit report (No. E5eH6-09-0226-71928) released in September 1987. This audit concluded that the WRCB, the Regional Board, and SCVWD had delayed contaminated groundwater clean-up. The WRCB adopted this audit conclusion in the current policy statement of the MSCA clarifying program objectives and shortcomings. While recognizing the community relations and educational benefits of the MSCA, the WRCB stated that if the program is not in effect by the June 1 deadline, the Board will remove the program from its project list.

The Board accepted additional EPA funds of \$700,000 to continue work on the program until June 1988, with the added stipulation of a two-month and six-month Board review to consider the effectiveness and continued desirability of the program.

FUTURE MEETINGS:

Workshop meetings are generally held the first Wednesday and Thursday of the month. For exact times and meeting locations, contact Maureen Marche at (916) 445-5240.



INDEPENDENTS

AUCTIONEER COMMISSION
Executive Officer: Karen Wyant
(916) 324-5894

The Auctioneer and Auction Licensing Act was enacted in 1982 (AB 1257, Chapter 1499, Statutes of 1982) and established the California Auctioneer Commission to regulate auctioneers and auction businesses in California.

The Act was designed to protect the public from various forms of deceptive and fraudulent sales practices by establishing minimal requirements for the licensure of auctioneers and auction businesses and prohibiting certain types of conduct.

The Auctioneer and Auction Licensing Act provided for the appointment of a seven-member Board of Governors,



composed of four public members and three auctioneers, to enforce the provisions of the act and to administer the activities of the Auctioneer Commission. Members of the Board are appointed by the Governor for four-year terms. Each member must be at least 21 years old and a California resident for at least five years prior to appointment. In addition, the three industry members must have a minimum of five years' experience in auctioneering and be of recognized standing in the trade.

The Act provides assistance to the Board of Governors in the form of a council of advisers appointed by the Board for one-year terms. In September 1987, the Board disbanded the council of advisers and replaced it with a new Advisory Council (see CRLR Vol. 7, No. 4 (Fall 1987) p. 99 for background information).

MAJOR PROJECTS:

New Proposed Language for Section 3527. Last December, the Office of Administrative Law (OAL) disapproved the Commission's proposed section 3527, chapter 35, Title 16 of the California Code of Regulations, which would have required specific disclosures on consignor contracts. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 99 and Vol. 7, No. 4 (Fall 1987) p. 99 for background information.) On January 29, the Board of Governors met in Costa Mesa to reconsider the issue. The Board modified the proposed language to require express notice of the \$10,000 bonding limit in contracts between auctioneers or auction companies and consumers/consignors. The Board decided that the current disclosure is misleading to the public, and that the language of the disapproved regulation did not adequately inform the public of the limited bonding protection. The amended language requires that contracts between an auctioneer or auction company and the owner or consignor of goods include a notice that the auctioneer "is licensed and regulated by the California Auctioneer Commission...and is bonded to the Commission in the amount of \$10,000 for all occurrences."

The Commission reopened the comment period on the revised language until February 29.

Complaint, Fine, and Disciplinary Action Report. On November 30, the Commission released its recent enforcement statistics. During the reporting period of July through November 1987, 65 new complaints were filed by consumers. During the same four-month

period, 90 complaints were resolved or closed. At the beginning of the reporting period, 63 complaints were pending, but by the end of November 1987, only 36 remained. Of those 36, 19 concerned auctioneers or auctioneer companies who failed to pay consignors. Over \$32,000 has been recovered for consumers; \$1,650 in fines has also been collected.

Future Exam Dates and Opportunities for Licensing. Auctioneer licensing examinations were held on January 21 and March 23. The next scheduled test is May 25 in Los Angeles. Exams are also given every Tuesday in the Commission office by appointment. Applicants may contact the Auctioneer Commission office for application packets and information, including ten of the most commonly missed exam questions and answers.

June 30 License Renewal Deadline. All auctioneer and auction company licenses must be renewed by June 30, 1988, regardless of the date of the issuance. The fee will be the same as in 1986: \$265 for auctioneers and \$275 for auction companies. A late fee of \$50 will be assessed. Auctioneers will be required to return their pocket identification cards so the new expiration date can be imprinted on the card.

Bid Caller Survey Results. As a result of the Board of Governors' September 28, 1987 meeting, the Commission conducted a survey of bid callers. A total of 149 surveys were completed regarding the licensing and bonding of bid callers. A bid caller is a licensed, bonded auctioneer employed by a licensed auction company. Many bid callers have questioned the need for bonding. Executive Officer Karen Wyant pointed out that "if bid callers were deregulated completely there would be no enforcement problem. They would not possess a license which could be...presented to a consignor with the representation that he or she was bonded to take consignments." According to Wyant, "the auction company would be responsible for violations committed by the auctioneer" without licensing the bid caller.

The following is a statistical description of the survey responses:

"I am always employed as a bid caller by an auction company or another licensed auctioneer and do not handle consignor monies." Yes—33%; No—67%.

"I take consignments and handle consignor monies...." Always—29%; Usually—26%; Occasionally—13%; Rarely—24%; Never—7%.

"I believe that bid callers should have to meet less strict bonding and

licensing requirements than auctioneers who handle consignor monies...." Agree—64%; Disagree—36%.

Many of those who agreed with the last question felt that bid callers should be bonded for a lesser amount or not at all, because they are not responsible for consignors' monies, although most felt they should meet the same licensing requirements. Executive Officer Wyant noted that any such change would require legislation. During the December 14 meeting, Board members noted the survey indicates that only a very small number of auctioneers never take consignments (7%), which does not justify a complete change in the licensing structure.

Definitions Survey Results. The Commission's attempt to establish standard definitions for commonly-used industry terms is now complete. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 100; Vol. 7, No. 1 (Winter 1987) p. 89; and Vol. 6, No. 4 (Fall 1986) p. 85 for background information.) A total of 152 completed surveys were returned, and 73 (or 48%) of those responding agreed with all of the definitions without comment.

"Reserve" means that the owner of the goods being sold has reserved the right to bid on one or more of the items to be sold, either in person or through an agent. "No Reserve" means that the owner of the goods being sold has not reserved the right to so bid and will not knowingly be allowed to bid by the licensee. (68% agreed with no comment.)

"Minimum" means that certain or all goods to be sold will have a minimum opening bid requirement or reserve as a condition of putting the item up for sale. "No minimum" means that no minimum starting price or reserve will be placed on an item before or during the sale of that item. (68% agreed with no comment.)

"Subject to Confirmation" means that the bid of the highest bidder on an item may be either confirmed (accepted) or rejected by the owner of the item during or after the auction sale. (79% agreed with no comment.)

"Absolute Auction," "No Limit," "Sold to the Highest Bidder," and similar terms which indicate that items are to be sold without restriction, mean that none of the items to be sold will be sold subject to a "reserve," "minimum," or "subject to confirmation." (85% agreed with no comment.)

LEGISLATION:

SB 84 (Boatwright) was not heard by the Senate Business and Professions Committee prior to the required deadline



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and is thus dead for this session. The bill would have dissolved the Commission and, in its most recent amended version, transferred the authority to assess fines and take disciplinary action against auctioneers to the Department of Consumer Affairs. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 99; Vol. 7, No. 4 (Fall 1987) pp. 99-100; Vol. 7, No. 3 (Summer 1987) p. 124; Vol. 7, No. 2 (Spring 1987) p. 98; and Vol. 7, No. 1 (Winter 1987) p. 90 for background information.)

RECENT MEETINGS:

In November 1987, the Commission released its workload statistics for July through November 1987. During the reporting period, over \$32,000 in revenue from the new applications was collected. A total of 202 applications were filed; 62 exams were administered, with 51 applicants passing for an overall 82% pass rate during the period. Eighty-one new licenses were issued while 26 temporary permits were issued. For 1986 through the current 1988 reporting period, 1014 licenses were renewed. Through November 1987, there were 1,190 valid licenses; 974 of those are auctioneers, and 216 (150 corporations, 27 partnerships, 39 individuals) are auction companies.

At the Board's December 14 meeting in Sacramento, Howard "Gus" Hall was reelected as Board President; Vance VanTassell was elected Vice-President; and Judy Johnson was elected Secretary.

Also at the December 14 meeting, S.M. "Sandy" Hochman recommended that temporary permits no longer be issued. Executive Officer Wyant noted that a temporary permit may be issued once an applicant has submitted all fees and documents, including the surety bond, provided he/she has applied to take the exam within 45 days. Wyant agreed that it may not be rational to allow people to operate before they have taken the exam, but no complaints have been received against temporary permit holders. No action was taken on the issue.

The Board also discussed the use of state investigators as opposed to hiring or contracting with private investigators. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 99 for background information.) Executive Officer Wyant advised the Board that the Department of Finance has approved the Commission's requested \$47,000 budget augmentation, but it is still subject to approval by the legislature and the Governor. The Board noted the need for continual training of state

investigators, case control, the disadvantages of hiring one or two direct employees, the need for a broad geographic distribution of people to minimize travel and per diem costs, the difficulty in assuring the quality of private contractors, and the inability of private contractors to compel the production of records. A subcommittee of Board members Vance VanTassell and Georgetta Banks was appointed to lend assistance to Executive Officer Wyant as needed in developing the best plan.

During the Board's January 29 meeting in Costa Mesa, Wyant presented a statistical profile on complaints received in the last two years, which showed that over 99% originated in either the Sacramento/San Francisco area or the Los Angeles basin.

Board President Hall announced the resignation of Board member Judy Johnson, effective February 1. She has accepted an appointment by Governor Deukmejian to the San Diego Regional Water Quality Control Board.

FUTURE MEETINGS:

To be announced.

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director: Edward Hoefling (916) 445-3244

In 1922, California voters approved an initiative which created the Board of Chiropractic Examiners. The Board licenses chiropractors and enforces professional standards. It also approves chiropractic schools, colleges, and continuing education courses.

The Board consists of seven members, including five chiropractors and two public members.

Dr. Lee Kauffman, whose term on the Board has expired, was recently replaced by Louis E. Newman, DC, of Santee. Dr. Newman was appointed to the Board by Governor Deukmejian.

RECENT MEETINGS:

At its February 18 meeting, the Board discussed the results of the November 1987 licensure examination. Of 228 individuals who took the examination for the first time, 149 passed (65.3% pass rate). Of 164 people retaking the exam, 136 passed (92.9% pass rate). There were 17 people in the multiple retake category, and 9 passed the exam (52.9% pass rate). Overall, 409 candidates took the exam, with 294 passing (71.88% pass rate). The Board appointed a committee

consisting of Dr. Jackie Bartels and Patricia Quibell to review examination appeals.

FUTURE MEETINGS:

To be announced.

CALIFORNIA ENERGY COMMISSION

*Executive Director: Stephen Rhoads
Chairperson: Charles R. Imbrecht
(916) 324-3008*

In 1974, the legislature created the State Energy Resources Conservation and Development Commission, better known as the California Energy Commission (CEC). The Commission's major regulatory function is the siting of power plants. It is also generally charged with assessing trends in energy consumption and energy resources available to the state; reducing wasteful, unnecessary uses of energy; conducting research and development of alternative energy sources; and developing contingency plans to deal with possible fuel or electrical energy shortages.

The Governor appoints the five members of the Commission to five-year terms, and every two years selects a chairperson from among the members. Commissioners represent the fields of engineering or physical science, administrative law, environmental protection, economics, and the public at large. The Governor also appoints a Public Adviser, whose job is to ensure that the general public and other interested groups are adequately represented at all Commission proceedings.

The five divisions within the Energy Commission are: (1) Conservation; (2) Development, which studies alternative energy sources including geothermal, wind and solar energy; (3) Assessment, responsible for forecasting the state's energy needs; (4) Siting and Environmental, which does evaluative work in connection with the siting of power plants; and (5) Administrative Services.

The CEC publishes *Energy Watch*, a summary of energy production and use trends in California. The publication provides the latest available information about the state's energy picture. *Energy Watch*, published every two months, is available from the CEC, MS-22, 1516 Ninth Street, Sacramento, CA 95814.

MAJOR PROJECTS:

Santa Maria Aggregate Project.
Santa Maria Aggregate Corporation filed