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| OPINION                 | : | No. 80-715              |
| of                      | : | <u>November 7, 1980</u> |
| GEORGE DEUKMEJIAN       | : |                         |
| Attorney General        | : |                         |
| Paul H. Dobson          | : |                         |
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SUBJECT: DISPOSAL OF HIGH-VOLUME WOOD WASTE—Health and Safety Code section 41805 provides no authorization for an air pollution control district to enact a regulation authorizing the disposal of high-volume wood waste by open fire.

The Air Resources Board has requested an opinion on the following question:

Does Health and Safety Code section 41805 provide authorization for an air pollution control district to enact a regulation authorizing the disposal of high-volume wood waste by open fire?

CONCLUSION

Health and Safety Code section 41805 provides no authorization for an air pollution control district to enact a regulation authorizing the disposal of high-volume wood waste by open fire.

## ANALYSIS

A county air pollution control district has the primary responsibility for the control of air pollution from all sources other than motor vehicle emissions in the area under its jurisdiction. (Health & Saf. Code, § 40000.)<sup>1</sup> Subject to the powers and the duties of the Air Resources Board, a county district is authorized to adopt and enforce rules and regulations which assure that reasonable provision is made to achieve and maintain the state air quality standards and is required to enforce all applicable provisions of state law. (§§ 40001, 40702.)

Section 42300 authorizes the district board to establish by regulation a permit system under which a person may obtain a permit to conduct an activity which may cause the issuance of air contaminants. Such an activity would include an open fire. Section 42301 provides that a permit system, established pursuant to section 42300 shall prohibit the issuance of a permit unless the air pollution control district officer is satisfied on the basis of criteria adopted by the district board that the activity which may cause the issuance of air contaminants complies “with all applicable orders, rules, and regulations of the district and of the state board and *with all applicable provisions of [division 26].*” (Emphasis added.)

We are advised that a particular county air pollution control district has adopted a regulation regarding the issuance of a permit for the disposal by an open outdoor fire of high-volume wood waste. The regulation purportedly implements section 41805, subdivision (a), and provides that the county air pollution control officer has the authority to approve or disapprove each request for open burning under that section, taking into consideration the amount of waste to be burned, the season of the year, the ambient air quality, the proximity of the waste to developed areas, and other criteria which the district board may establish.

The question presented is whether section 41805 authorizes such a regulation. To understand the significance of the question, it is necessary to examine the various statutory provisions relating to the disposal of solid wood waste.

Division 26, part 4, chapter 3, article 2 (§§ 41800–41812) of the Health and Safety Code regulates nonagricultural burning. Section 41800, provides:

“Except as otherwise provided in the chapter, no person shall use open outdoor fires for the purpose of disposal or burning of petroleum wastes, demolition debris, tires, tar, *trees*, wood *waste*, or other combustible or

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<sup>1</sup> Hereinafter all unidentified section references are to the Health and Safety Code.

flammable solid or liquid waste; or for metal salvage or burning of motor vehicle bodies.” (Emphasis added.)

Other sections in article 2 provide exceptions to the general prohibition of section 41801 for fires set by public officers for safety and instructional purposes (§ 41801), for the burning of wood waste from trees, vines or bushes under specified, limited circumstances (§§ 41802, 41804, 41804.5), for outdoor fires set for cooking and recreation purposes (§ 41806), for burning in connection with right of way clearance (§ 41807), for burning for the disposal of Russian thistle (§ 41809), and for burning permitted by the state board in connection with the operation of a city or county dump, but only upon a finding that because of sparse population and economic and technical difficulties the dump should be so operated (§ 41808).

The county air pollution control district regulation which is the subject of this opinion would authorize permits for burning high-volume wood waste not otherwise included in one of the above exceptions. The district in question asserts the regulation is authorized by section 41805 which provides:

“(a) The Legislature hereby finds and declares that, because sanitary landfill site are very difficult to obtain, these valuable sites should be reserved for high-priority waste such as garbage and low-volume rubbish, and that the disposal, by open outdoor fires of high-volume wood waste will help prolong the life of such landfill sites. *However, it is the intent of the Legislature that the disposal, by open outdoor fires, of such waste be reasonably regulated so as to not create a nuisance or significantly reduce the quality of the ambient air.*

“Therefore, the state board shall conduct studies of alternative methods of disposing of wood waste from trees, vines, or bushes, other than by open outdoor fires.” (Emphasis added.)

It is the contention of the county district that the above emphasized sentence in section 41805 authorizes the district to “reasonably regulate[]” by open outdoor fire the disposal of high-volume wood waste ‘which would not otherwise fall within the statutory exceptions to section 41800. We find the district’s contention unpersuasive. It is our conclusion that section 41805 does not authorize a county air pollution control district to adopt a regulation which would authorize the disposal by open fire of high-volume solid wood waste.

The cardinal rule of statutory construction is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*Select Base Materials v. Board of Equalization*

(1959) 51 Cal. 2d 640, 645.) The legislative intent may be found from the words used in the statute with the language given its usual and ordinary import. (*Moyer v. Workmens Compensation Appeals Board* (1973) 10 Cal. 3d 222, 230.) Statutes dealing with the same subject matter should be harmonized if possible to give effect to each. (*Moyer, supra.*)

Section 41800 clearly states that unless there is an exception provided for by statute, the burning of high-volume solid wood waste is prohibited. Turning to the words of section 41805, we find no exception to that prohibition. Subdivision (a) of that section expresses legislative findings and declarations. The first sentence of that subdivision is a simple statement of fact by the Legislature—outdoor burning of high-volume wood waste will help prolong the life of landfill sites. It does not state a legislative choice to use outdoor fires instead of landfill to dispose of wood waste. The second sentence expresses the Legislature’s concern with respect to outdoor fires being used as a means of disposal, the concern being air pollution.

Subdivision (b) is the operative provision of the section and it requires that the Air Resources Board conduct studies of alternative methods of disposing of wood waste from trees, vines or bushes. The subdivision begins with the word “[t]herefore” indicating that the command of subdivision (b) was a result of the legislative declaration in subdivision (a). Thus, the only resolution of the dilemma presented in subdivision (a) is the direction that the state board conduct studies of alternative methods of disposal of wood wastes.

We perceive no basis for concluding that the policy statement in subdivision (a) is in effect an authorization to a district board to adopt a regulation which would permit burning otherwise prohibited by express statutory provisions. A declaration of legislative policy in a statute is entitled to great weight as an interpretative aid. (*The Housing Authority v. Dockweiler* (1939) 14 Cal. 2d 437, 449.) However, while the language of a policy section is available for the clarification of an ambiguous section, it may not be used to create an ambiguity. (IA Sutherland, *Statutory Construction*, § 20.12, p. 63 (4th ed. 1972).) Accordingly, it has been held that a general section setting forth legislative goals neither constitutes an operative section of a statute nor prevails over specific provisions. (*Bissette v. Colonial Mortgage Corporation of District of Columbia* (DC Cir. 1978) 477 F.2d 1245, 1246, fn. 2.)

If the Legislature had intended such local regulation of high-volume wood waste burning it could have easily and clearly so stated by way of a separate section in the article. “It cannot be inferred that the Legislature intended to do indirectly what it refrained from doing directly.” (*People v. Superior Court (Guerrero)* (1962) 199 Cal. App. 2d 303, 328.)

It is our conclusion, therefore, that Health and Safety Code section 41805 provides no authorization for an air pollution control district to enact a regulation authorizing the

disposal of high-volume wood waste by open fire.<sup>2</sup>

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<sup>2</sup> Section 41811 provides:

“That provisions of this article shall not supersede any rule or regulation of any district, which rule or regulation was in effect for five or more years prior to September 19, 1970.”

Nothing in this opinion is to be construed as to be applicable to a regulation of any district which would fall within this grandfather clause.