

Inside Cal/EPA

An exclusive weekly report on environmental legislation, regulation and litigation from the publishers of Inside EPA

Vol. 20, No. 20 — May 22, 2009

ENVIRONMENTALISTS MOUNT CAMPAIGN TO SAVE OEHHA FROM BUDGET AX

Environmentalists are mounting a campaign to kill a proposal by Gov. Arnold Schwarzenegger (R) to eliminate the health hazard office as a way to cut the state's budget, arguing the office provides crucial scientific expertise counted on by Cal/EPA's various boards and departments. Activists are also concerned that the implementation and oversight of Proposition 65, which the office manages, would be threatened and weakened if those responsibilities are transferred to another agency.

Cal/EPA Secretary Linda Adams said last week that key functions of the Office of Environmental Health Hazard Assessment — including Prop. 65 oversight and elements of the state's biomonitoring program — would likely be transferred to the Department of Public Health (DPH) if the proposal is adopted in the final 2009-2010

continued on page 5

News Analysis

OBAMA AUTO DEAL FAILS TO ADDRESS LOOMING ARB 2017 GHG RULES

While the Obama Administration announced this week a landmark agreement with automakers and state officials to set new national fuel economy and greenhouse gas (GHG) vehicle standards for model years 2012-2016, a major battle may erupt within months when the air board proposes new GHG standards for model year 2017 vehicles and beyond.

If the air board pursues stricter standards than those automakers or federal agencies would prefer, another contentious debate is likely to ensue about whether U.S. EPA should grant the state a Clean Air Act waiver to allow the rules to advance. California's original waiver request to implement its 2012-2016 standards sparked fierce auto

continued on page 6

COMPANIES TO SUE WRCB AGAIN OVER RIALTO PERCHLORATE-CLEANUP PLAN

Attorneys for businesses locked in a legal battle over a southern California perchlorate cleanup told the water board this week they will sue the board over its adoption of an order to hold a future hearing on the cleanup. The attorneys argue that a staff order calling for the board's executive director to select a hearing officer for the case violates a court ruling last year over the board's jurisdiction in the matter.

The same businesses sued the board in 2008, challenging the enforcement action at the site by alleging bias on the part of the board. The court's decision earlier this year said the board could move forward with the cleanup order under certain parameters. But industry attorneys argue that the board's order adopted this week violates that court order.

continued on page 8

Costs seen dimming chances

'JOB KILLER' LIST, BUDGET DEFICIT HURT CHANCES FOR KEY ACTIVIST BILLS

Activists are conceding that key environmental bills with perceived high costs will face a tough time advancing through the Legislature this year due to the state's continuing budget crisis and the ongoing recession. One of the priority bills for environmentalists this year expected to face a tough road is an "extended producer responsibility" (EPR) measure that would give the state waste board new authority to mandate manufacturers to take back and recycle many products.

The California Chamber of Commerce last week also released its list of bills seen as "job killers," including the EPR bill, greenhouse gas (GHG) measures, and other environmentalist-backed legislation. The industry's strong

continued on next page

INSIDE

AIR QUALITY: Engine makers level legal arguments over ARB diagnostic rules	3
CLIMATE CHANGE: ARB opposition helps defeat bill for new AB 32 economic analysis	5
ENERGY: Budget crisis seen hampering CO2 sequestration projects, rules	9
WATER QUALITY: Criticism leads WRCB to revise recycled water permit	12

opposition to these bills, and Gov. Arnold Schwarzenegger's (R) past record of vetoing "job killer" bills, is also seen spelling failure for many measures.

The chamber's annual list of job-killer bills is often touted by industry as a tool to defeat many environmental bills, and acknowledged by environmentalists as a potential obstacle to Schwarzenegger's approval of green legislation. The industry's targeting of six key environmental bills due to their costs, coupled with the ongoing recession and budget deficit, is likely to significantly lower the bills' chances of surviving this year.

The chamber May 15 released its annual list of job-killer bills. They include:

- AB 212 (Assemblywoman Lori Saldaña, D-San Diego), which would require the California Energy Commission to adopt standards for new residential construction to use "zero net energy," aimed at improving homes' energy efficiency.

- AB 231 (Assemblyman Jared Huffman, D-San Rafael), which requires the Air Resources Board to set up a "Climate Protection" trust fund where fee revenue collected under the board's climate change program would be deposited.

- AB 1404 (Assemblyman Kevin De Leon, D-Los Angeles), which would limit industry's use of GHG offsets to comply with the Air Resources Board's climate change program to 10% of GHG reductions expected.

- AB 1405 (De Leon), which would dedicate a portion of funds generated by ARB's climate change fees to disadvantaged communities for projects that mitigate or adapt to climate change.

- AB 283 (Assemblyman Wes Chesbro, D-Eureka), which would establish an "EPR" program at the state waste board. The bill would ban products from being sold in California unless the producer or a product stewardship organization submits a plan to the board for maximizing recycling and reducing the life-cycle impacts of the products, such as through redesign.

- AB 479 (Chesbro), which would increase the tipping fees at landfills and require local jurisdictions to meet a 75% waste diversion or recycling rate by 2020.

All of these bills are currently in the Assembly Appropriations Committee's "suspense" file. Typically, bills are sent to the suspense file because they have been flagged for further analysis because of cost impacts.

An environmentalist said of the bills on the chamber's list that generally speaking, "this is clearly going to be a tough year for any bills with large — or even medium — fiscal tags."

The source added that aside from the cost concerns posed by legislative committees, strong opposition from industry means these bills will be difficult to pass off either the Assembly or Senate floors. "Still, I expect the Legislature, which will not do much this year that is popular, will want to take some action to protect our air, water and land, causes that are very popular with voters," the environmentalist said.

Of the six bills tagged by industry as job killers, AB 283 has been described as a high-priority bill for environmentalists and local governments this year.

These groups argue that an EPR program is needed because local household hazardous waste programs are having a difficult time managing the increasing number of toxic wastes that have emerged since a statewide ban on disposal of "universal" waste took effect. The bill seeks to shift responsibility for managing these discarded products to manufacturers.

A supporter of AB 283 said the fact that the bill is on the suspense file raises serious concerns about its chances to advance. But the source disputes the chamber's claim it is a job killer. "We have lots of proof that is absolutely not the case, and in fact, EPR is a proven job creator," the source argued.

The source pointed to data from British Columbia's EPR regulation, which shows creation of 2,100 full-time green jobs, reduced landfill costs, avoided contamination, and avoided remedial cleanup costs. The study also documents significant carbon dioxide reductions and energy saved, according to the source.

The chamber describes AB 283 as leading to increased costs for consumers and businesses by requiring producers of select products sold in California to collect their products after use by the consumer and manage the recycling and/or disposal of those products.

A Schwarzenegger budget proposal to eliminate the waste board, although opposed by Democrats and activists, may also raise questions in the Legislature about approving AB 283 if the board may not exist in the coming years.

The chamber also describes the GHG bills on its list as "climate change tax increases" that would discourage job growth and increase business costs by limiting the amount of GHG offsets industry can use to meet global warming targets.

"This is clearly going to be a tough year for any bills with large — or even medium — fiscal tags."

— An environmentalist
