

2008 Consolidated Environmental Law Enforcement Report

Cal/EPA

Air Resources Board

Air Pollution Control District

Department of Toxic Substances Control

California Unified Program Agencies

Department of Pesticide Regulation

Integrated Waste Management Board

State Water Resources Control Board

Office of Environmental Health Hazard Assessment

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LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION



ARNOLD SCHWARZENEGGER
GOVERNOR

California Environmental Protection Agency

2008 Consolidated Environmental Law Enforcement Report

Office of the Secretary

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California Air Pollution Control Officers Association

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October 2009

Dear Reader,

As I wrote in the forward of the first report we published last year, the following Consolidated Environmental Law Enforcement Report reflecting 2008 activities was created under the direction of Governor Schwarzenegger and California Environmental Protection Agency (Cal/EPA) Secretary Linda Adams. My staff worked with many individuals inside our allied agencies to bring together the various program reports to meet Cal/EPA's statutory obligation under Government Code section 12812.2 which requires that I report on the status of our program to ensure consistent, effective and coordinated environmental enforcement in the State of California.

Like the first edition, this report for 2008 activities is intended to be an increasingly understandable and usable yearly effort to reflect enforcement progress over time in the context of an outline that includes the varied pieces of California's decentralized environmental enforcement system. With an understanding of our progress in this larger context, productive program critiques may be made and program improvements will be achieved.

New, in this year's edition you will find an Executive Summary that provides a short synopsis of Cal/EPA's programs highlighting how their efforts have benefitted the people of California.

The Introduction explains how and why we have a decentralized environmental enforcement system in California, the mechanics of how this report came to be, and a review of the substance of the reports that each of our allied agencies provided.

Following the Introduction are the reports from the agencies with enforcement responsibilities in the areas of air, water, pesticides, solid waste and hazardous waste and materials.

Many thanks go out to the dedicated environmental professionals who worked on this effort including my staff and the Cal/EPA Enforcement Initiative Performance Measures Team. Thanks to the enforcement chiefs from each of the state agencies who worked with our staff and with their local allied agencies to bring this document together. Thanks, finally to our local and regional enforcement partners who cooperated in the effort – much of enforcement is local and without the day-to-day efforts of these environmental professionals to protect Californians, their environment and to provide a level playing field for fair business competition, California would not be the great State that it is.

Thanks finally to you the reader for taking the time to read this report. If you will, please provide me your written feedback at mbogoshian@calepa.ca.gov. We want to know what you think of the effort, and how we might improve it for next year.

Sincerely,

Matt Bogoshian
Deputy Secretary for Law Enforcement and Counsel
California Environmental Protection Agency

ACKNOWLEDGEMENT

The following organizations and individuals deserve special recognition for their valuable contribution to the California Environmental Protection Agency's (Cal/EPA) 2008 Consolidated Environmental Law Enforcement Report.

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- United States Environmental Protection Agency (US EPA)
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Many thanks for their valuable contribution and dedication to the fruition of this annual report project is given to the Enforcement Report Steering Committee members: Ada Scott (DPR), Carmen Milanes (OEHHA), Charlene Williams (DTSC), Florentino Castellon (Cal/EPA), Joe Marade (DPR), Lorraine Van Kekerix (IWMB), Mark Tavianini (ARB), Rafael Maestu (SWRCB), Robin Holloway (US EPA), Tyrone Smith (Cal/EPA), Vance Fong (US EPA).

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**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
2008 CONSOLIDATED ENVIRONMENTAL LAW ENFORCEMENT REPORT**

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The mission of the California Environmental Protection Agency (Cal/EPA)

is to restore, protect, and enhance the environment to ensure public health, environmental quality, and economic vitality. Cal/EPA's vision is of a California that enjoys a clean, healthy, sustainable environment, which enhances the quality of life for current and future generations, and protects our diverse natural resources. The goals of California's environmental laws cannot be achieved without compliance. To achieve compliance, Cal/EPA uses many tools including education, inspection and enforcement.

An important part of our efforts to protect the environment is the establishment and maintenance of viable environmental compliance and enforcement programs. To achieve compliance, and assure a level playing field for businesses in California, consistent and fair enforcement of environmental laws is necessary. Statewide consistency in the application of environmental laws is a must if we are to achieve Cal/EPA's vision of air that is healthy to breathe, water that is safe to use and communities that are free from unacceptable human health risk from hazardous materials.

Following is a short synopsis of the programs within Cal/EPA including highlights showing how the efforts of California's environmental protections programs have benefitted the people of California. California's citizens and the environment are protected from harm through the efforts of an integrated family of independent regulatory programs within Cal/EPA and at other agencies. The efforts of these programs are described in detail in the 2008 Consolidated Environmental Law Enforcement Report and outlined in the following summary.

What this summary shows are robust programs at the local, state and federal government levels working together to continually reduce the risk to public health, from environmental factors, through continuing improvements in pollution prevention. Since the establishment of environmental protection programs in California, we have seen a consistent improvement in the environmental factors that impact our health and the quality of the environment. The air is healthier, the water is cleaner and people are exposed to fewer harmful chemicals as a result of the environmental enforcement programs within the Cal/EPA family of regulatory programs.

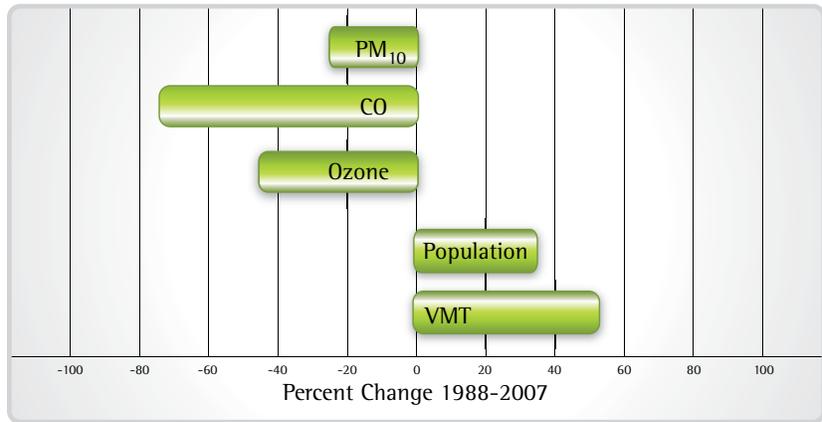
Additionally what this summary shows is that Cal/EPA and its regulatory programs have much work to do in the development of useful environmental performance indicators that are able to reflect the impact the efforts of the regulatory programs have on protection of public health and the environment. In future reports we will attempt to expand on the performance indicators that will tell us how well we did in accomplishing our Vision and Mission.





Air Resources Board Highlights:

For over 40 years the Air Resources Board (ARB) has worked aggressively to improve California's air quality. Through its multifaceted programs of planning, research, air monitoring, regulation, and enforcement, the ARB, in collaboration with the state's 35 air districts, has succeeded in reducing Californian's exposure to air pollution significantly. This progress has been dramatic despite considerable growth in population, motor vehicles, and vehicle miles travelled (VMT). Even though California's air is much cleaner, over 90% of Californians, or approximately 33 million people, still live in regions with unhealthy air. Thus, clean air efforts by ARB, the air districts, industry, and all citizens must continue.



ARB regulates a growing universe of diverse pollution sources. These sources range from diesel big rigs to tricked-out motorcycles; from cargo ships to jet skis, from motor vehicle fuels to hair spray; from locomotive engines to the family car. While the sources are numerous and diverse, the fact remains that a high compliance rate is crucial to achieving the air quality goals promised in each regulation. To this end, ARB's Enforcement Division conducts a fair, consistent, and comprehensive program of inspections and penalties, case development, outreach and compliance assistance throughout the state. Enforcement Division staff inspects and investigates places and situations throughout California where non-compliance is most likely, as well as those areas where excess emissions have the largest adverse impact on public health. Recently added to these responsibilities is the challenge to address the enforceability of climate-change regulations.

Mobile Source Enforcement

California has long been a world leader in combating air pollution emitted from motor vehicles and other mobile sources. Because of its severe air quality problems, California is the only state authorized to set and enforce



its own mobile source emissions and fuels standards. ARB's Mobile Source Enforcement Program is structured to ensure that regulated engines and vehicles meet California's standards from the design phase through production, from the point of sale through their useful life and retirement from the fleet.

Mobile sources under ARB's authority fall into two major groups. One group includes passenger cars, motorcycles, off-road recreational vehicles, jet skis and other watercraft, lawnmowers, and chain saws. These sources contribute significantly to the state's ozone problems, particularly in populated areas.



The other group includes heavy-duty diesel vehicles and engines used by public agencies and private companies. Enforcement of the growing number of heavy-duty diesel regulations is one of the most rapidly expanding areas for the Enforcement Division. Although heavy-duty diesel vehicles comprise only two percent of California's on-road fleet, they produce about one-third of the nitrogen oxides and approximately two-thirds of the particulate matter emissions attributed to motor vehicles. The exhaust emissions from these vehicles are of special concern, particularly in populated areas, because of the toxic nature of the sooty particles found in diesel exhaust.

Enforcement Division staff inspects heavy-duty diesel vehicles for engine certification compliance, smoke emissions, and tampering. All diesel-powered trucks and buses operating in California, including those that cross the Mexican border, are subject to these inspections. It also enforces regulations designed to keep diesel-powered school buses and delivery vehicles from idling too long, or too close to children's developing lungs.



The Enforcement Division ensures that the highest level of particle controls are installed on construction, public and utility, and trash hauling vehicles, and on urban/transit buses.

In 2008, the mobile source enforcement program conducted over 58,000 inspections, closed 2473 cases, and collected over \$3.9 million in penalties.

Stationary Source Enforcement

The stationary source enforcement program at ARB is responsible for: 1) enforcing regulations for motor vehicle fuels, cargo tank vapor recovery certification, consumer products, and portable fuels containers; 2) conducting special and joint investigations of cross-media environmental cases (i.e., cases involving multiple environmental areas such as air, water, toxic wastes, regular waste, or pesticides); and 3) conducting inspection, investigation,



and compliance functions in conjunction with the 35 local air districts and for overseeing air district enforcement programs for stationary sources.

Stationary sources contribute substantially to emissions of criteria and toxic pollutants. Between one-quarter and one-half of the ozone-forming pollutants emitted are from stationary sources.

In 2008, the stationary source enforcement program at ARB collected nearly 4,600 samples of fuels and consumer products, conducted over 19,300 inspections, closed 124 cases, and collected over \$8.0 million in penalties.

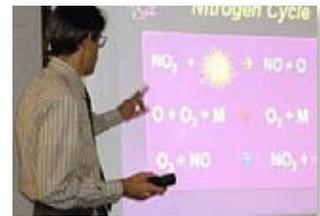
Training and Compliance Assistance

Ideally, businesses that are faced with new or tighter regulations comply voluntarily. The Enforcement Division provides training and materials to these businesses, as well as to local, state, and federal enforcement staff, for improving enforcement and promoting compliance.



The Enforcement Division's nationally-recognized training courses provide current, practical, usable and cost-effective information for both new and experienced environmental professionals working in California. Course content ranges from the basics of air quality to advanced topics in air quality compliance and enforcement.

Recently the program has focused on developing and delivering diesel-related compliance courses to meet the demand created by new ARB diesel emission control regulations. One of the most successful initiatives in 2008 was the introduction of webcasting so many of the courses can be conducted via the World Wide Web to reach a much wider audience.



The Compliance Assistance Program develops and distributes a variety of practical, rule-specific publications, technical manuals, and web-based information. This information is aimed at a diverse audience, including process operators, air quality specialists in small and large businesses, inspectors, and the public.

One-page outreach flyers and pamphlets explain key elements of compliance with new air quality regulations, self-inspection handbooks go into more detail and provide checklists so operators can be proactive in compliance, and technical manuals provide in-depth, source-specific information.

In 2008, the Training Program conducted 223 classes, representing over 11,000 student-day of training. The Compliance Assistance program distributed over 18,800 publications and counted 131,600 hits on the handbooks website.





Air Pollution Control Districts Highlights:

Air Pollution Control programs for stationary sources in California are implemented and enforced by the local and regional air districts. The enforcement of, and compliance with, air pollution control requirements is undertaken and measured through a variety of activities, approaches, and tools. As part of an ongoing effort to characterize enforcement programs at the local level, the California Air Pollution Control Officers Association surveyed 11 of its larger member districts. Overall, the data revealed a robust enforcement and compliance assistance program with substantial funding and staff resources that achieve a high degree of compliance with applicable requirements.



The following statistics measure performance of select enforcement and compliance program elements at the 11 largest local air districts over a five-year period (from 2002 through 2006). These districts include within their jurisdictions over 93% of California's residents. They describe a robust and effective enforcement and compliance program for stationary sources of air pollution. Program achievement include:

- Over 55,000 inspections of Major Permitted Sources (a.k.a. Title V Facilities)
- Facility compliance rate about 95%
- Over \$130 million in monetary violation settlements
- More than \$37 million in non-monetary violation settlements
- Over 185,000 special purpose inspections
- Nearly 33,000 inspections for asbestos pursuant to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos
- More than a 5-fold increase in the number of inspections of portable equipment
- More than 500 full time employees (FTE) conducting field inspections

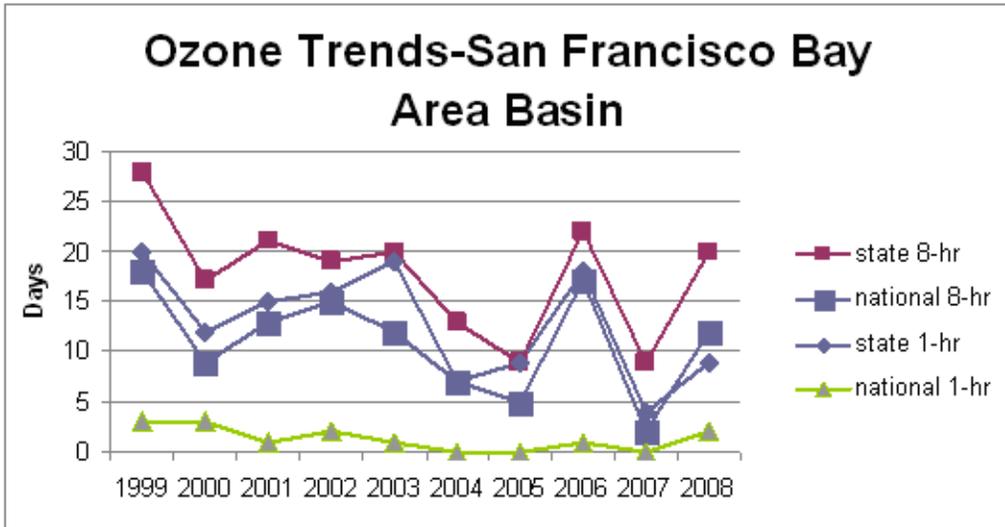
- Over 4,000 days of training for field staff, or 825 training days per year
- Approximately 25% of total district budgets dedicated to enforcement
- Over 510,000 inspections at traditional stationary sources between 2002 and 2006

The data below shows that resources of the 11 largest air districts are efficiently deployed to produce a measurable enforcement and compliance presence. Each individual district uses inspection, enforcement, and compliance statistics to establish future program goals and to guide the prioritization and deployment of resources.

| Select Enforcement Resource Commitments at 11 Local Air Districts | | | | | |
|---|---------------|---------------|---------------|---------------|---------------|
| Year | 2002 | 2003 | 2004 | 2005 | 2006 |
| Total Agency Budgets | \$225,284,490 | \$231,662,030 | \$248,781,560 | \$259,231,141 | \$267,238,772 |
| Enforcement Budget | \$55,911,667 | \$57,983,390 | \$61,277,241 | \$61,219,323 | \$62,766,708 |
| Funded Positions for Field Enforcement | 515.0 | 514.0 | 522.0 | 517.0 | 512.0 |



Compliance assistance and outreach programs proactively prevent violations from occurring, but when violations do occur, robust enforcement actions bring about a prompt return to compliance.



Source of Data: CARB

Data indicated a general improvement in air quality since 1999 with some annual variations







Department of Toxic Substances Control Highlights:

The collaborative efforts of Department of Toxic Substances Control (DTSC) staff culminated in several significant enforcement actions in 2008. These actions not only helped stop illegal hazardous waste management practices throughout California, but they also brought numerous companies back into compliance with the state's hazardous waste laws. They included the following:

- DTSC reached a \$1.4 million settlement with Kyocera America, Inc. to resolve hazardous waste violations occurring at the company's facility in San Diego. Violations found at the facility included: treatment of hazardous waste without a permit; storage of incompatible hazardous waste; failure to have tank inspections and assessments; storage of hazardous waste more than one year; and failure to provide a minimum of two feet of freeboard.
- DTSC reached a \$350,000 settlement with Atlas Iron & Metal Co., Inc. for hazardous waste violations at the company's facility in Los Angeles. Violations found at the facility included: illegal disposal of PCBs, lead, and other heavy metals. DTSC inspectors also found two illegal, lead-contaminated waste piles. Furthermore some of the contaminated hazardous material had migrated onto the Jordan High School athletic field. Atlas was required to pay for the cleanup and remediation of contaminated areas at both the company's plant, as well as the high school. In addition, a new containment wall was constructed to separate the Atlas site from the high school.
- DTSC reached a \$285,000 settlement with Trident Plating to resolve hazardous waste violations occurring at the company's facility in Santa Fe Spring, Los Angeles County. Violations found at the facility included: failure to comply with a previously issued Consent Order; failure to have tank certifications; storage of hazardous waste without a permit; treatment and storage of incompatible wastes (acid and cyanide); and failure to have secondary containment.
- DTSC reached a \$250,000 settlement with Gardena Specialized Processing to resolve hazardous waste violations occurring at the company's facility in Gardena, Los Angeles County. Violations found at the facility included: treatment of hazardous waste without a permit; no tank certifications; no secondary containment; unlabelled, bulging drums; and failure to respond to DTSC's request for written information.
- DTSC reached a \$170,000 settlement with Aviation Equipment Structures to resolve hazardous waste violations occurring at the company's facility in Costa Mesa, Orange County. Violations found at the facility included: illegal disposal of hazardous waste; possessing open containers of hazardous waste; storage of hazardous waste without a permit; and no training plan.

2008 Enforcement Data

- 562 core work inspections
- 286 Certified Unified Program Agency (CUPA) inspections
- 2,962 Mexican border truck stops
- 56 complaint investigations closed
- 74 enforcement cases settled
- \$3.5 million in total settlement dollars
- \$1.7 billion in financial assurance funds managed
- 14 Environmental Justice Initiative events
- 56 training classes provided, resulting in more than 350 CUPA inspectors, government officials and industry personnel trained
- 343 criminal cases initiated
- 257 criminal cases completed
- 89 arrests
- Landfill initiative conducted

Toxics in Consumer Products Enforcement

Forever 21 Settlement

In August 2008, DTSC settled the first enforcement action under provisions of the California Toxics in Packaging Prevention Act (TIPPA). The action was taken against international clothing retailer Forever 21 for circulating shopping bags with lead levels of up to 7,000 parts per million (ppm). Forever 21 is a chain of clothing retailers throughout the U.S., Asia, and the Middle East, offering fashion and accessories for young women and men. As part of the \$165,000 settlement, Forever 21 paid \$80,000 in penalties and \$35,000 to DTSC as reimbursement for investigative costs. Forever 21 also paid \$50,000 to the Toxics in Packaging Clearinghouse (TPCH) as a Supplemental Environmental Project. TPCH conducted the initial testing of the non-compliant plastic bags and notified DTSC of a potential violation when Forever 21 failed to respond to its correspondence. Forever 21 also failed to respond to initial inquiries from DTSC and to take prompt and effective action to replace the problematic bags in circulation. Although 19 other states have now implemented Toxics in Packaging statutes, this enforcement action under provisions of California's TIPPA was the first of its kind in the country.

Lead Toy Exchange

In December 2008, DTSC participated in the Lead Toy Exchange in Pacoima, an Environmental Justice community in Southern California. This toy exchange offered up to two \$25 gift cards for people whose toys tested positive for lead. The money was to pay for safer replacement toys. Nearly 100 toys were scanned using DTSC's X-Ray Fluorescence (XRF) devices. Fifty-three (53) toys were found to contain levels of lead up to 2,233 ppm. Toys were also identified where no lead was detected.



Enforcement Initiatives

E-waste in Landfills

In May 2008, DTSC's Office of Criminal Investigations (OCI) conducted an Electronic Waste (E-waste) Enforcement Initiative at the Puente Hills Landfill, in conjunction with the County Sanitation Districts of Los Angeles. The enforcement actions were aimed at commercial haulers who surreptitiously and illegally bring electronic and other hazardous waste to the landfill for disposal. During the three-day event, 21 haulers were cited for dumping several hundred pounds of E-waste and other hazardous wastes such as paint, solvents, pesticides and batteries. One individual was arrested. In addition, during the event OCI's scientists and criminal investigators made almost 500 contacts with customers visiting the landfill. DTSC staff educated these customers on what can and cannot be dumped at landfills, provided them with alternatives for legal disposal of E-waste and hazardous waste, and passed out more than 150 informational fact sheets.



Environmental Justice

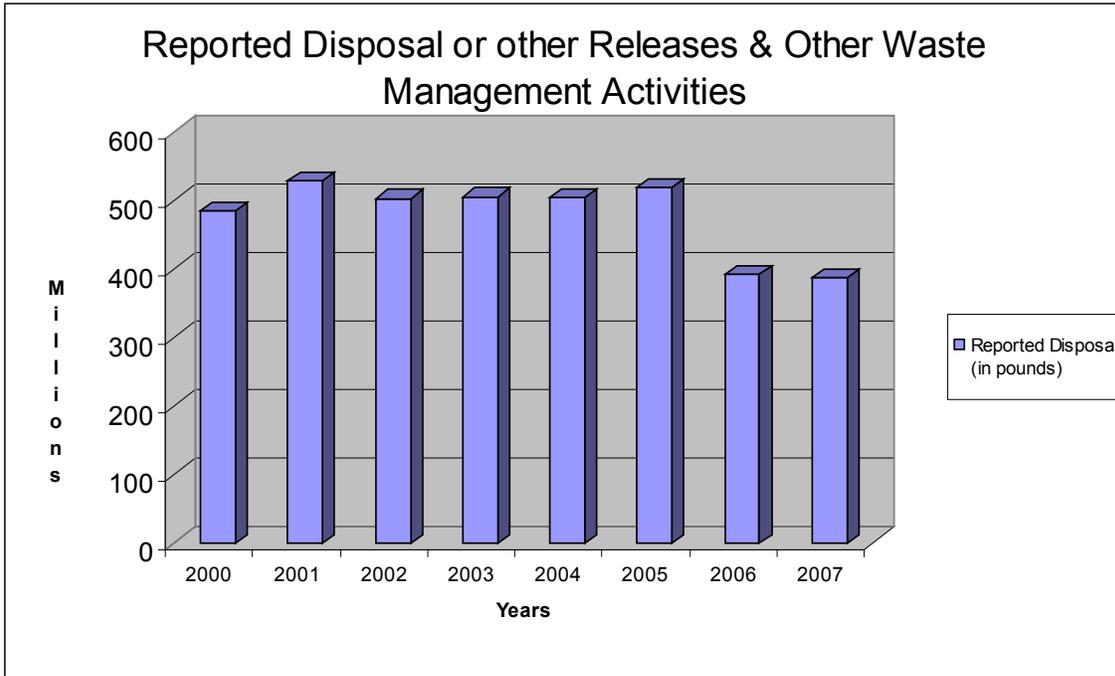
DTSC's Environmental Justice (EJ) Enforcement initiative works by connecting people who live closest to areas that have environmental problems with regulators in California's complex environmental enforcement structure (DTSC, local environmental health officials, Water Boards, air quality regulators, etc.). Community members, environmental activists and government officials join in day-long bus tours of local sites that are suspected of having environmental and health dangers. All sites are selected by community members who then present information regarding the sites' environmental problems and issues. At workshops held immediately after the tours, the entire

group works to develop priorities for inspection and enforcement efforts. DTSC's enforcement staff returns to the EJ community within 100 days to report on inspections and other activities, and to work with communities on future action plans. This sets the foundation for stronger partnerships for further information sharing and handling environmental problems on an ongoing basis with community support. In 2008, DTSC held EJ tours in Imperial, Los Angeles, and Fresno counties.



| 2008 ENVIRONMENTAL JUSTICE INITIATIVE EVENTS | | | |
|--|------------|--|--|
| Community | Population | Events | Examples of Environmental Concerns |
| Imperial County | 162,000 | March-tour & workshop May-Follow-up meeting September-follow-up meeting | Illegal dumping, exposure to chemicals |
| Wilmington | 53,300 | June-tour November- follow-up meeting (additional inspections scheduled for 2009) | What's causing rising rates of illness |
| Fresno County | 899,300 | October-tour | Neighborhood lead exposure, abandoned factory site |
| Los Angeles County | 10,393,185 | The Environmental Justice Enforcement Ombudsman was invited and participated in nine of the monthly meetings of the Los Angeles Environmental Justice Forum. | |

The chart below reflects California's data from the Toxic Release Inventory (TRI) a national database that contains detailed information on the toxic chemical releases and waste management activities reported annually by certain industries. The observed decrease in disposal or releases of waste in 2006 and 2007 was primarily due to a sharp reduction in the on-site treatment of hazardous waste.



Source: U.S.EPA Tri Explorer

The observed decrease in disposal or releases of waste in 2006 and 2007 was primarily due to a sharp reduction in the on-site treatment of hazardous waste





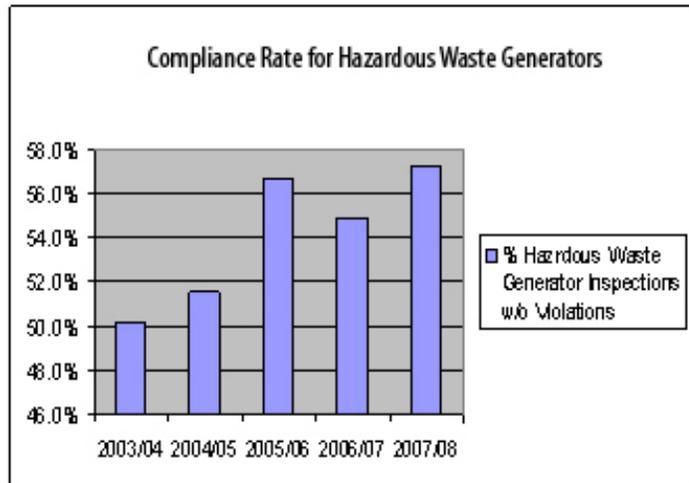
Unified Program Highlights:

The Secretary of the California Environmental Protection Agency is directly responsible for coordinating the administration of the Unified Program. The 84 Certified Unified Program Agencies (CUPAs) which are generally part of the local Fire Department or Environmental Health Department carry out the responsibilities of six environmental programs that were previously handled by approximately 1,300 state and local agencies. The goal of the Unified Program is to reduce the impact of hazardous materials on public health and environment by achieving greater statewide and cross program consistency for the 140,000 businesses regulated by the CUPAs. CUPAs have authority to enforce regulations, conduct inspections, administer penalties, and hold hearings.

Unified Program Regulated Universe:

Hazardous Waste Generators

CUPAs implement the hazardous waste generator and onsite tiered-treatment program, as part of the Unified Program. The hazardous waste generator program prevents releases of hazardous waste by ensuring that those who generate, handle, transport, store and dispose of wastes do so properly. Enforcement actions are taken against those who fail to manage their hazardous wastes appropriately. In addition, the program also promotes pollution prevention and reuse and recycling of hazardous materials and waste. Local CUPAs conducted 40,760 hazardous waste site inspections in 2008.



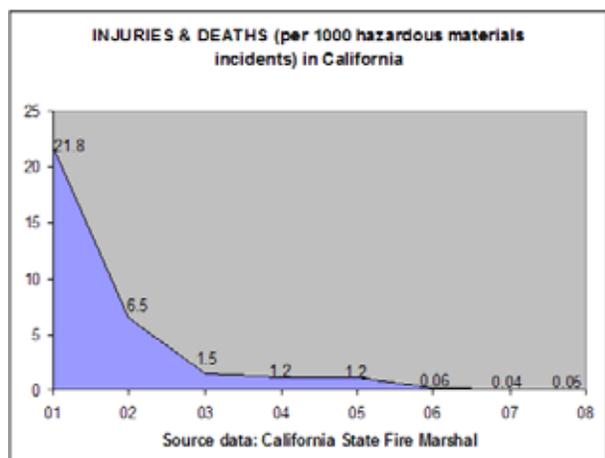
Hazardous Materials Release Response Plans and Inventories (Business Plans and California Fire Code)

CUPAs collect and annually update chemical and site information from over 116,000 businesses. The information



collected is utilized by local, state and federal emergency response agencies in responding to hazardous materials spills and natural disasters. Its purpose is to prevent or minimize the damage to public health and safety and the environment from a release or threatened release of hazardous materials and to satisfy community right-

to-know laws. In 2008, CUPAs have conducted extensive outreach to agricultural businesses to obtain chemical information from growers who had not previously been reporting under the business plan program.



The state of California began to aggressively regulate the storage and handling of hazardous materials in 1986. In 1994 the creation of the Unified Hazardous Material Program was mandated with most of these new programs beginning operation by 1998. It is very likely the development of the Unified Hazardous Materials Program contributed significantly to the decrease in deaths and injuries reflected in the graph.

California Accidental Release Prevention Program (Cal/ARP)

CUPAs determine and enforce at those facilities which are required by law, to prepare and submit a Risk Management Plan (RMP) based on the significant likelihood of regulated substance accident risk. The risk management program requirements go beyond emergency planning and reporting; they require a holistic approach to accident prevention and mitigation. Elements required under the risk management program regulations vary for individual stationary sources, but generally include a hazard assessment, a prevention program, an emergency response program, and a management system. The compliance rates for inspections at Cal/ARP facilities have risen from 20% for those inspected in 2003 to approximately 60% at inspected facilities in 2008.

Underground Storage Tanks

CUPAs oversee and regulate state and federal regulations that set operating requirements and technical standards for tank design and installation, leak detection, spill and overflow control, corrective action, and tank closure. The CUPAs underground storage tank program ensures that the tank contents (petroleum or other hazardous substances) do not seep into the soil and contaminate California's groundwater and waterways which are a source of drinking water.

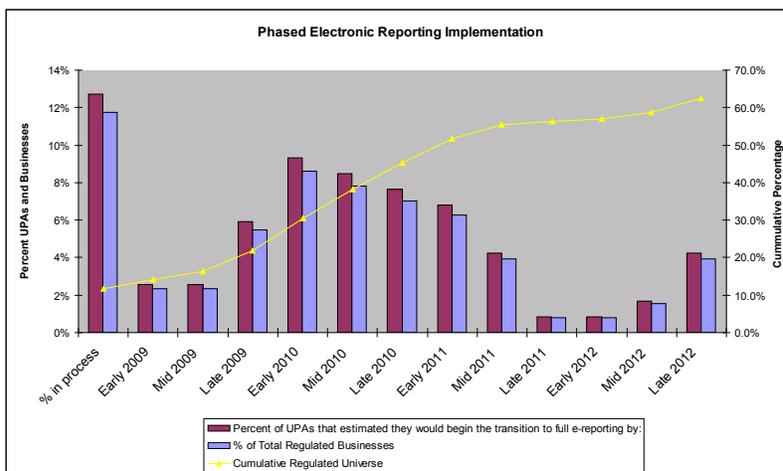
Above Ground Storage Tanks

In 2007, the California Legislature transferred the responsibility for the Above Ground Storage Tank Inspection Program to the CUPAs. In 2008, the Unified Program used grant monies to develop an aboveground storage tank inspector course that will provide 16 workshops statewide for over 600 CUPA inspectors by the end of 2009 in order to implement the program.



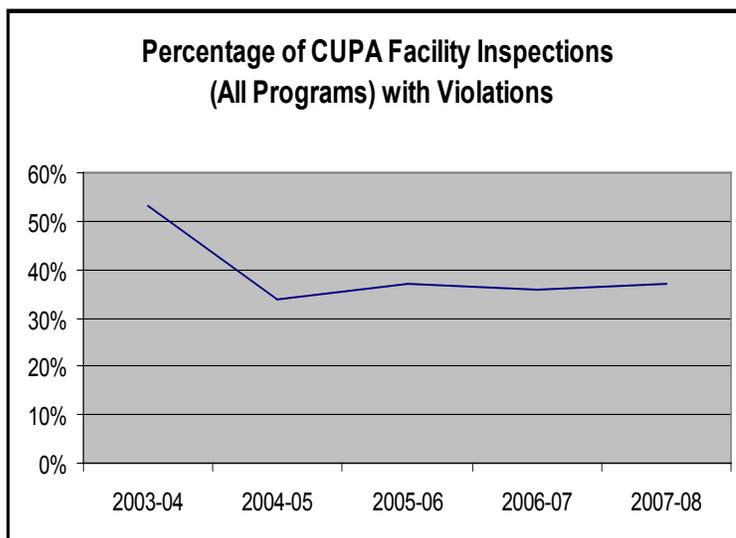
Electronic Reporting

Assembly Bill 2286, which requires Unified Program electronic reporting, was chaptered into law in 2008. It requires the electronic submittal of Unified Program data, which allows the regulated community to submit data directly to their local Certified Unified Program Agency (CUPA) which will share it with Cal/EPA. Alternatively, multi-jurisdictional businesses will be able to exchange data with Cal/EPA who will in turn share the data with the CUPA. Cal/EPA will serve as a virtual data warehouse and have the ability to exchange data with US EPA and create a public access website. The earliest electronic filers will start using the statewide system, called the California Environmental Reporting System in September of 2009. Based on when a business' CUPA is able to receive the data from the state system, the CUPA will determine when electronic reporting is mandatory locally and paper-filing is no longer an option.

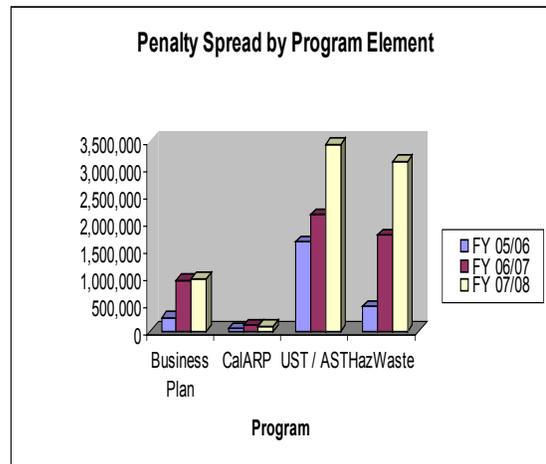


Enforcement

In state fiscal year 2007/2008 (July 1, 2007 thru June 30, 2008) the CUPAs initiated a total of 4,418 formal enforcement actions against regulated entities or individuals that were in violation of environmental laws. Each year has seen a growth in the use of this enforcement tool, in particular Administrative Enforcement Orders that totaled less than 200 five years ago and increased to over 500 in the last two consecutive years. Total fines collected in fiscal year 2007/2008 rose to \$7.6 million, an increase of almost 50% from the \$5.4 million that was collected in fiscal year 2006/2007, and \$2.0 million collected in fiscal year 2005/2006.



- Sacramento County Environmental Management Department reached a \$2.4M settlement with Georgia-Pacific Chemicals for violations of the State Health and Safety Code relating to the management and treatment of hazardous waste at the company's Elk Grove plant.
- March Global Port, the developer of a former March Air Base property, and the facility's commercial fueling company have paid more than \$100,000 in fines to settle a criminal case brought against them last year for operating a hazardous jet-fueling system.



- The California Department of General Services paid \$93,350 to the Sacramento County CUPA after violating rules governing the operation of its underground fuel storage tank at the Capitol.
- The State Attorney General culminated efforts of eleven CUPAs in settling a statewide agreement with Jiffy Lube International, resolving allegations that some of its oil change centers did not follow precautions to protect the environment from oil and antifreeze spills. The company agreed to pay \$500,000 as civil penalties, costs and attorneys' fees. District Attorneys assisting in the investigation include: Alameda, Los Angeles, Marin, Monterey, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, Solano, Ventura, and the Los Angeles City Attorney.

Outreach Efforts to Local Agencies, Businesses and Community

CUPAs post environmental compliance newsletters that highlight environmental requirements and opportunities relating to pollution prevention to regulated businesses. In addition, CUPAs conduct site visits to help regulated businesses plan compliance strategies and pollution prevention opportunities at their facility. CUPAs provide vital assistance to local business owners/operators in completing their permits, Hazardous Materials Business Plans or renewal documents.

- Sacramento County CUPA staff provides bi-monthly Hazardous Materials Business Plan Workshops for businesses to come in and obtain personal assistance for submittal of environmental reports.
- The San Diego County CUPA taught the California Standardized Training Institute's Personal Protective Equipment and Railway and



Highway Spill mitigation classes in Spanish for the Border 2012 project to the Tijuana Fire Department at the Otay Mesa-U.S. Border Customs station. Fifteen members of Tijuana fire's Hazmat team are trained as Hazardous Materials Technicians. These Bomberos now meet California standards and can assist with Bi-national responses.

- The City of Los Angeles CUPA maintains an environmental events calendar that highlights opportunities for local businesses and the public to participate in eco-friendly activities in the community.
- CUPAs conduct presentations at classrooms and science fairs to raise awareness about careers in Environmental Health and promote Pollution prevention as well as proper managements of hazardous materials and universal waste. In 2008, the San Diego CUPA reached over 2000 students (elementary, middle and high school) through classroom presentations and table demos at science fairs at 30 outreach sessions.



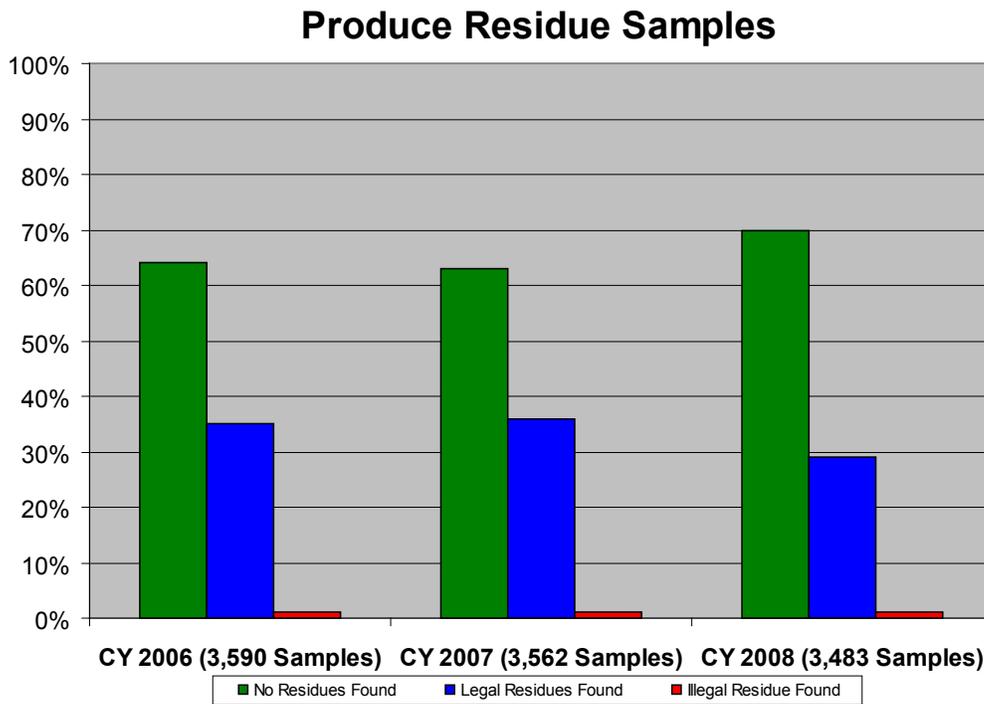




Department of Pesticide Regulation (DPR) Highlights:

Food Safety

Overall, DPR collected more than 3,400 produce residue samples in 2008. Of the total, 70% had no detected pesticide residues and 29% had residues within legal tolerances established for that crop. The remaining 1% had illegal residues. These crops were removed from the marketplace to prevent consumption by the public.



Source of Data: DPR

This graph indicates a general increase in the amount of produce in California that has no detectable pesticide residuals.

In 2008, as a result of a series of problems with illegal residues in snow peas from Guatemala, DPR contacted the Guatemalan exporters' association and United Nations officials to share our findings and request action.

We are pleased that Guatemala recently banned the insecticide that had produced most of the illegal residues. Since the ban, we have seen far fewer illegal residues in Guatemalan snow peas.



Agricultural Inspections

Counties conducted more than 14,000 agricultural inspections in 2008 to assess compliance with laws and regulations related to field worker safety, pesticide use applications, mixing and loading pesticides, and commodity and field fumigation. Nearly 235,000 criteria were assessed with a compliance rate of 97.6%.

Structural and Landscape Maintenance Inspections

California's pesticide enforcement programs oversee more than just production agriculture. It also ensures that licensees are using pesticides safely in and around the home and surrounding landscape.

Nearly 4,500 inspections were performed that evaluated approximately 100,000 criteria. Ten percent of the inspections in 2008 revealed one or more violations with an overall compliance rate of 99.2%. Civil penalties assessed for agricultural and structural enforcement actions by the county agricultural commissioners in 2008 totaled \$363,700.

Monitoring the Marketplace

DPR routinely conducts inspections at retail establishments, home and garden stores, retail and wholesale nurseries, landscape material suppliers, pet suppliers, restaurant and hospital suppliers, and pool and spa centers to check that pesticide products being offered for sale are registered in California. This is to ensure that the products have been evaluated and will not cause health or environmental problems, when used properly.



In 2008, DPR conducted about 300 inspections and 70 audits. Close to 600 unregistered and misbranded pesticide products were identified as a result of these investigations and were removed from the marketplace. DPR completed legal proceedings on 182 cases resulted in over \$1.4 million in penalties to violators.

Implementing Integrated Pest Management (IPM) practices in schools and child day care facilities

Regional school IPM training workshops for school district employees in 2008 brought DPR's total outreach in this arena up to 718 public school districts. Since the 2000 passage of the Healthy Schools Act, personnel from

nearly 75% of California’s public school districts have been trained, representing about 4.5 million students. These workshops enable school district IPM coordinators to go back into their districts to train school maintenance and operations staff, including groundskeepers and custodians, on reduced-risk strategies to control cockroaches, ants, rodents, weeds, and other pests.

Outreach efforts to farm worker communities and families

State and county compliance activities include participation in community meetings, health conferences and other events to promote pesticide safety to over 25,000 people; and radio and television interviews regarding pesticide safety on Spanish-language stations to a viewership estimated at 22,000.

Continuing Education

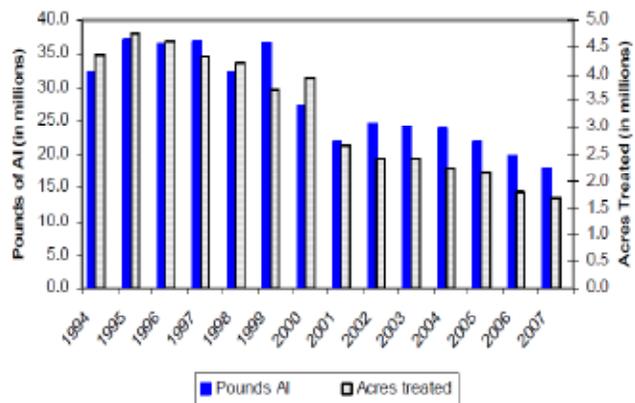
State and county pesticide officials gave more than 1,450 presentations and workshops on pesticide laws and regulations to audiences totaling an estimated 50,000 people in 2008.

Improving Air Quality

DPR implemented stringent Volatile Organic Carbon fumigant emission controls in areas of the state facing air quality challenges and capped pesticide emissions in Ventura County beginning in January 2008 to meet State Implementation Plan goals under the Federal Clean Air Act.

Use Trends of Pesticides on the State’s Proposition 65 List of Chemicals

DPR’s system to collect and track pesticide use is recognized as the most comprehensive in the world. With the exception of home and most industrial and institutional uses, all pesticide applications have been reported to DPR since 1990.



Use trends of pesticides that are on the State’s Proposition 65 list of chemicals that are “known to cause reproductive toxicity.” Reported pounds of active ingredient (AI) applied include both agricultural and non-agricultural applications. The reported cumulative acres treated include primarily agricultural applications. Data are from the Department of Pesticide Regulation’s Pesticide Use Reports.

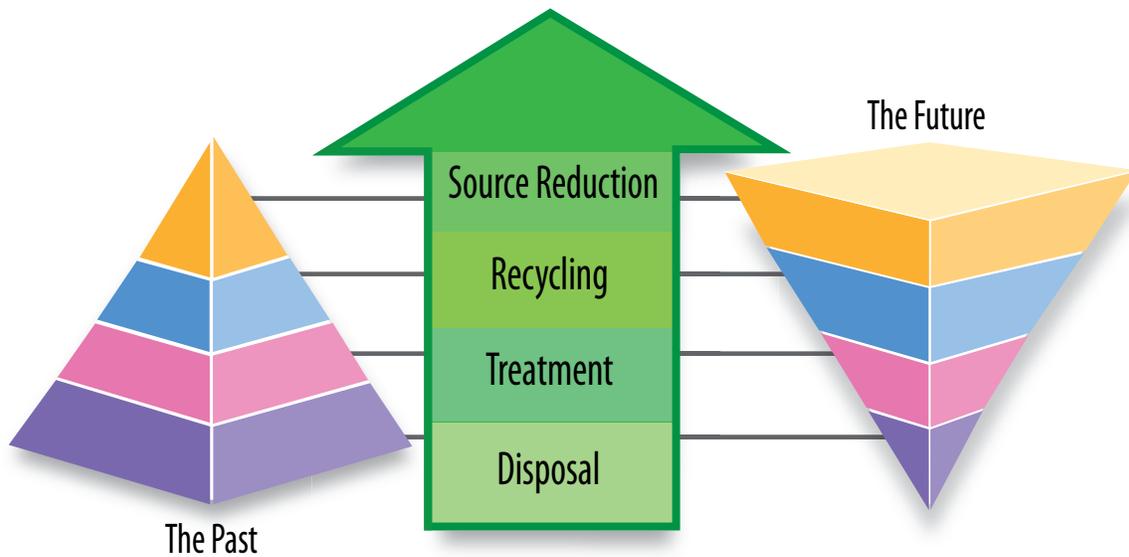
About DPR: The California Department of Pesticide Regulation’s (DPR’s) mission is to protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. For more information about our programs please visit our website at: www.cdpr.ca.gov





Integrated Waste Management Board Highlights:

Protecting public health, safety and the environment from the negative impact of solid waste requires effective regulation and enforcement and diversion programs (recycling, composting and waste prevention) that reduce the amount of solid waste disposed.

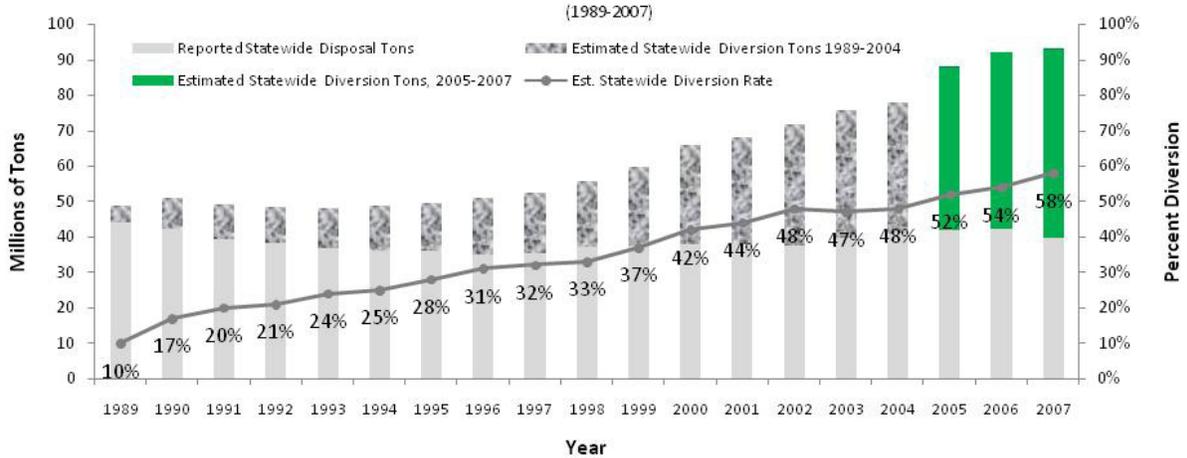


Californians have made “reduce, reuse, and recycle” part of their daily lives and are moving toward zero waste to protect and conserve resources for the future.

Technical assistance and training are critical to help the California’s waste management industry, millions of businesses, thousands of schools and hundreds of state agencies and local governments to comply with waste management laws. When compliance is not achieved, the IWMB emphasizes enforcement.

Statewide diversion increased to 58% in 2007, the latest year for which data is available. This exceeds the 50% diversion requirement under State law.

Estimated Statewide Waste Generation, Diversion, and Disposal Tonnages and Statewide Diversion Rates^{1,2}

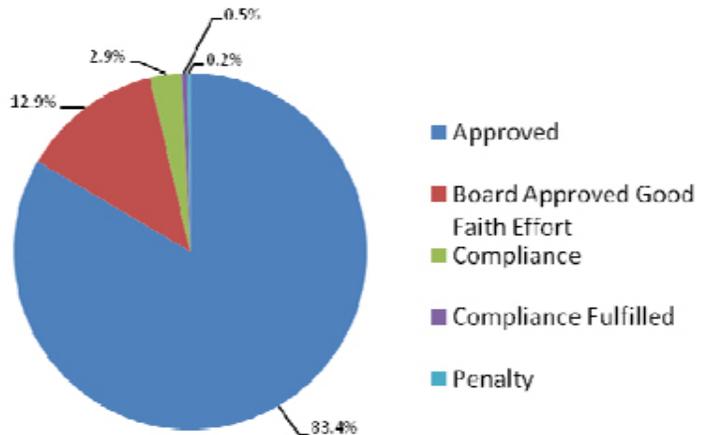


1. The Board's Taxable Sales Deflator Index (TSDI) was used to remove inflation from taxable sales amounts used in statewide diversion rate estimates for 2005, 2006 and 2007. A preliminary TSDI is used for the statewide diversion rate. Prior to 2005, Consumer Price Index (CPI) was used. In 2004, the State Board of Equalization stated that its taxable sales deflator is a more accurate measure of inflation in taxable sale amounts. Because of this change in methodology, the statewide generation and diversion rate estimates for 2005, 2006, and 2007 are not directly comparable with prior year estimates.
2. Per Chapter 993, Statutes of 2002 (Chavez, AB 2308), 2001-2005 disposal figures do not include waste sent to three Integrated Waste Management Board-permitted inert mine-reclamation facilities in Southern California. Starting in 2006, disposal does not include waste sent to two of these facilities. This represents approximately 2 percentage points of diversion.

California's local governments have aggressively implemented almost 16,000 programs to help all Californians divert waste from landfills.

In 2008, the IWMB reviewed and approved 96 percent of local governments' diversion progress. Only 13 local governments were under IWMB scrutiny for poor performance and of these only 1 received enforcement fines. Recent statutory changes will make diversion measurement more timely and accurate and focus on diversion program implementation.

2005-06 Local Government Biennial Review Results



Solid waste processing and disposal must be handled safely to protect public health, safety and the environment. IWMB oversees local government enforcement agencies that regulate solid waste facilities such as landfills and transfer stations, and lists those facilities that are chronic violators. IWMB provides compliance training and

assistance to operators. In 2008, 25% of the facilities with significant violations came back into compliance. State law was also changed to provide additional enforcement options at solid waste facilities.

Illegal waste tire disposal poses fire risks and public health risks including providing breeding ground for mosquitoes that carry the West Nile virus. IWMB tracks reuse, recycling or disposal of waste tires through a manifest system and together with local enforcement partners inspects tire dealers, haulers and waste tire facilities. After extensive industry compliance training and technical assistance IWMB adopted a zero tolerance compliance policy and a streamlined penalty process. Implementation of these programs resulted in an eight fold increase in tire hauler and tire manifest enforcement actions in 2008 resulting in a 73 percent increase in total tire related enforcement actions (both tire hauler and manifest, and tire facility).

California is currently poised to lead the nation in environmental literacy as a result of the Education and the Environment Initiative (EEI). The goal of EEI is to increase environmental literacy for California K – 12 students by teaching academic content standards to mastery within the context of a variety of environmental topics such as sustainability, global climate change, waste, water, energy, and resource conservation and recycling. EEI is a unique opportunity to formally include environment-based education into California's classrooms. Over 6,000,000 students and 150,000 teachers will be reached. This is the first program of its kind that will be approved by the State Board of Education.



The State of California has contributed approximately \$10,000,000 for the development of the EEI Curriculum including contracts with writers, editors, designers, photographers, photo editors, printers, and field testing teachers. The Integrated Waste Management Board, Department of Conservation, Department of Toxic Substances Control, State Water Resources Control Board, State and Consumer Services Agency, Air Resources Board, California Energy Commission, and Office of Environmental Health Hazard Assessment have all contributed to this landmark effort due to the integrated nature of the EEI curriculum.

EEI has an active public/private partnership in place with a multitude of stakeholders. Key partners with the Integrated Waste Management Board and the California Environmental Protection Agency are the State Board of Education, California Department of Education, and Governor's Secretary for Education.





Water Boards Highlights:

The State Water Resources Control Board and its nine Regional Water Quality Control Boards (Water Boards) protect the waters of the State by ensuring compliance with clean water laws, issuing permits and by taking enforcement actions against illegal discharges of waste in surface and ground waters. The Water Boards regulate the discharge of wastewater or leakage from more than 40,000 facilities. The Water Boards also regulate and enforce California's water rights.

Calendar year 2008 was a significant year for the enforcement programs for all the Regional Boards and for the State Board. Several enforcement initiatives were implemented, and the "2008 Initiative for Mandatory Minimum Penalty Enforcement" resulted in an additional 150 administrative actions that will result in an additional \$17 million in assessed penalties and fines. The Water Boards have an active enforcement program in collaboration with the rest of the enforcement programs at the California Environmental Protection Agency and with local regulatory and law enforcement agencies.

The Water Boards are also committed to accountability and transparency. During 2008, the Water Boards released the "Baseline Enforcement Report for Fiscal Year 2006-07" and is now producing 7 enforcement reports a year and extensive compliance and enforcement information is available on the public Water Boards public internet site. The California Water Boards Strategic Plan, completed in September 2008, includes specific goals and objectives related to enforcement. The Water Boards updated the enforcement policy during calendar year 2009.

Program Statistics:

The five core regulatory programs are:

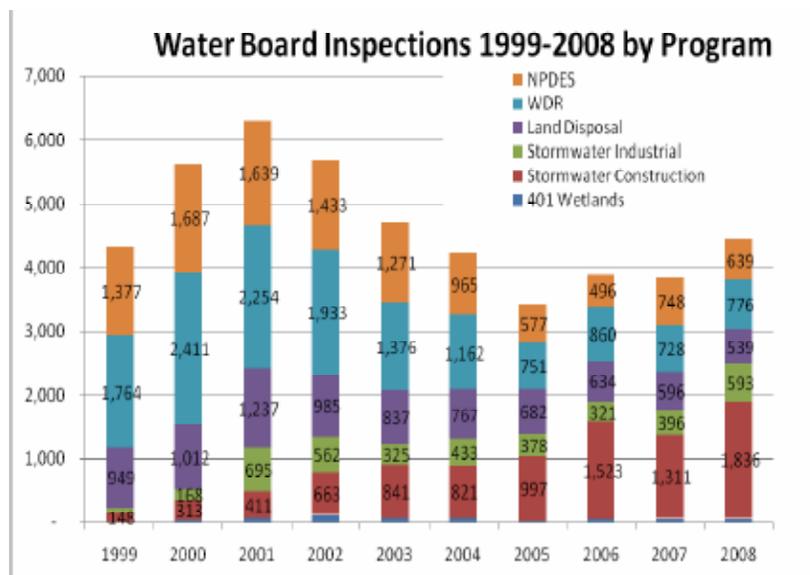
- National Pollutant Discharge Elimination System (NPDES), Wastewater
- National Pollutant Discharge Elimination System (NPDES), Stormwater
- Waste Discharge Requirements (WDR)
- Land Disposal
- Wetlands and 401 Certification

General information on these programs is shown below, including actions taken by the State Water Board's Office of Enforcement and the Division of Water Rights.

NPDES Wastewater Program

Discharges from specific point sources to surface waters (rivers, lakes, oceans, wetlands, etc.), such as municipal waste treatment plants, food processors, etc.

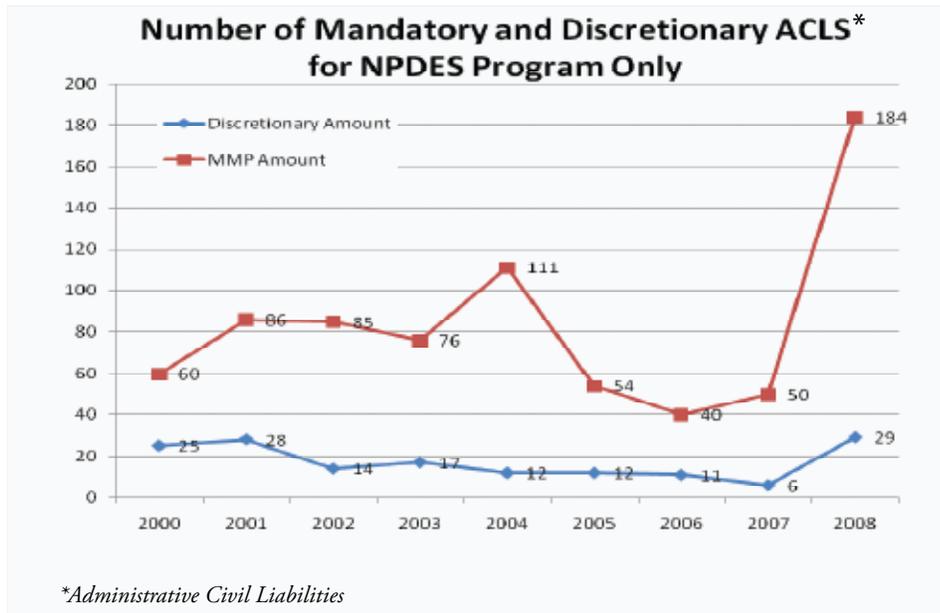
- Facilities regulated: 2,037
- Inspections conducted: 639
- Facilities with one or more violations: 601
- Violations documented: 5,417
- Percentage of violations with enforcement actions: 63%
- Enforcement actions issued: 855
- Penalties assessed: \$23,158,206



NPDES Stormwater Program

Stormwater discharges generated by runoff from land and impervious areas such as paved streets, parking lots, industrial and construction sites during rainfall events.

- Facilities regulated: 28,805
- Inspections conducted: 2,472
- Facilities with one or more violations: 1,389
- Violations documented: 1,873
- Percentage of violations with enforcement actions: 93%
- Enforcement actions issued: 2,139
- Penalties assessed: \$2,757,960



Waste Discharge Requirements Program

Discharges of wastewater from point sources to land and groundwater, waste generated from confined animal facilities and all other pollution sources that can affect water quality not covered by other programs.

- Facilities regulated: 6,731
- Inspections conducted: 780
- Facilities with one or more violations: 825
- Violations documented: 5,179
- Percentage of violations with enforcement actions: 36%
- Enforcement actions issued: 551
- Penalties assessed: \$2,539,690

Land Disposal Program

Discharges of waste to land that need containment in order to protect water quality, including landfills, waste ponds, waste piles, and land treatment units.

- Facilities regulated: 790
- Inspections conducted: 539
- Facilities with one or more violations: 115
- Violations documented: 277
- Percentage of violations with enforcement actions: 78%
- Enforcement actions issued: 87
- Penalties assessed: \$126,950

401 Certification/Wetlands Program

Impacts from dredging and disposal of sediments, filling of wetlands or waters, and any other modification of a water body.

- Projects regulated: 959
- Inspections conducted: 60
- Facilities with one or more violations: 12
- Violations documented: 61
- Percentage of violations with enforcement actions: 70%
- Enforcement actions issued: 35
- Penalties assessed: \$132,375

Office of Enforcement

The Office of Enforcement at the State Water Board provides coordination and oversight of Regional Water Board enforcement activities, through policy adoption, training and investigative assistance. The Office of Enforcement also takes independent enforcement actions where authorized.

- Cases investigated: 323
- Cases closed: 19
- Cases referred to District Attorney: 4
- Enforcement actions issued: 8
- Penalties assessed: \$57,500

Water Rights

Allocates water rights through a system of permits, licenses and registrations that grant individuals and others the right to beneficially use reasonable amounts of water. Water rights permits help to protect the environment from impacts that occur as a result of water diversions and include conditions to protect other water users and the environment.

- Facilities regulated: 23,622
- Inspections conducted: 65
- Violations documented: 6,240
- Percentage of violations with enforcement actions: 1%
- Enforcement actions issued: 137
- Cases closed: 195
- Penalties assessed: \$46,850

Beach-Related Indicators

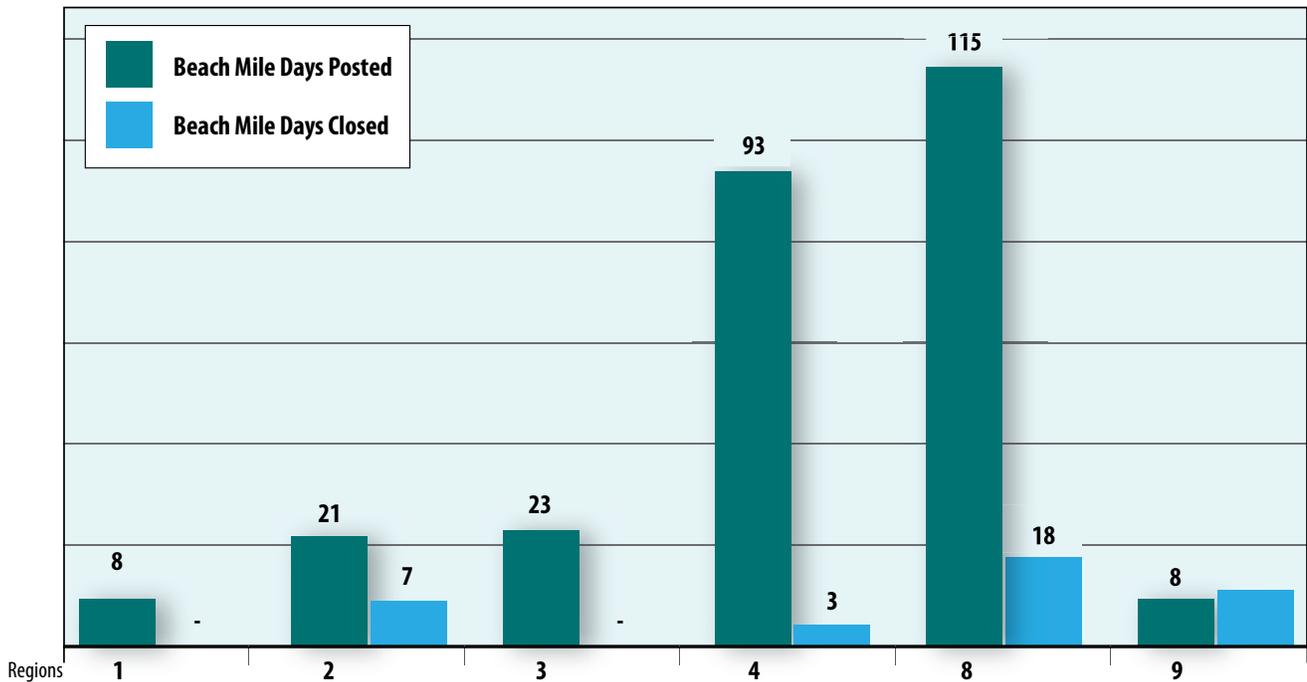
Group: Beach availability
 Measure: Number of Beach Closures
 Number of Beach Postings
 Message: Beaches are available for swimming 99% of the time

Key Statistics for FY 2008-2009

Number of Beach Closures: 44
 Number of Beach Postings: 579

Measurements:

| Region | # of Beaches | # of Beaches Closure Events | # of Days Beaches Closed | # of Beach Mile Days Closed | # of Beaches Posted Events | # of Days Beaches Posted | # of Beach Mile Days Posted | Total Days Posted or Closed | Total Beach Mile Days Posted or Closed | % of Swim Days not Fully Available | % of Swim Beach Mile Days not Available |
|--------|--------------|-----------------------------|--------------------------|-----------------------------|----------------------------|--------------------------|-----------------------------|-----------------------------|--|------------------------------------|---|
| 1 | 67 | - | - | - | 17 | 192 | 8 | 192 | 8 | 1.6% | 0.052% |
| 2 | 76 | 7 | 151 | 7 | 72 | 486 | 21 | 637 | 28 | 4.5% | 0.190% |
| 3 | 106 | - | - | - | 70 | 423 | 23 | 423 | 23 | 1.7% | 0.079% |
| 4 | 84 | 21 | 58 | 3 | 273 | 1,855 | 93 | 1,913 | 96 | 6.6% | 0.361% |
| 8 | 7 | 10 | 31 | 18 | 121 | 529 | 115 | 560 | 133 | 21.9% | 0.402% |
| 9 | 93 | 6 | 10 | 10 | 26 | 77 | 8 | 87 | 18 | 0.4% | 0.053% |
| Total | 433 | 44 | 250 | 38 | 579 | 3,562 | 268 | 3,812 | 307 | 3.7% | 0.199% |







Office of Environmental Health Hazard Assessment (OEHHA) Highlights:

California has a long tradition of leading the nation in public health and environmental protection. The state has enacted laws, promulgated regulations, and set standards designed to protect its residents when federal provisions are non-existent or inadequate. In many cases, these efforts to protect against harmful human exposures to environmental contaminants are based upon scientific evaluations by the Office of Environmental Health Hazard Assessment (OEHHA).

OEHHA plays a critical and unique role in environmental protection. OEHHA functions as a risk assessment arm of Cal/EPA, independent of the five regulatory entities in the agency. OEHHA is also the lead agency for the implementation of Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986).

OEHHA's core responsibility is to evaluate the health impacts of environmental chemicals. OEHHA's assessments support a broad array of environmental programs, including those that regulate:



Air Quality

OEHHA makes health-based recommendations for ambient air quality standards, identifies toxic air contaminants, and develops guidelines for assessing them.

In 2008, OEHHA revised the risk assessment guidelines for non-carcinogens to more explicitly account for children's susceptibilities. To date, OEHHA has developed health-based exposure levels for about 100 chemicals, six of which were added in 2008.

Water Quality

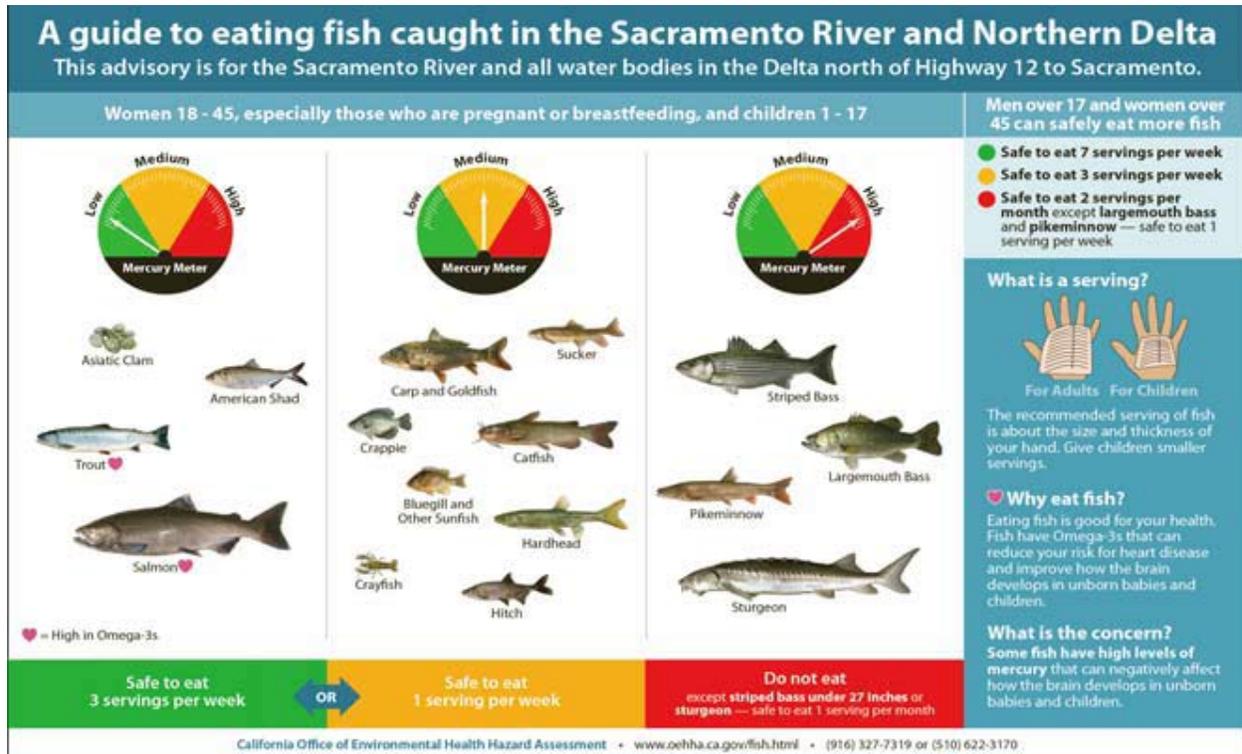
OEHHA develops "public health goals" (PHGs) for drinking water contaminants. The Department of Public Health uses these values as the health basis for the state's primary drinking water standards. Over 80 PHGs have been developed, including three in 2008.



OEHHA issues waterbody-specific fish consumption advisories that provide guidance on eating sports fish that may contain hazardous contaminants.

OEHHA has issued fish advisories for approximately 235 miles of river, 220,000 acres of estuary and 11,990 acres of lake in 2008.

Example cited in bullet about fish advisories:



Pesticides

OEHHA evaluates pesticide toxicity data in support of the Department of Pesticide Regulation’s (DPR) pesticide registration and regulation efforts. In 2008, OEHHA collaborated with DPR and the Department of Public Health in evaluating of the toxicity of the pheromone used in aerial applications against the light brown apple moth (LBAM) in Monterey and Santa Cruz counties. Symptoms reported following aerial pheromone application were also evaluated, as were toxicity data on four potential LBAM eradication products. As part of its responsibilities relating to pesticide illness surveillance, OEHHA trained about 100 physicians and health care providers on the recognition and management of pesticide poisoning in 2008.

In 2008, OEHHA developed the nation’s first health-based cleanup level for methamphetamine on residential indoor surfaces. OEHHA reviewed health risk assessments for 63 contaminated sites in 2008, and conducted risk assessment trainings for local agencies.

Contaminated Sites

OEHHA supports site cleanup programs in two ways: (a) By developing health-based values for assessing risks at contaminated sites; and (b) By reviewing risk assessments as the basis for cleanup decisions made by the Regional Water Quality Control Boards, the California Integrated Waste Management Board and local government. Health-based values include child-protective exposure levels for school site contaminants.



The environmental challenges now confronting California and the global community require novel approaches founded on reliable scientific tools and information. OEHHA will continue to play a role in providing the scientific foundation for environmental policy in several areas, including:

Green Chemistry

Pursuant to recent legislation, OEHHA is evaluating chemical-hazard traits and environmental and toxicological effects to be included in a Toxics Information Clearinghouse.

Biomonitoring

The California Environmental Contaminant Biomonitoring Program, a collaborative effort of the Department of Public Health, OEHHA, and the Department of Toxic Substances Control, is designed to measure levels of environmental chemicals in biological samples from statewide participants and establish trends over time. In the start-up phase, the program is identifying priority chemicals for biomonitoring and is planning pilot studies to develop laboratory and field methods.

Environmental Justice

OEHHA is leading a Cal/EPA initiative to develop a framework and guidance for assessing cumulative impacts and incorporating precautionary approaches. These will be used by Cal/EPA in addressing the cumulative impacts of environmental pollution from multiple sources in California communities.

Climate Change

OEHHA evaluates the impacts of increasing temperatures on human health. In its capacity as lead agency for the Environmental Protection Indicators for California Project, OEHHA has published a compilation of about 25 indicators describing trends in the multiple facets of climate change and its impacts on the state.

Ecotoxicology

OEHHA develops tools and technical resources to assess the impacts of chemical, physical, and biological stressors on ecosystems. The current focus of its work is on aquatic ecosystems. Among other things, OEHHA is developing a tool for estimating imperviousness, a key stressor in most urban watersheds.



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LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION



ARNOLD SCHWARZENEGGER
GOVERNOR

California Environmental Protection Agency

2008 Consolidated Environmental Law Enforcement Report

Office of the Secretary

Air Resources Board

California Air Pollution Control Officers Association

Department of Pesticide Regulation

Department of Toxic Substances Control

Integrated Waste Management Board

Office of Environmental Health Hazard Assessment

State Water Resources Control Board

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INTRODUCTION

The following report was prepared by the California Environmental Protection Agency (Cal/EPA), its underlying Boards, Departments, Office, and local and regional government enforcement partners. This report meets the reporting requirements of California Government Code section 12812.2 and provides government regulators, legislators, the regulated community, non-governmental organizations and all Californians an overview of the mechanics of our complicated environmental law enforcement system.

This report is presented in part as Governor Schwarzenegger's and Cal/EPA's Enforcement Initiative and is designed to assess and then improve upon California's environmental law enforcement efforts. Several "Teams" comprised of staff from all of our Boards, Departments and Offices were created and are assigned to carry out specific tasks and make recommendations for our agency's coordination and improvement. Our Teams' progress and their continuing work are described in the Office of the Secretary section of this report.

The information contained in this report covers enforcement program activities during the 2008 calendar year.

A) California's Environmental Law Enforcement System

In order to understand how environmental laws are enforced in California, it is important to understand how the regulatory programs that implement these laws are organized. It is also important to understand the limitations and strengths of those programs.

Within California, government programs for the protection of health and the environment are implemented by a combination of local, regional, state and federal agencies in a decentralized system of government. Each part of the system has a division of responsibility that is outlined in federal, state, regional and local requirements and ideally is implemented by these separate governmental entities working in a complementary fashion.

Because of its decentralized nature, the environmental law enforcement system has many varied points of accountability to the public. For example, despite what the name would suggest, this agency, Cal/EPA, is not a monolith of all environmental enforcement in California. Although it is the designated leader with the obligation to coordinate enforcement efforts throughout the state, Cal/EPA does not have direct management authority over all the agencies within Cal/EPA, known as Boards, Departments, and Offices (BDOs) or their local and regional government partners. These state, regional and local agencies have responsibilities that are outlined in law, however, in many cases they are not obligated to report directly to the Secretary of Cal/EPA. For example, Air Pollution Control Districts and County Agricultural Commissioners generally report to elected county officials.

As to which is the appropriate "government" enforcer in any particular situation, it depends on the type of violation (e.g., air, pesticides, water, hazardous waste, etc.) and/or where the violation occurs.

Although federal law provides the baseline for environmental protection in the State of California, state, regional and local requirements may be and often are broader in scope with higher standards, creating a level of protection in California greater than federal law provides.

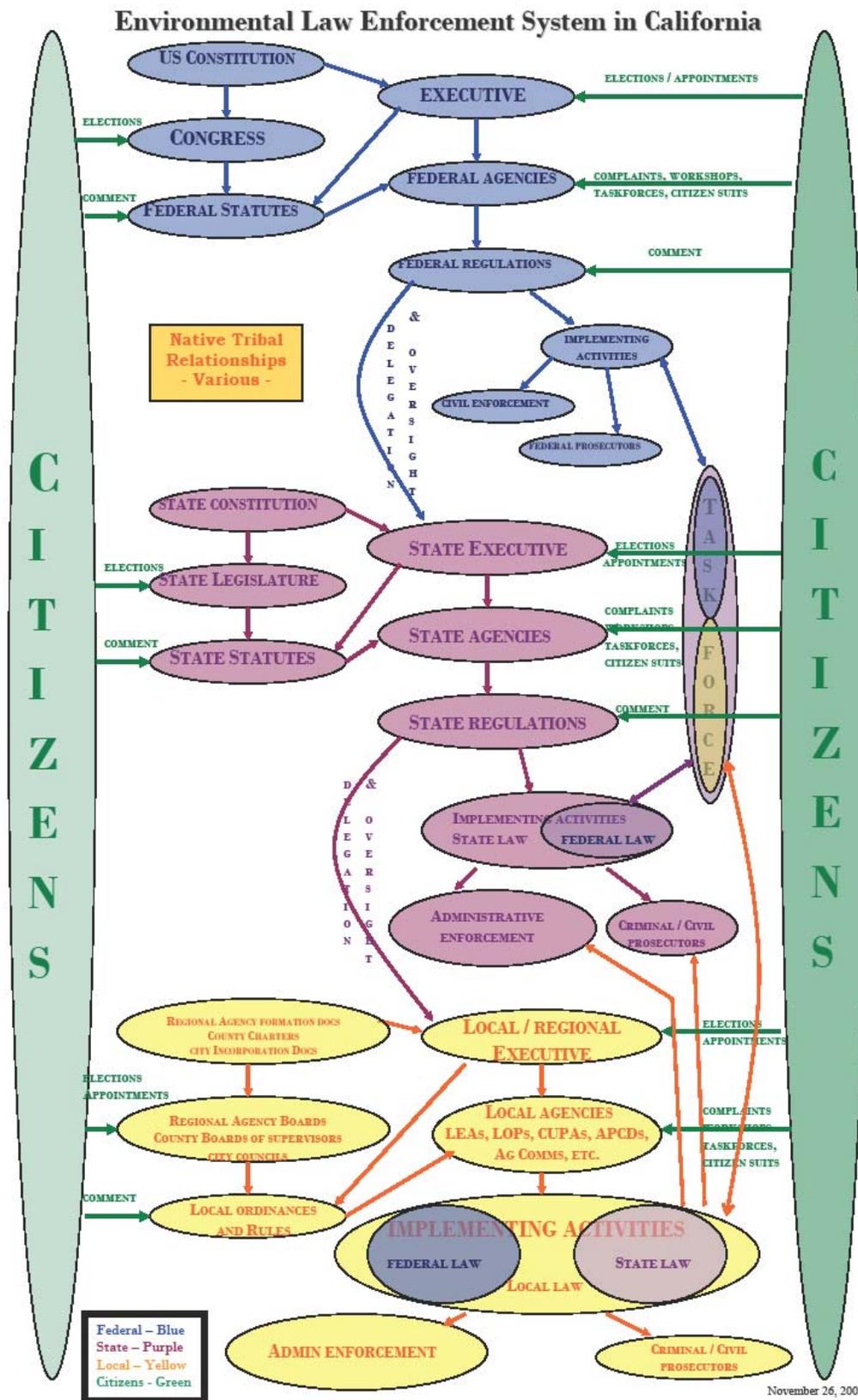
Federal agencies such as the U. S. Environmental Protection Agency (US EPA) only ensure compliance with federal environmental laws. As a result of agreements between the various levels of government, state agencies often agree to be responsible for the enforcement of both state and federal environmental laws. Local and regional governments may also take responsibility for the enforcement of federal and state laws in addition to their own local laws/ordinances. Because of these overlapping authorities and responsibilities, this decentralized organizational structure is often confusing and difficult to understand.

As a result of California's well developed state, regional and local programs, and in comparison to other states, the US EPA has a relatively smaller enforcement role in California compared with its role in other states. In turn, California relies on state and local government to play a correspondingly larger role to assure that regulated activities and businesses are in compliance.

The number of employees at each level of government helps to illustrate this point. US EPA Region IX which has responsibility for California, Nevada, Arizona, Hawaii and the Pacific Territories, has approximate 850 employees. By comparison, Cal/EPA and its six state Boards, Departments and Office have approximately 4,500 employees while at the local level there are thousands of city and county officials who can enforce environmental laws. That said, US EPA is an important partner in California's environmental law enforcement work.

Many of these local and regional enforcement agencies include the 35 Air Pollution Control and Air Quality Management Districts (air districts) that regulate stationary sources of air pollution, 58 County Agricultural Commissioners that regulate pesticide use, nine Regional Water Quality Control Boards that regulate discharges to water, 84 Certified Unified Programs Agencies (CUPAs) that implement hazardous waste and hazardous materials programs and 55 Local Enforcement Agencies (LEAs) that implement solid waste programs.

The employees who work within this complicated web of federal, state, regional, and local efforts are dedicated to carrying out the will of the people as expressed at the various levels of government. Their success depends upon teamwork between active citizens who report violations; businesses dedicated to complying with the rules, and trained regulators doing their duty. On the next page is a chart reflecting the dimensions of our decentralized law enforcement system and the most apparent input points for citizen access. The sizes of the "bubbles" do not represent the relative size or importance of any group reflected in each.



B) The Need for Accurate and Timely Information

In order to protect the health of the public, the environment, and a level playing field for business competition, California environmental law enforcers must understand what enforcement has been done well and what needs to be improved. We need to look at what information gaps exist and figure out how to fix them. We also need to improve how we collect information from the regulated community and how that information flows from and between the many members of our decentralized law enforcement team.

Success in presenting a comprehensive and transparent report for a calendar year depends on accurate information produced in a timely basis. This information does not always come easily as some governmental entities either can not, do not, or are not statutorily required to, provide enforcement information to Cal/EPA. The overall effort requires good faith, hard work, and dedication from the staff of each agency involved during times of overall limited resources and increasing program demands. As evidenced by this report, cooperation amongst the various agencies exists and continues to improve.

Key to this improvement, and ultimately to allow more public transparency, is the goal to electronically exchange collected data and create a cross-BDO database of regulated facilities and sites of environmental interest for use by regulators. This work is carried out with the assistance of two of our Enforcement Initiative steering committees: the Data Standards Steering Committee and the Environmental Data Exchange Steering Committee. Progress by these committees is described in the Office of the Secretary section of this report.

C) Cal/EPA's Overview of the Program Report Development Process and Associated Outcomes

This Consolidated Environmental Law Enforcement Report is composed of one report from each responsible agency that describes their respective 2008 environmental law enforcement activities in a standardized manner. For convenience to our readers a new section was developed that provides highlights from our Boards, Departments and Office and the California Air Pollution Control Officers Association with glimpses of their extraordinary work and purpose.

In this 2008 report, we have attempted to describe some enforcement trends overall and shall compare outcomes next year to the information contained in this year's report. We also hope that the process necessary to produce each annual report will lead to closer integration of efforts by state, regional and local law enforcers and provide a basis for stronger strategic planning.

Critical in future reports will be our ability to reveal to our audience understandable outcomes as a result of our program activities. In other words, for the dollars and resources expended, is our environment getting cleaner, and is there a level playing field for business competition? This is key to our accountability as stewards for the environment.

Air: Reports by the Air Resources Board and the California Air Pollution Control Officers Association

The Air Resources Board (ARB) is a state agency and the local Air Pollution Control Districts (a term we use to include the multi-county Air Quality Management Districts) regulate different sources of air pollution. Generally speaking, ARB regulates mobile sources and consumer products, and the air districts regulate stationary sources such as factories and gasoline stations. There is no

requirement that the air districts report all their enforcement activities to the ARB. This is one example of why we have two reports.

For this report, the California Air Pollution Control Officers Association (CAPCOA) surveyed 11 of its larger member air districts. Updated program information from all air districts should be in next year's report.

Hazardous Waste and Materials: Report by the Department of Toxic Substances Control

As the only program to have peace officer investigators, the Department of Toxic Substances Control (DTSC) pursues criminals who violate hazardous waste laws. DTSC staff participates in environmental crimes task forces, coordinates and marshals statewide resources to assist with multi-media enforcement actions and provides technical support such as surveillance and sampling to other federal, state and local agencies.

To its credit, DTSC has been seeking out new ways to identify environmental violations by engaging more groups concerned about their neighborhoods. We expect that these new techniques will be evaluated and presented in next year's report so that the merits of the resource expenditure can be evaluated.

Hazardous Waste and Materials: Report by Cal/EPA on the Unified Program

Local law enforcers in this area are generally the county or city health or fire departments. These agencies, collectively, are called Certified Unified Program Agencies or CUPAs. Cal/EPA staff prepared this report because it oversees the CUPA program. Most of the 84 CUPAs take formal enforcement actions, utilizing all the formal enforcement tools: administrative, civil and criminal actions, on a regular basis. The CUPAs have pioneered the use of multi-county and statewide civil enforcement actions in recent years to achieve effective enforcement outcomes.

Still, mostly because of resource problems, some smaller CUPAs do not consistently take formal enforcement against violators. Progress to reduce this weakness should be reported on in the next report.

Pesticides: Report by the Department of Pesticide Regulation

The report by the Department of Pesticide Regulation (DPR) describes six core regulatory programs it administers, including oversight of the local pesticide use enforcement by county agricultural commissioner's (CAC) offices. Most pesticide enforcement is administered by the CACs using administrative enforcement tools including warning letters and small fines. The report also includes key outreach activities conducted to educate and advance compliance with pesticide laws and regulations.

Despite resource challenges, we expect DPR to exercise more enforcement leadership to include improved physician reporting of pesticide illness treatment so proper pesticide exposure investigations can be conducted.

Solid Waste: Report by the Integrated Waste Management Board

The report describes how the IWMB directly enforces environmental standards at some waste facilities, tire facilities, businesses required to use recycled product content, and governments required to reduce their waste. The IWMB also oversees local enforcement agencies (LEAs) which enforce requirements at most solid waste facilities.

At the time of this printing, the Integrated Waste Management Board is awaiting an uncertain future. It has nonetheless worked diligently in its pursuit to achieve higher enforcement standards as noted in this report, and we look forward to their continuing momentum in the years ahead.

Water: Report by the State Water Resources Control Board and the Regional Water Quality Control Boards

This report describes the numerous water protection laws enforced at the state and regional levels and details the enforcement activity taking place in the five "core regulatory Programs" as well as several other critical programs. It also highlights the 2008 Statewide Initiative for Mandatory Minimum Penalty Enforcement and efforts to address and reduce a backlog of outstanding violations.

Certainly, the reduction of the Maximum Minimum Penalty backlog is an important step forward but we expect even more progress on leading the nine regional boards to improved enforcement consistency.

Risk Assessment: Office of Environmental Health Hazard Assessment

This report is included only for informational purposes so the reader can understand that although Office of Environmental Health Hazard Assessment (OEHHA) is a Cal/EPA Agency, it has no conventional government enforcement responsibility. The report describes the varied responsibilities carried out by OEHHA and the support it provides to Cal/EPA boards' and departments' environmental programs. It also describes its lead agency role related to "Proposition 65," the Safe Drinking Water and Toxic Enforcement Act of 1986. The Attorney General's Office has independent authority to enforce Proposition 65 and general oversight authority over private enforcement actions.

General Observations

A major goal of this report is to provide a clear understanding as to how Cal/EPA compliance and enforcement programs function and to create a path to improved understanding of their accomplishments by developing more useful and standard performance measures.

The first objective in the development of the Cal/EPA enforcement report was to create a model report outline to be used by each of the reporting programs in the development of their report. This outline was intended to provide a format that would allow all program reports to be consistent in the information provided and the manner in which the information was presented.

Another objective was to provide information that measures the performance of each program allowing the reader to understand how well the programs did in meeting their statutory missions.

This objective requires that each program present performance measures that define the work they do and the impact that work has on their mission.

The program reports provide an overview of each of the Cal/EPA enforcement programs allowing the reader to better understand how these independent programs function. Future reports will include more information on program goals and performance measures that show how well the programs did in accomplishing their goals.

The Cal/EPA Performance Measurement Steering Committee, the Cal/EPA Environmental Data Exchange Steering Committee and the Cal/EPA Data Standards Steering Committee will focus more on performance measures going forward.

There are two types of performance measures, those that measure outputs and those that measure outcomes. Examples of outputs include the numbers of inspections and enforcement actions taken. Outcomes try to measure the impact the program has on the protection of public health and the environment. A good example of an outcome is the number of days that an air quality standard is exceeded each year. A general decline in the number of days of exceeded air quality standards would show a positive outcome. While measurements that capture outputs are important, outcomes provide a better picture of the success of a program in meeting its intended mission.

Cal/EPA programs are generally able to capture program outputs like inspections but in some cases have more of a challenge capturing program outcomes. The Secretary of Cal/EPA has recognized this as a limitation of Cal/EPA BDOs ability to meet its mission and has directed the development of performance measures including outputs and outcomes for all Cal/EPA programs. As these performance measures are identified and data is collected they will be presented in future annual reports.

The Secretary has also directed that an environmental data exchange system be created so that Cal/EPA will have a common information system capable of collecting and compiling data from environmental regulatory programs. This exchange system will require the standardization of environmental data and the exchange of that data between programs and into a statewide information warehouse for use by all programs and the public. Once established, this exchange network will allow the state and local programs within the Cal/EPA family and the public to better monitor the effectiveness of California's public health and environmental programs.

As previously mentioned, the local, regional and state programs within the Cal/EPA family are independent organizations, which were created at different times with their own program enforcement requirements and processes. Under state law, each of the Cal/EPA programs provides their own definitions for violations and their own processes for adjudicating a violation. Some of the programs have very well defined criminal, civil and administrative enforcement processes while other programs are limited in one or all of these areas. While there is nothing inherently wrong with enforcement processes and capabilities that vary between programs, it does create some limitations. One major limitation is the confusion that is created when enforcement actions are taken that cross multiple programs. This confusion makes it difficult for multi-media enforcement actions to be handled collectively. This disparity in approach also makes it difficult for enforcement personnel trained in one program to easily apply what they have learned when working in other programs.

The Secretary recognizes this limitation prevents the effective use of resources in adjudication of environmental crimes and has asked the Deputy Secretary for Law Enforcement and Counsel to develop a plan to help alleviate this problem.

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THE OFFICE OF THE SECRETARY

This 2008 Environmental Enforcement Report by the Office of the Secretary reflects the statutory enforcement activities for which it is responsible. Readers should know that most of the activities of the Office of the Secretary involve assisting and coordinating with other agencies as opposed to the Office directly administering the enforcement programs. These other agencies are the primary program enforcement authorities. The Office of the Secretary does directly administer the “Unified Program,” which enforces only six of the State’s hazardous material and hazardous waste program elements. The report on the Unified Program is located in the Unified Program chapter of this report.

I. EXECUTIVE SUMMARY

Government Code section 12812.2(a) establishes the duties of the California Environmental Protection Agency (Cal/EPA) Deputy Secretary for Law Enforcement and Counsel to include the development of a program to ensure that Cal/EPA, its entities, and local government take consistent, effective, and coordinated enforcement actions. The program is required to include training.

Major Program Highlights

The following highlight some of the more important enforcement improvement activities that were accomplished by the Office of the Secretary in 2008:

- Produced an annual report of statewide environmental enforcement for 2007.
- Established an electronic information exchange node with U.S. EPA. Cal/EPA is currently transferring data from its information systems to U.S. EPA electronically for the Hazardous Waste program.
- Developed and piloted a new “One Day” enforcement class.
- Expanded on-line learning capabilities.
- Provided legal review to ensure the effective enforcement of the Global Warming Solutions Act of 2006 (AB 32 (2006); Health and Safety Code section 38500 et seq.).

What The Reported Data Tells Us

The Office of the Secretary in its enforcement role does not implement a regulatory program; rather its statutory duties are to oversee and assure environmental protection regulatory programs are implemented in a coordinated and consistent manner. Data standardization, collection and analysis are critical elements of these mandated responsibilities. While progress has been made, it’s clear that many data gaps still exist. In some cases, the requirement to report necessary data does not exist. In many cases, the technical resources and funding needed to build and maintain the necessary integrated databases are severely limited. Compounding problems include the lack of common data definitions among the many diverse elements of our decentralized regulatory system and the ability to efficiently share data across program lines. These and related issues create “blind spots” that impact our ability to assess program effectiveness, identify trends and report environmental progress.

Cal/EPA's initial enforcement assessment in 2004 identified many of these issues that are being addressed by two Enforcement Initiative Committees: the Data Standards and the Environmental Data Exchange committees. Reports on their progress and on-going work are included below.

How The Agency Will Use This Information

As the available data from the Cal/EPA programs and local and regional agency partners improves and is integrated, Cal/EPA will be able to use that data to both measure progress toward implementing its statutory mandates and for planning and compliance targeting purposes.

II. THE ENFORCEMENT PROGRAM IN THE OFFICE OF THE SECRETARY

A) Overview

In 2008, staff within the Legal Unit of the Office of the Secretary consisted of:

- The Deputy Secretary for Law Enforcement and Counsel (whose duties include both the statutory duties regarding enforcement and the duties of General Counsel for the Agency).
- The Assistant General Counsel for Enforcement.
- The Special Counsel to the Secretary.
- The Assistant Secretary for the Unified Program and Regulatory Affairs, supported by a staff of nine.
- Three support staff (Executive Assistant, Staff Services Analyst and an Associate Government Program Analyst) whose duties include enforcement and support of the general legal office function.

As described in this report, the Office of the Secretary's Enforcement Program relies heavily on staff from the Cal/EPA Boards, Departments and Offices (Cal/EPA programs) to perform most of the tasks needed to improve enforcement.

B) Description of Program Components

Cal/EPA's program to ensure consistent, effective, and coordinated enforcement actions has several components which are discussed below:

- Targeted program and infrastructure improvement tasked to Enforcement Initiative Teams/Committees.
- Enforcement training for regulators, investigators and prosecutors.
- The Environmental Circuit Prosecutor Project to address the need for prosecutorial resources in rural counties.
- Securing funding for enforcement and training through conventional and creative funding mechanisms.
- Assisting local environmental enforcement task forces to facilitate communication between regulators and prosecutors.
- Enforcement policy review and coordination of state and regional efforts to ensure enforceability of the Global Warming Solutions Act of 2006 (AB 32 (2006); Health and Safety Code section 38500 et seq.).
- Oversight of the Unified Program to assure it is implemented in a coordinated, consolidated and consistent manner statewide.

- Oversight of Cal/EPA's Emergency Response activities to assure Cal/EPA's responses to emergencies are coordinated and protective of public health and the environment.

1) The Cal/EPA Enforcement Initiative

In October 2004, Cal/EPA directed the first steps to implement Cal/EPA's "Enforcement Initiative." Teams were established to carry out specific enforcement improvement tasks. Details about the teams are available on the Internet at <http://www.calepa.ca.gov/Enforcement/Initiative/default.htm>.

In 2007, Secretary Linda Adams signed several policy documents instituting recommendations from the Enforcement Initiative Teams and directing resources to support several Cal/EPA Enforcement Steering Committees that are continuing the work begun by these teams. For example, each Board and Department within Cal/EPA has dedicated an employee to work on the Cal/EPA Enforcement Training Steering Committee to develop and provide cross media enforcement training.

Enforcement Initiative Steering Committees have continued progress in assigned areas of responsibility through 2008. Each Team's mission, accomplishments and planned 2009 efforts are described below.

Enforcement Steering Committee

The Enforcement Steering Committee consists of the Chiefs of Enforcement for the Air Resources Board, the California Integrated Waste Management Board, the Department of Pesticide Regulation, the Department of Toxic Substances Control, and the State Water Resources Control Board. The Committee is chaired by the Cal/EPA Deputy Secretary of Law Enforcement and Counsel.

- Matt Bogoshian, Chair, Deputy Secretary of Law Enforcement and Counsel, Cal/EPA
- James Ryden, Chief, Enforcement Division, Air Resources Board
- Gale Filter, Deputy Director, Enforcement and Emergency Response Division, Department of Toxic Substances Control
- Ted Rauh, Program Director, Waste Compliance and Mitigation Program, California Integrated Waste Management Board
- Reed Sato, Director, Office of Enforcement, State Water Resources Control Board
- Nan Gorder, Chief, Enforcement Branch, California Department of Pesticide Regulation

Mission

The mission of the Cal/EPA Enforcement Steering Committee is to plan and manage the continuing improvement and coordination of California's state, regional and local environmental enforcement programs to more effectively and efficiently meet the state's environmental goals.

Accomplishments

In 2008, the Enforcement Steering Committee worked with US EPA on various issues related to better coordination of enforcement activity and with California's county prosecutors, represented by the California District Attorneys Association, to improve California's environmental crimes enforcement activities.

Calendar Year 2009 Mission

This Enforcement Steering Committee will continue to plan and manage the continuing improvement and coordination of California's state, regional and local environmental enforcement programs.

Data Standards Steering Committee

Mission

The mission of the Data Standards Steering Committee (DSSC) is to establish and maintain a process for environmental programs to provide public access to environmental data maintained by those programs. This committee will coordinate the continuing development of data standards across Cal/EPA's programs and establish a data dictionary management process that will standardize environmental data in California. The committee will work with Cal/EPA programs and local government partners to implement the standards and process.

A significant change in direction was approved when the DSSC proposed and adopted a Data Registry/Data Exchange Template concept to support future development of a Master Data Dictionary for environmental protection programs. The Data Registry will contain all the data elements of the major environmental data systems currently maintained by Cal/EPA programs.

Throughout 2007 and 2008, there has been need for increased participation by Cal/EPA program staff in this work. Increased participation is needed to maintain momentum toward the development of a common Environmental Data Dictionary.

Accomplishments

- The DSSC work plan for 2008 was reviewed and updated.
- The DSSC spent a major portion of the year developing processes and designs in support of the Master Data Dictionary. With the refocusing of direction to the development of the Data Registry, those processes and designs will need to be reviewed and updated.
- CIWMB proposed to develop the Master Data Dictionary as long as at least two other Cal/EPA Boards, Departments and Offices committed resources to support the effort. DTSC committed to support the effort. No other Cal/EPA Boards, Departments and Offices offered support. For the development of the Data Registry, the decision was made to use contractor support for this development effort.
- The Agency Information Officer (AIO), Gary Arstein-Kerslake, was added as a standing member of the DSSC to help improve program coordination.
- DSSC Leadership. In response to a lack of volunteers for the Chairperson and Vice-Chairperson roles, the DSSC changed from electing to rotating leadership within the Cal/EPA programs. The term for Chair and the Vice-Chair will be 6 months instead of 1 year.

Calendar Year 2009 Objectives

- Review and update the work plan for 2009.
- The DSSC will review all previous deliverables and make any necessary changes required by the new Data Registry/Data Exchange Template concept.
- Initiate development of the Data Registry.
- Finalize process for mapping EDE data elements that will be exchanged between programs.

Environmental Data Exchange Steering Committee

Mission

The mission of the Environmental Data Exchange (EDE) project is to create a web tool with which eighteen enforcement and other related databases from five Cal/EPA Boards, Departments, and Offices can be viewed via the Internet. The project will implement data standards and business rules across Cal/EPA programs' facilities databases to ensure consistency of data and ease of cross-organizational exchanges. Further, the Environmental Data Exchange project is to determine a method of identifying regulated facilities and sites and exchange information between Cal/EPA programs in order to promote cross-media and multi-agency enforcement capabilities.

Accomplishments

- Received U.S. EPA Grant to contract with computer programmer to develop a portion of the computer code needed for the Environmental Data Exchange project.
- Developed Proof of Concept Site to demonstrate differential security for the Environmental Data Exchange project. Differential security will allow the release of publicly available information, while protecting trade secret or sensitive information as required by law.

Calendar Year 2009 Objectives

- Adopt protocol for computer data exchange as determined by the Data Standards Steering Committee.
- Secure a contract with a computer programmer to develop a portion of the computer code needed for the Environmental Data Exchange project.
- Secure from Cal/EPA programs' management the approval for their program and Information Technology (IT) staff to develop the Environmental Data Exchange project.
- Cal/EPA program staff will identify differential security levels, and the information associated with each of those levels.
- Cal/EPA program IT staff will determine resources needed to implement differential security and any other remaining IT tasks needed to complete the project and begin to complete those tasks, with an expected completion of EDE in late 2010.

Enforcement Performance Measures Team

Mission

To develop performance measures for the activities of Cal/EPA programs and those of our local and regional partners to measure program achievement and to develop a comprehensive annual report of environmental enforcement for all Cal/EPA programs.

Accomplishments

With the guidance of the Enforcement Performance Measures Team, our Cal/EPA programs, and our local and regional partners, Cal/EPA was able to produce the 2007 Cal/EPA Environmental Enforcement Report by November 2008. The 2007 report is the foundation for this and future enforcement reports.

Calendar Year 2009 Objectives

Begin the early preparation of the 2008 Cal/EPA Environmental Enforcement Report in order to produce and post the report by mid-year.

Because of the efforts required to increase future report's planning potential and utilization, a new "Enforcement Report Team" will be created that will continue the progress gained from preparation of the 2007 and 2008 reports.

Identify a new team leader for the Enforcement Performance Measures Team due to the upcoming re-retirement of its team leader.

Enforceable Permits Steering Committee

The Enforceable Permits Steering Committee was established in 2007 and is building on the work of the prior permits team, which investigated concerns that the enforceability of permits issued by Cal/EPA boards and departments needed to be improved. A staff survey and report, conducted by the prior team in 2006, developed recommendations for addressing the problems reported in the survey. One of the fundamental recommendations from the survey was that a cross-program steering committee be established, and that this committee include representatives from both enforcement and permitting programs.

Mission

Plan and manage the continuing improvement and coordination of California's state permitting programs, to ensure that permits are clear, consistent and enforceable.

Accomplishments

During 2008, members for the steering committee were solicited from the Cal/EPA programs. The Enforceable Permits Steering Committee was activated, and the first meeting was held in July of 2008. In subsequent meetings and conference calls, members reviewed the issues from the first team survey, and validated that these were still of concern. These issues were synthesized into areas for future action.

Calendar Year 2009 Objectives

- Consolidate workplan issues into an action plan.
- Identify criteria regarding tracking of permit related issues and assess whether tracking systems that exist which could be modified to capture issues related to enforceability of permits.
- Draft a best management practices document that addresses survey issues regarding enforceability of permits and that provides recommendations to Cal/EPA Boards, Departments and Offices on these issues.
- Assess availability of training for staff regarding topics that would strengthen enforceability of permits.

Enforcement Training Steering Committee

Mission

The Enforcement Training Steering Committee is to provide training and outreach to field personnel of state and local regulatory agencies, investigators and attorneys across environmental programs to ensure consistent, effective and coordinated enforcement.

Accomplishments

The Cal/EPA Enforcement Training Team consisted of one representative from each Cal/EPA Board and Department and the Assistant General Counsel from the Office of the Secretary. The

Team was chaired by the Chief of the ARB's Training and Compliance Assistance Branch. The team prepared a report on their activities for 2008 that is available from the Office of the Secretary.

Although a directive indicated team members were to work on enforcement training full time, the amount of time spent on this assignment varied as the requirement was modified to assist the Cal/EPA Boards and Departments in meeting other workload and program requirements. The team has been able to offer substantial support to existing training efforts, such as the Cal/EPA Symposium and Basic Inspector Academy, the development of new program specific training, and the development and delivery of new cross program enforcement training, as described below. A substantial hindrance to getting training performed in 2008 was due to the protracted budget process for fiscal 2008-2009 that severely limited or stopped travel by the trainers from July 1 through most of September.

The Cal/EPA Enforcement Training Team provided support staff, outreach and speakers for the Cal/EPA Basic Inspector Academy (BIA). The BIA provides baseline knowledge of environmental enforcement and works in conjunction with existing program specific training to prepare state and local environmental regulatory staff to conduct efficient and professional inspections. Training includes overviews of all environmental regulatory programs. Students learn to recognize possible violations in other programs and to work with their partner agencies. Six hours of this training are available online at www.calepa.ca.gov/enforcement. The complete Academy course includes both the online module and 4 days of classroom training. The classroom sessions include a simulated inspection, report writing, case review by prosecutors and mock testimony. In 2008, the Academy was offered in Sacramento (2 sessions), San Diego and Ventura; 91 people completed the BIA course in 2008.

In addition to the above, Team members:

- Developed a new "One Day" enforcement class and piloted it in San Diego and Kelseyville, Lake County. Each session had approximately 60 attendees, the agenda included search and seizure issues, report writing, elements and evidence to support a violation and case development and referrals discussion by local prosecutors.
- Revised the "Evidence and Sample Collection" 1 day course, then delivered the course to Task Force attendees in Riverside and Eureka in the fall of 2008.
- Developed a new 2 hour course "Introduction to Investigation" which was presented at the 2009 California Unified Program Agency annual conference.
- Assisted with support of the 2 week course "Advanced Crime Environmental Enforcement" offered through a partnership of the Federal Law Enforcement Training Center (FLETC) and California prosecutors held in San Luis Obispo at the California State Training Institute (CSTI).
- Acted as facilitators for the practical exercises at Cal/EPA Environmental Enforcement Symposium.

Other Cal/EPA Enforcement Training Team accomplishments are listed in their annual report.

Calendar Year 2009 Objectives

- Deliver seven sessions of the BIA and review and update course materials.
- Deliver 5 "One Day" enforcement training classes.
- Continue efforts in outreach and coordination of training classes for various task forces.

- Continued work with the Environmental Enforcement Training Coordination Forum to improve coordination of training efforts.
- Increase awareness and use of online training such as webcasts, webinars and web based training.
- Increase coordination with US EPA on national training issues.

Single Complaint Tracking Steering Committee

Mission

The Single Complaint Tracking Steering Committee was established to create a Cal/EPA-wide, single complaint tracking system to receive, track, and respond to environmental complaints reported to Cal/EPA Boards, Departments and Offices. This project resulted in a web-based system that provides a consistent, single point of contact for the public via Internet access through the various Cal/EPA web pages. The primary point of contact is an online complaint form that is used to collect information about environmental complaints and/or violations. The system is being designed as a tool used to relay complaint information directly to the appropriate Cal/EPA Boards, Departments and Offices for action, coordination with local and regional government agencies, and further follow-up.

Citizen complaints are a critical source of information about potential non-compliance with environmental laws. Program managers have found that citizen complaints are usually made to a specific Cal/EPA Board, Department and Office, but may also have cross-media environmental impacts. In order to provide adequate response to environmental complaints, a coordinated approach is needed to address the possible cross-media responses as well as assure that complaints are investigated and prosecuted properly.

Accomplishments

Cal/EPA's Complaints System programmer, working within DTSC, developed a set of step-by-step online forms to move the complaint through the response process from Cal/EPA Boards, Departments and Offices' staff assignments through referral to external agency to close out. The Steering Committee met with Complaint Coordinators from each Cal/EPA Board, Department and Office to establish overall complaint handling procedures and to identify their specific business rules, limitations or requirements impacting their ability to handle complaints within the online system. Using the information gathered, the online forms were modified to adapt individually to their needs while still allowing uniform coordinated response to complaints. Access permission levels for user types (Central Contact, Supervisor and Staff Person) needed to apply secured access to all pages were also defined.

A Search Complaints feature was developed to allow complaints staff to generate ad-hoc reports from the complaint data by searching/sorting on any of the data fields collected on the Cal/EPA Environmental Complaint Form. This feature is currently disabled until issues about unauthorized staff potentially viewing sensitive or confidential information are resolved. It is expected that implementation of the secured access will address these concerns.

A "Notify Other BDOs" page was developed to facilitate easy cross-Cal/EPA Boards, Departments and Offices coordination. The page allows any Cal/EPA Board, Department or Office to email appropriate staff at any or all Cal/EPA Boards, Departments and Offices with relevant information about a complaint. The page will be enhanced with the ability to attach and send electronic copies of relevant documents.

Calendar Year 2009 Objectives

Upgrade versions of the internal complaints tracking and maintenance pages. Complete the development phase and place into the testing phase.

2) Enforcement Training for Regulators, Investigators and Prosecutors

One crucial role Cal/EPA plays in California's diverse and decentralized network of enforcement is coordination and support of training of enforcement personnel. Environmental laws and regulations are very technical and require special expertise to enforce. Basic and continuing education for environmental regulatory professionals are key. Enforcement requires additional skill sets, such as cross media violations awareness, report writing, investigation, and case development.

Cal/EPA coordinates enforcement training with the Enforcement Training Steering Committee, the California District Attorneys Association, the California Hazardous Materials Investigators Association, the California CUPA Forum Board, the Western States Project (a U.S. EPA-funded training entity) and the Peace Officers Standards Training Commission (POST). Enforcement training information is located at www.calepa.ca.gov/Enforcement/Training. Specific enforcement training is described below. Cal/EPA continues to fund several of these enforcement training events using money from settlements of enforcement actions in which a portion of the settlement funds were specifically designated for use for enforcement training. These funds were the source of the enforcement scholarships referred to in this report.

Environmental Enforcement Training Coordination Forum

Forum members consist of: The CUPA Forum Board, California Hazardous Materials Investigators Association, Cal/EPA, Western States Project, EPA National Environmental Training Institute, California District Attorney Association, California State Parks, POST, and California Specialized Training Institute (part of the Office of Emergency Services). The mission of this Forum is to protect human health and the environment through coordinated, consolidated, and consistent environmental enforcement training. The Forum is chaired by a member of the Cal/EPA Enforcement Training Team and meets quarterly.

During 2008, the forum developed goals, a coordinated training calendar, reviewed online training delivery options and reviewed the Cal/EPA On-Line Inspector Fundamental Course.

The Cal/EPA Basic Inspector Academy

See description and details above.

The Cal/EPA Environmental Enforcement Symposium

This annual four day advanced training event is open to government, industry, and members of the public. Training sessions cover enforcement issues from each of Cal/EPA's Boards and Departments. Real and mock case studies are presented to illustrate current enforcement topics. Cross program, cross media violations and investigations are emphasized. Topics in 2008 included *Enforcement Issues on and Near Tribal Lands, Evidence Collection, Practical Use of GIS, and Enforcement and Disaster Recovery*. Mock testimony is provided and each attendee sits on a jury panel that deliberates an enforcement case. The Symposium is certified for Continuing Education Credits and for Mandatory Continuing Legal Education. One-hundred eighty-one (181) individuals attended the Symposium in 2008, including representatives from business, federal, state, tribal, and local government. Using enforcement scholarships, Cal/EPA paid for speaker travel costs and for registration and/or travel costs for 90 (77 scholarships and approximately 13 speakers) staff from

state and local environmental regulatory programs. Staff support for this training is provided by the Air Resources Board. For more information, see: www.arb.ca.gov/training/enfsym.htm.

The Tenth Annual Unified Program/Underground Storage Tank Training Conference

The Unified Hazardous Waste and Hazardous Materials Management Regulatory Program (Unified Program) consolidates permits, inspections, and enforcement activities for six hazardous materials, hazardous waste, and emergency management programs within the Certified Unified Program Agencies (CUPAs). The annual training conference has over 1,200 attendees and its goal is to assure that Unified Program Regulators are trained to maintain their professional and technical skills.

Sixty technical sessions are presented in six different “tracks.” Cal/EPA works with the CUPA Forum Board to present this annual training conference and coordinates the enforcement track of sessions. In 2008, the enforcement track included multi-county investigations, gathering, and presenting evidence and effective interview techniques. Cal/EPA paid for travel costs for speakers on enforcement subjects. Cal/EPA paid for enforcement track classes to be recorded and worked with the CUPA Forum Board to establish a web based portal where these taped trainings can be viewed online: http://www.calcupa.net/training/training_video_library.asp.

Other Enforcement Training

A new “One Day” enforcement class was developed and piloted in San Diego and Kelseyville. (See details in the Enforcement Initiative, Enforcement Training Team section above).

Cal/EPA partners with the Western States Project (WSP), a US EPA funded non-profit, to provide the following training for state and local environmental enforcement:

- “Introduction to Environmental Enforcement” 3-day course (50 attendees)
- “Introduction to Environmental Criminal Investigation” 3-day course (36 attendees) and the majority received scholarships from Cal/EPA or WSP.
- “Effective Interviewing for Inspectors” 1-day class (132 attendees)

Cal/EPA also assists WSP with administering scholarships and providing some Cal/EPA scholarships to attend Western States training. In 2008, Cal/EPA’s Enforcement Training Committee provided support for the “Effective Interviewing for Inspectors” course that entailed registration, site selection, and preparation and role playing in the practical exercise portion of the training. For more information on the Western States Project, see <http://www.regionalassociations.org/default.aspx>.

3) The Environmental Circuit Prosecutor Project

The Environmental Circuit Prosecutor Project (ECP) is a cooperative project of Cal/EPA and the California District Attorneys Association as provided for in California Penal Code section 14309. The Project fills the gap in the enforcement of environmental laws in California’s small counties by providing environmental prosecutors to District Attorneys in rural areas. Circuit Prosecutors are hired by the California District Attorneys Association and then made available to be deputized by rural county District Attorneys to handle civil and/or criminal environmental cases. One Circuit Prosecutor may work in as many as 10 different counties. Their cases run the gamut of various environmental programs but the majority of cases involved water quality (including streambed alteration and sediment discharges), hazardous waste and hazardous materials, and illegal dumping. In addition to handling cases, Circuit Prosecutors assist local enforcement task forces and provide training.

In 2008, the ECPP provided service to the following counties through direct filings or as a result of a multi-jurisdictional case: Alpine, Amador, Calaveras, Colusa, El Dorado, Glenn, Humboldt, Inyo, Kings, Lake, Madera, Mariposa, Mendocino, Merced, Modoc, Mono, Nevada, San Benito, Shasta, Stanislaus, Sutter, Tehama, Tuolumne, Yolo and Yuba.

In 2008, the ECPP opened far fewer civil and criminal environmental cases than in previous years. A single multi-jurisdictional case accounted for the majority of fines/penalties recovered. The decline in cases accepted by this project is largely attributable to unstable funding, reduction in staff and staff turnover. Obtaining funding support from all the agencies whose cases are handled by the Project remains a challenge.

Environmental Circuit Prosecutor Project

| Year | Cases Opened | Cases Closed | Fines / Penalties | Jail Time | Probation |
|------|--------------|--------------|-------------------|-----------|-----------|
| 2006 | 176 | 141 | \$1,016,626 | 900 days | 9 years |
| 2007 | 173 | 68 | \$1,205,470 | 80 days | 27 years |
| 2008 | 50 | 39 | \$6,964,400 | 0 days | 8.5 years |

For more information on the Environmental Circuit Prosecutor Project, see <http://www.calepa.ca.gov/Enforcement/CircuitPros/>.

4) The Environmental Enforcement and Training Act (Penal Code Section 14300)

The legislation that created the Environmental Enforcement and Training Act (Act) was the product of a Cal/EPA-chaired stakeholder group that was charged with finding alternative means to supplement funding for environmental enforcement and training. The Act provides a method for the distribution of grant funds for enforcement, enforcement training, and the Environmental Circuit Prosecutor Project. Funding for environmental enforcement and training comes from money designated in civil or administrative judgments in environmental enforcement cases and is placed in the Environmental Enforcement and Training Act Account (Account) created by the Act. These contributions are often referred to as Supplemental Environmental Projects or “SEPs.” No General Fund money is used in the Account. Cal/EPA manages the Account and issues annual grants.

The lowest amount of grant funds distributed from the Account occurred in 2008 (see chart below). The sources of funds were the result of cases settled by the Department of Toxic Substances Control and local District Attorneys. The Account has continued to receive fewer contributions than in past years as follows:

| Year | Penal Code § 14300 Funding |
|------|----------------------------|
| 2006 | \$ 654,081 |
| 2007 | \$ 503,562 |
| 2008 | \$ 138,260 |

Each year these funds are apportioned as required by statute:

- 25 percent to the Environmental Circuit Prosecutor Project .
- 25 percent to the California District Attorneys Association for enforcement training for investigators, regulators and prosecutors 25 percent (up to \$100,000) to the Commission on Peace Officer Standards and Training (POST) for environmental investigation training).
- Remainder to Cal/EPA to award training and enforcement grants.

The Cal/EPA portion in the Account was awarded in grants totaling \$34,564.88 as follows:

- The California District Attorneys Association received \$14,564.88 in additional funds to support the Circuit Prosecutor Project.
- City of San Bernardino received \$20,000 for code enforcement related illegal dumping work for overtime for officers.

For more information on the Penal Code section 14300 Account, see:

<http://www.calepa.ca.gov/Enforcement/Grants/14300.htm>

5) Supporting Environmental Enforcement Task Forces

Since its inception, Cal/EPA has been encouraging the creation and support of task forces dedicated to the deterrence, detection, investigation, and prosecution of environmental violations.

Environmental enforcement task forces are comprised of voluntarily participating federal, state, and local agencies with enforcement authority. The members of these task forces generally include local, state or federal prosecutors, local, state, and federal law enforcement agencies (Sheriff, Fish and Game wardens, California Highway Patrol, Federal Bureau of Investigation, U.S. EPA Criminal Investigation Division, etc.), investigators and technical experts from Cal/EPA's Boards and Departments, and local environmental agencies (local hazardous material control programs, air pollution control districts, sanitation departments, etc.). Task forces facilitate the pooling and exchange of resources and intelligence between different law enforcement and regulatory entities. These cooperative partnerships allow task force member agencies to pursue investigations that they would not be able to complete alone.

The Cal/EPA Department of Toxic Substances Control (DTSC) Enforcement and Emergency Response Program has staff located in Sacramento, Chatsworth, Cypress, and Berkeley. Amongst its many duties, this group supports environmental enforcement task forces. They work closely with local, state, and federal environmental regulatory agencies, investigators, and prosecutors to coordinate environmental enforcement.

DTSC staff provides training in various investigative techniques; sampling and investigative expertise, equipment, and laboratory services; conveys complaints and makes referrals to local task force agencies and helps coordinate multi-agency investigations of environmental violations. The work of DTSC task force support staff has improved the abilities of regulatory agencies to respond to complaints and environmental crimes, to prosecute complex and difficult cases, to react quickly to environmental emergencies, and to coordinate activities between agencies.

Many counties in California are covered by a local environmental enforcement task force. In addition, there are some regional and/or single subject task forces. For more information, see: <http://www.calepa.ca.gov/Enforcement/TaskForce/>.

The Cal/EPA Office of the Secretary chairs the "State Environmental Enforcement Task Force" which meets monthly. Attendees include representatives from enforcement programs within

Cal/EPA Boards and Departments, enforcement liaison attorneys from the Cal/EPA Boards and Departments, the Department of Fish & Game, the California District Attorneys Association, Assistant U.S. Attorneys, Deputy Attorneys General, U.S. EPA Criminal Investigation Division, and the federal Bureau of Land Management. The purpose of these meetings is to go over current major cases, discuss enforcement program administrative issues (new regulations, legislation, and budgets), address needs for joint investigations, enforcement training, and enforcement projects including the Environmental Circuit Prosecutor Project, and discuss issues affecting local agency partners.

The Cal/EPA Office of the Secretary participates in the Border Environmental Enforcement Task Force, a group of federal, state, and local officials that meet quarterly in the Mexico/California border area to discuss border-related environmental enforcement issues; and the Border 2012 California/Baja Waste and Enforcement Task Force, which includes Mexican environmental enforcement officials.

Cal/EPA also participates in the Western States Project; a U.S. EPA-funded non-profit organization that provides environmental enforcement resources, networking and training to the western United States. For more information, see <http://www.regionalassociations.org/>.

6) Cal/EPA Assistance on Investigation and Enforcement Actions

Cal/EPA has institutionalized the cross media model of investigation and enforcement. Cal/EPA's enforcement training is focused on the cross media model. The Cal/EPA Basic Inspector Academy trains inspectors to recognize enforcement issues outside of their own programs and to create cross media teams. The annual Cal/EPA Cross Media Enforcement Symposium highlights accomplishments in this area and teaches this model to regulators, investigators, and attorneys. This training is brought to reality by the task forces described above, where inspectors and others can request assistance with enforcement investigations. Cross media enforcement is a regular part of environmental enforcement in California; every day regulators and investigators "make the call" to another agency about violations requiring this approach.

Pursuant to a Memorandum of Understanding between the Air Resources Board and Cal/EPA, the Strategic Enforcement Investigations (SEI) unit at Air Resources Board has been designated as Cal/EPA's cross media enforcement unit in accordance with Government Code section 12812.2. SEI has surveillance equipment and its staff is utilized to assist state, regional and local agencies in investigations of environmental crimes. Video evidence is a highly effective tool in environmental crime enforcement and its use by state and local agencies continues to grow. The use of remote surveillance is particularly effective in illegal dumping problem areas.

The Department of Toxic Substances Control also provides enforcement assistance through its Office of Criminal Investigations (OCI). Both OCI and ARB's SEI assist federal, state, regional, and local agencies with enforcement resources and case development. Other Cal/EPA Boards, Departments, regional and local agency partners provide enforcement and case development assistance on a case-by-case basis.

7) Case Coordination and Referral

During 2008, Cal/EPA continued to assist and coordinate regulators, investigators, and prosecutors in investigations of violations of environmental laws. Cal/EPA meets with US EPA Region 9 enforcement officials regularly to discuss federal enforcement activity and to coordinate joint state and federal investigations and prosecutions.

California has seen an increase in the number of multi-county and statewide civil cases brought to enforce environmental laws. These cases require close cooperation between the regulators in various jurisdictions and the local and state prosecutors. Cal/EPA has assisted this effort by providing training on this subject at the Cal/EPA Enforcement Symposium and the CUPA/UST Training Conference. Complaints and judgments from multi-county and state actions are posted on Cal/EPA's web pages at <http://www.calepa.ca.gov/Enforcement/Orders/>.

8) New Enforcement Policy Development and Review

a. Climate Change Enforcement Policy Review

During 2008, the Office of the Secretary began working on market enforcement implementation issues of AB 32's cap and trade program. As a result of that effort the Office of the Secretary also works on these issues within WCI, the Western Climate Initiative. WCI is presently a collaboration of seven Western American states and four Canadian provinces that are committed to reducing greenhouse gas emission within their respective jurisdictions.

b. Other Enforcement Policy Reviews

The Office of the Secretary consistently reviews other significant new enforcement policies that come to its attention.

C) Enforcement Program Metrics

The Office of the Secretary in its enforcement role does not implement a regulatory program; rather its statutory duties are to coordinate existing enforcement efforts. Therefore, Cal/EPA does not have its own reported data but rather relies on the data generated by Cal/EPA Boards, Departments and Offices, and regional and local agencies. The Office of the Secretary has led efforts to improve the data generated by these programs, see the Enforcement Initiative section above and the Unified Program chapter in this report.

D) Program Limitations

Similar to other programs described in this report, the Office of the Secretary functions with limited enforcement resources. Currently there is no dedicated funding for equipment or contracts and most staff also have multiple additional non-enforcement responsibilities. Our statutory responsibility to promote consistent and effective enforcement across environmental programs is made more difficult by the significant differences in program statutory construction, differing and sometimes limited enforcement authorities, program structures and reporting responsibilities.

While coordination and consistency among the many diverse elements of our decentralized environmental enforcement system are continually improving, each individual program's primary focus on a single environmental media (e.g., air, water, waste etc.) remains largely driven by federal and state law, program structure, funding constraints, federal oversight and similar issues. Each program's narrow focus on a single environmental media can create at least the appearance, if not the reality of overlapping or conflicting regulatory demands on regulated businesses that are commonly regulated under several different programs. Additionally, there is a need for improved coordination between programs. Without continual vigilance, this limited focus can also cause

environmental risks to move from one program media to another in conflict with the more global environmental protection goals we all seek.

Finally, the significant data challenges noted elsewhere in the report remain a limitation.

III. WHAT ARE WE GOING TO DO: FUTURE DIRECTIONS

A) Objectives for 2009

- Continue the work on infrastructure improvements tasked to Enforcement Initiative Teams and Committees.
- Produce a comprehensive Report on Environmental Enforcement for the year 2008.
- Continue support for enforcement training for regulators, investigators and prosecutors.
- Provide support for environmental enforcement task forces to facilitate communication between regulators in various programs and prosecutors.

B) Recommendations for Future Actions

- Work with the Air Resources Board and regulatory stakeholders to review enforcement issues in the development of regulations to implement the Global Warming Solutions Act of 2006 (AB 32 (2006); Health and Safety Code section 38500 et seq.).
- Work to coordinate the various providers of environmental enforcement training.
- Produce an annual comprehensive Report on Environmental Enforcement.

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AIR RESOURCES BOARD

I. EXECUTIVE SUMMARY

ARB regulates a growing universe of sources in its fight for clean air in California. Cleaner fuels, gasoline dispensing vapor recovery systems, consumer products, on- and off-road vehicles and engines, and a host of air toxics are just a few areas of concern. While the sources of air pollution and the regulations to control these sources are numerous and diverse, common to each regulation is the basic principle that we cannot reach California's air quality goals unless everyone complies with the rules.

Ideally, businesses that are faced with new or tighter regulations comply voluntarily; and ARB offers education, outreach, incentive, and compliance assistance programs to help them. However, there are always a small percentage of businesses that do not comply with the law. This not only postpones achieving cleaner air but also punishes the complying companies by providing an unfair economic advantage to the violators. ARB enforcement staff inspects and investigates places and situations where non-compliance is most likely, as well as those areas where the violating emissions have the largest adverse impact on public health.

With each new regulation, the universe of inspection sites expands. In recent years, the Board's Enforcement Division has accommodated an increasing number of critical responsibilities in all areas of the state. The Enforcement Division inspects heavy-duty diesel vehicles for engine certification compliance, smoke emissions, and tampering. All diesel-powered trucks and buses operating in California, including those that cross the Mexican border, are subject to these inspections. In addition, Enforcement Division enforces the rules against specific fleets of diesel trucks such as Solid Waste Collection Vehicles, Transit Fleet and Public Agencies and Utility Vehicles. The Enforcement Division seeks out and intercepts imports of illegal vehicles, engines, and consumer products at the state's large marine ports such as those in Los Angeles, Long Beach, and Oakland. It also enforces regulations designed to keep diesel-powered commercial vehicles from idling more than 5 minutes and school buses and delivery vehicles from idling at all, near children's developing lungs. The Enforcement Division ensures that the lowest-polluting fuel is available for cars and trucks, and that the highest level of particle controls are installed on construction, public and utility, and trash hauling vehicles, and on urban/transit buses.

Recently added to these responsibilities is the challenge to reduce greenhouse gas emissions from both mobile and stationary sources under the requirements of California's landmark climate change legislation (AB 1493 of 2004 and AB 32, California's Global Warming Solutions Act, of 2006). Enforcement is a big job, but if California is to keep moving toward its goal of clean, healthful air, it is an absolute necessity.

A) Major Program Highlights

In 2008, the ARB's Enforcement Division resolved a total of 2,597 cases/citations and collected \$12 million in total penalties. This includes 2,473 mobile source cases/citations closed for over \$3.9 million, two stationary source cases closed for over \$6 million, 46 fuels/cargo tanks cases closed for nearly \$150,000, and 45 consumer products/portable fuel containers cases closed for over \$1.75 million. The following statistics provide more details on the achievements of the enforcement program:

- 74 cases of non-California certified vehicles sold in California closed for \$278,500
- Eight illegal motorcycle and off-highway recreational vehicle cases closed for over \$575,000
- Two illegal aftermarket performance parts cases closed for over \$44,000
- One On-Board Diagnostics case closed for \$250,000
- Enforcement of regulations regarding illegal imported products from Asia
- 145 diesel fleet and exhaust retrofit cases closed for over \$2.2 million
- Over 17,800 heavy-duty vehicles inspected for smoke emissions and tampering, with over 650 violations closed for over \$249,000
- Over 800 inspections of solid waste collection vehicles, with over 150 violations and over \$33,000 collected
- Over 100 inspections of public agency and utility company fleet vehicles, with over 15 violations cleared for over \$5,000 collected
- Over 17,000 heavy-duty vehicles inspected for engine certification labeling requirements, with over 1,100 violations and over \$216,000 collected
- Over 7,700 inspections for commercial vehicle and school bus idling conducted, resulting in over 300 violations settled for over \$84,600
- Over 4,000 inspections/compliance checks for Carl Moyer Program and Proposition 1B Goods Movement funding, with 27 violations
- Over 10,300 inspections in Environmental Justice areas conducted and over 1,300 violations documented
- Nine fuels cases for various violations closed for \$133,000
- Over 745 cargo tanks inspected for proper certification and leak decay with 36 cases closed for \$16,750
- Over 2,300 consumer product samples gathered during inspections, with 35 cases closed for over \$1.4 million
- Over 125 samples of portable fuel containers and spouts collected during inspections, with 10 cases closed for over \$350,000
- Over 864 million gallons of gasoline represented in sampling
- Over 334 million gallons of diesel fuel represented in sampling
- Over 16,260 inspections of on-road vehicles for off-road use only non-taxed red-dyed diesel fuel
- Over 2,020 inspections of locomotives conducted, 28 violations issued, and 32 violations closed for \$12,800
- Over 240 delinquent violations (multiple programs) closed for over \$162,800 collected
- Over 223 classes or multi-day training programs offered, representing over 11,300 student days of training
- Over 18,800 publications distributed, plus 131,600 web hits on handbooks alone
- Funded 99 Supplemental Environmental Projects (SEPs) totaling over \$2.6 million (SEPs are penalties in lieu of fines such as adding control equipment or providing training.)

B) What the Reported Data Tells Us

The reported data provides a measure of activity across all applicable enforcement programs at ARB. Due to the wide range of the regulations ARB enforces, each program generates a somewhat unique dataset and has its own measure of activity and performance.

C) How the Program Will Use This Information

This data helps division leadership measure enforcement activity levels, and look for ways to make effective use of limited resources. This information is especially helpful in the strategic planning and analysis arena, especially when new regulations are being proposed or implemented. It will also help ARB's enforcement management team to redirect staff to programs with low compliance rates and identify where additional resources and staff may be needed.

II. THE ARB'S ENFORCEMENT PROGRAM

A) Overview

The ARB coordinates California's efforts to reach and maintain the health-based air quality standards and to protect the public from exposure to toxic air contaminants. The agency has two broad mandates to accomplish this. One is overseeing the efforts of local air pollution control and air quality management districts to control air pollution caused by stationary source emissions. The other is directly regulating mobile sources – cars, motorcycles, trucks and buses, off-road vehicles and equipment, and the fuels that power them – and smaller but more numerous sources of air pollution, including consumer products, other types of mobile sources like lawn and garden equipment and utility engines, and, especially, any sources of toxic air pollutants. ARB sets and enforces engine requirements, fuel standards, and consumer products standards to limit emissions from these sources.

To carry out these responsibilities, ARB has undertaken a multifaceted program of planning, regulation development, and enforcement. This complex process weaves together air quality research, modeling and assessment, the development and adoption of regulations through a public process, and program implementation through active outreach to regulators and regulated industries through training and compliance assistance.

The final component, enforcement, ensures that these efforts do achieve the anticipated emissions reductions and a level playing field for all participants. This report focuses on ARB's enforcement efforts -- direct enforcement, oversight of district enforcement programs, and facilitating voluntary compliance through education and compliance assistance materials.

Violations of California's air quality laws and regulations span a wide spectrum that extends from nominal breaches of the state's statutes or regulations to deliberate, criminal actions. While these violations can result in varying degrees of pollution, what remains constant in each is the unfair economic disadvantage suffered by those members of the industries that do comply. To address these varying degrees of violation and their effects on the state's health and economic welfare, the Enforcement Division of ARB has adopted as its mission statement:

“The Enforcement Division seeks to protect public health and provide safe, clean air to all Californians by reducing emissions of air contaminants through the fair, consistent and comprehensive enforcement of statutory and regulatory requirements and by providing training and compliance assistance.”

Organizational Structure

The Enforcement Division is comprised of three branches and one section, each reporting to the division chief:

The **Mobile Source Enforcement Branch** (MSEB) enforces programs to reduce gaseous, particulate, and visible exhaust emissions from heavy-duty diesel and gasoline-powered commercial trucks and buses, passenger vehicles and other light-duty on-road vehicles, off-highway vehicles, non-road engines like lawn and garden equipment, and aftermarket parts for on- and off-road vehicles. MSEB staff investigates alleged violations of these programs and develops administrative, civil, and criminal cases against violators

The **Stationary Source Enforcement Branch** (SSEB) investigates and develops cases related to motor vehicle fuels and consumer products, provides oversight and assistance to local and regional air district enforcement of stationary source requirements, and provides investigative and surveillance services to assist in the development of air quality, toxic exposure, and multi-media cases.

The **Training and Compliance Assistance Branch** (TCAB) provides training and materials to ARB staff, air districts, and industry for improving enforcement and promoting compliance.

The **Greenhouse Gas Enforcement Section (GHGES)** addresses the enforceability of regulations, especially those pursuant to Assembly Bill (AB) 32, the California Global Warming Solutions Act of 2006. Staff provides input on enforcement-related issues to ARB staff developing climate change regulations. Work in several enforcement-related Western Climate Initiative committees, and Cal/EPA's Intergovernmental Market Enforcement Group is ongoing.

Finally, integral to the success of the enforcement program is the Enforcement Division's close working relationship with ARB's Office of Legal Affairs (OLA). Many of the cases are settled through an informal process in which division staff works directly with the violators. For cases that cannot be handled through this informal process, OLA attorneys work with the enforcement staff to negotiate settlements or prepare cases for referral for civil litigation or criminal prosecution to the California Office of the Attorney General, local district attorneys, or the United States Attorney's Office.

B) Enforcement Program Components

1) Mobile Source Enforcement Branch

California has long been a world leader in combating air pollution emitted from motor vehicles and other mobile sources. Because of the state's severe air quality problem, California is the only state authorized under the federal Clean Air Act to set its own mobile source emissions and fuels standards. ARB has used this authority to establish an aggressive program to reduce emissions from many sources, ranging from heavy-duty diesel trucks, passenger cars, and motorcycles to jet skis, lawn mowers, and chain saws. Because of the complexity and diversity of its regulated universe, the Mobile Source Enforcement Branch is split into two broad enforcement program efforts: the general **Mobile Source Enforcement Program** and the **Heavy Duty Diesel Enforcement Program**.

Mobile Source Enforcement Program

The Mobile Source Enforcement Program is structured to ensure that on- and off-road vehicles and other applicable sources, such as small off-road engines and aftermarket parts, meet California's emission standards.

On-Road Program

49-State Vehicle Enforcement

This program includes passenger vehicles, trucks, and motorcycles. The cornerstone of this program is the requirement that each new on-road vehicle sold in California must meet ARB emissions standards. Manufacturers and dealers offering vehicles for sale that do not meet these standards are subject to penalties up to \$5,000 per violation and the vehicles are removed from the state. These violating vehicles are captured through random audits of dealers and manufacturers, manufacturer audit reports and self reporting, informants and Smog Check Program inspections of vehicles being registered from other states in California for the first time. Staff has also been working closely with custom motorcycle and limousine dealers and manufacturers to curb non-compliance in these industry sectors.

Limousine Enforcement

ARB has regulated on-road motor vehicles since 1966. An original equipment manufacturer (OEM) certifies a vehicle with ARB, based on specific gross vehicle weight, emissions equipment, horsepower, engine size and other criteria. When a limousine manufacturer, either of a brand new base-model chassis or a used vehicle chassis, changes the configuration of the originally certified vehicle, the vehicle is no longer certified for use in California. Violations of California law occur when the manufacturer/builder modifies the vehicle beyond the certified configuration, and then sells the vehicle to a California dealer or customer. To continue to operate in the state, the modifier or builder must certify the modified vehicles with ARB.

In 2008, enforcement resources were focused on limousine enforcement. Twelve enforcement cases were opened, with two closed in 2008. Two of the state's largest limousine manufacturers have begun the certification process.

MSES staff has done outreach through presentations at industry association meetings and through ongoing communication with the manufacturers and their Coach Builders' Association. In 2008, staff worked with the nation's largest industry publication and had an article published, explaining ARB requirements and the certification process to the limousine industry. These efforts were very successful, resulting in the manufacturers ceasing California sales of uncertified limousines and certifying the models that were not previously certified.

Motorcycle Enforcement

During 2008, staff continued enforcement of ARB's motorcycle regulations. Due to the focus on custom motorcycle builders' enforcement in 2006, this category was found to be generally in compliance in 2008, with the exception of one custom manufacturer that was supplying uncertified motorcycles to dealers in California. The 2008 focus turned toward the Asian import motorcycles coming into California without having been certified by ARB. The Motorcycle Industry Working Group, formed in 2006 to foster better government and industry relations and higher levels of compliance, continues on an as-needed basis.

Aftermarket Parts Outreach and Enforcement

Staff continued to develop a positive working relationship with the Specialty Equipment Marketing Association (SEMA). These efforts help to ensure that all after-market parts that might affect emissions or emissions control systems are issued an ARB Executive Order (EO) that allows for their legal sale in California. Staff provided outreach at the 2008 SEMA show by explaining ARB enforcement programs to represented aftermarket company attendees, making available ARB fact sheets and answering questions.

ARB regulations prohibit the sale, advertising for sale, or installation of certified used catalytic converters beginning July 10, 2008. In 2008, staff focused enforcement efforts on manufacturers that were supplying uncertified catalytic converters to California dealers and suppliers. As a result, enforcement actions have been initiated against shops that install illegal catalysts and manufacturers that are supplying these converters, with approximately seven new cases opened in 2008.

The cost differential between a legal OEM catalyst and an illegal aftermarket catalyst can often be hundreds of dollars. This creates a huge inequity for repair facilities that follow the law and use only legal replacement parts. Our enforcement efforts are targeted at leveling the market for all repair facilities.

Street Racing Enforcement Assistance

During 2008, ARB staff conducted training seminars for California Highway Patrol (CHP) and local law enforcement agencies throughout California to assist in their efforts to eradicate street racing. Often the vehicles involved in these unlawful activities are equipped with illegal engine modifications and after-market parts, which significantly impact air quality. The training by ARB mobile source enforcement staff assists peace officers in writing solid tampering citations that will support resulting court cases.

As these types of modifications can cost thousands of dollars, citing the vehicle owners for tampering has proven to be a powerful deterrent, because the owner must show that the offending equipment has been removed, as well as pay the related penalties. In 2008, law enforcement personnel conducted hundreds of street racing strike force operations, resulting in the issuance of hundreds of citations. These enforcement actions have had a significant impact on reducing excessive emissions from these modified vehicles.

Off-Road Program

This program ensures that non-road vehicles and engines such as off-road motorcycles, all-terrain vehicles (ATVs)/off highway recreational vehicles (OHRVs), lawn and garden equipment, motorized scooters, generators, fork lifts, and construction equipment meet ARB certification requirements. Staff also supports the industry by assisting new manufacturers with the certification process.

Small Off-Road Engines (SOREs) & Off-Highway Recreational Vehicles (OHRVs)

SOREs and OHRVs continued to receive enforcement attention during 2008. Mobile source enforcement staff continued to expand their enforcement program to include illegal lawn mowers, trimmers, generators, scooters, and other SORE products, and a number of cases were opened and settled. In addition, staff supported the industry by assisting new manufacturers with the certification process. The cases in this category have decreased overall as a direct reflection of the aggressive enforcement in this area in the past. These engines and vehicles are increasingly being legally certified.

Staff also continued enforcement efforts to ensure that all off-road motorcycle manufacturers and dealers introduce and sell only products that meet California certification requirements. Staff continues to work cooperatively with industry to provide education that assists in industry's awareness and compliance with ARB laws and regulations.

The potential impact of SORE and OHRV regulations is significant, potentially reducing smog-forming emissions by approximately 200 tons per day; therefore, aggressive enforcement of these regulations is critical to improving air quality. Enforcement staff continues to work with DMV and the California Department of Parks and Recreation to ensure proper registration and enforcement in the riding areas throughout California. This cooperative effort ensures that ARB will receive the anticipated reductions from this category.

Sandcar¹ Enforcement

In January 2007, the OHRV regulation pertaining to sandcars was amended by ARB. One of the amendments affected the way sandcars are required to be certified by ARB. Prior to January 2007, sandcars were regulated by Large Spark Ignition (LSI) regulations. In 2007, they were reclassified and included in the OHRV regulations.

In early 2008, MSES staff discovered that there are no Executive Orders (EOs) covering sandcars, nor had any sandcar manufacturers submitted an application for certification with ARB. There were, however, many sales of uncertified sandcars in California. These findings spurred an enforcement effort to ensure that the sandcar industry came into compliance with the current regulations.

The focus of the 2008 enforcement was on sandcar manufacturers and the engine builders that provide the engines to those manufacturers. As a result of those investigations, three engine suppliers have obtained EOs covering their engines and the vehicles that they are installed in. Several additional engine manufacturers are in the process of obtaining EOs to cover more of the industry's vehicle models.

Overall, the sandcar enforcement effort has been successful in bringing this industry into compliance with the new OHRV regulations and requirements. Over 37 cases are pending settlement. The program is ongoing and will continue through 2009, with the goal of certification and compliance throughout this industry.

Asian Import Market

During 2008, staff continued its efforts to reduce the incidence of illegal Asian import products (e.g. on- and off-road motorcycles and ATVs, personal watercraft, and lawn and garden equipment, etc.) coming into California through the major shipping ports. Staff is working with US EPA, US Immigration & Customs Enforcement, US Coast Guard, and Chinese governmental agencies to ensure that Asian import products coming into California fully comply with environmental regulations.

In 2008, ARB mobile source enforcement staff investigated a number of Asian import market cases and is pursuing administrative, civil, and criminal action against violators. The number of Asian imported off-road vehicles that have been legally certified emission compliant with the ARB has

¹ A sandcar is an off-road vehicle that is made and registered for off-road use and has to be certified by the ARB prior to importation, sale or use in CA. They can cost upwards of \$80K and use automobile engines. They are used like a dune buggy but look different and can go a lot faster.

increased dramatically from years passed. In 2005, for instance, there were only 19 Asian imported off-road vehicles certified emissions compliant. The certified vehicles grew to over 50 in 2006 and well over 100 in 2007 and 2008. This is a direct reflection of the success of the mobile source enforcement program in this area, and the ongoing outreach with Asian government environmental groups and academic representatives, mostly from China.

Late in 2008, Enforcement Division staff met with various representatives from different governmental and industry organizations in China to explain ARB's regulatory and enforcement programs and give tours of the ARB Haagen-Smit Laboratory to observe vehicle and engine emissions testing. This outreach and training is part of an ongoing program available to visiting Asian delegations, including members of universities, media, government and environmental groups, who are interested in California's air quality programs and how they can be adapted to Asia's needs. This outreach effort has resulted in a decrease in illegal imported Asian OHRVs and a doubling of the number of legally certified Asian products coming into California and the United States.

Marine Engine and Watercraft Enforcement

The Spark-Ignition Marine Engine (SIME) regulations were amended in 2008 to include a carbon monoxide emissions standard for all watercraft engines, and evaporative emissions control requirements for all high-performance stern-drive engines.

ARB staff vigorously enforced the SIME regulations in 2008 by inspecting marine vessels and engines at dealerships and boat shows. Staff continues to dialog with the National Marine Manufacturers Association, the Northern California Marine Association, and the Southern California Marine Association on various enforcement-related topics.

Heavy Duty Diesel Enforcement Program

The Heavy-Duty Diesel Enforcement Program inspects heavy-duty trucks and buses for excessive smoke emissions and tampering of emission control systems. Currently more than 440,000 heavy duty diesel vehicles are registered in California. Each of these heavy-duty vehicles, as well as an estimated one million heavy-duty vehicles registered in other states or foreign countries (i.e., Mexico or Canada), are subject to inspection and testing. Vehicles in fleets, such as transit buses, solid waste collection vehicles, delivery service vehicles and others are also required to comply with the ARB fleet rules. The fleet rules were adopted by the Board under the ARB Diesel Risk Reduction Plan (DRRP) and Goods Movement programs, which aim to reduce vehicle emissions through the installation of exhaust emission control devices such as diesel particulate filters, new engines, and vehicle replacement. Key program elements include:

Heavy Duty Vehicle Inspection Program

The roadside Heavy Duty Vehicle Inspection Program (HDVIP) is designed to reduce excessive visible smoke emitted from the exhaust of heavy duty diesel powered trucks and buses on California roads. Vehicles are tested at random roadside locations statewide, including Environmental Justice areas such as the maritime ports in Los Angeles, Long Beach and Oakland and the Mexican border crossings. Vehicles found with engine tampering or smoke emissions exceeding applicable standards are cited with penalties ranging from \$300 - \$1800 per violation and must be repaired within 45 days. The California Highway Patrol may impound the non-compliant vehicle and the Department of Motor Vehicles can block the registration.

Inspections for red-dyed diesel fuel (non-taxed diesel fuel designated for off-road use only) are also conducted in conjunction with the HDVIP. In 2008, staff conducted more than 16,250 red-dyed diesel fuel inspections and found 23 violations. These inspections are conducted as part of the HDVIP program. (See Stationary Source Enforcement Branch, Fuels Enforcement section for more details.)

Periodic Smoke Inspection Program

The Periodic Smoke Inspection Program (PSIP) requires fleets of two or more heavy duty diesel vehicles to test their trucks and buses annually for exhaust smoke opacity levels. The PSIP is a companion to the HDVIP, ARB's roadside enforcement program. Under the PSIP, penalties are assessed at \$500 per violation. Additionally, fleet owners are required to maintain their records for two years. ARB staff routinely selects fleets for audits and review their logs of smoke opacity test results to ensure that the program requirements are being fulfilled. PSIP is often enforced in conjunction with other diesel programs such as Solid Waste Collection Vehicle, Public Agency Utility, and Transit Vehicles/Urban Bus.

Solid Waste Collection Vehicle Program

The Solid Waste Collection Vehicle (SWCV) Program enforces an Air Toxic Control Measure (ATCM) adopted by the ARB under the DRRP. It applies to all diesel-fueled trucks in excess of 14,000 GVWR that collect solid waste for a fee – approximately 13,000 vehicles in California. It requires that solid waste collection vehicles be retrofitted, repowered or replaced according to a specified phase-in schedule. This will dramatically reduce the emissions of particulate matter from SWCVs over the phase-in period. Enforcement of this program is conducted in conjunction with HDVIP and PSIP as well as through roadside inspections at solid waste facilities. In 2008, 16 SWCV fleet cases were settled for over \$265,000.

Public Agency Utility (PAU) Enforcement

The Fleet Rule for Public Agencies and Utilities is ARB's effort to reduce both criteria pollutant emissions and exposure to toxic air contaminants from on-road heavy-duty diesel-fueled vehicles owned or operated by a municipality or utility. The regulation affects all diesel-fueled medium-heavy or heavy-heavy duty engine vehicles greater than 14,000 pounds gross vehicle weight. All engines operated by a municipality or utility are required to use the best available control technology (BACT). This can be achieved through the use of verified diesel emission control strategies, i.e. by installing certified particulate filters, by replacing older engines with ones that meet the 2008 engine exhaust emission standards, or by using alternative fuels. In 2008, over 103 vehicle inspections were conducted, 27 violations were documented, and over \$5,000 in fees were collected.

Transit Fleet Vehicle/Urban Bus (TFV/UB) Enforcement

The Fleet Rule for Transit Agencies is designed to reduce criteria and toxic emissions from urban buses and smaller transit vehicles above 8,500 lbs. gross vehicle weight with heavy-duty rated diesel engines. This is accomplished by requiring best available control technology (BACT) to be installed on the diesel engines of transit vehicles, or by adding vehicles that run on cleaner fuels to a fleet while phasing out older diesel vehicles. Each option is accomplished with a phased-in approach by reducing the percentage of emissions within a fleet by certain compliance deadlines specified in the regulation. In 2008, the Enforcement Division closed a total of 7 transit fleet/urban bus cases.

Engine Certification Label Program (AB 1009)

The Engine Certification Label Program (ECLP) requires that all on-road diesel powered trucks and buses operating in California use engines that are labeled as having been engineered and built to

federal exhaust emission certification standards. The ECLP also requires Mexican and Canadian diesel trucks and buses to be certified to equivalent standards by their respective governments. This program was adopted by urgent legislation in 2004 as a result of the June 2004 U.S. Supreme Court decision regarding truck emissions from the implementation of the North American Free Trade Agreement. Violations under this program carry penalties ranging from \$300 to \$500. The CHP may impound the non-compliant vehicle and/or the DMV can block the registration.

Idling Programs

This program ensures that school buses, transit buses, or other commercial heavy-duty vehicles are prohibited from idling for more than five minutes in any given area. Enforcement is concentrated around commercial areas conducive to truck activity, schools, truck stops, environmental justice areas and residential neighborhoods. Exemptions are provided for idling that is necessary for safety or operational purposes. Penalties start at \$300 per violation. To enhance program enforcement, Enforcement Division Training Section staff is training local air pollution control districts to enforce the prohibitions of this program.

Smoking Vehicle Complaint Program

Smoking vehicles can have a very significant effect on our air quality. A number of air districts, along with ARB, have implemented programs for contacting the owners of smoking vehicles. Under these programs, citizens report excessively smoking vehicles and the owners are sent notices asking that they check (and repair as needed) their vehicles. ARB's program generated a 20% compliance response rate in 2008.

Transport Refrigeration Unit (TRU) Rule

The Transport Refrigeration Unit (TRU) rule went into effect in December 2004. This regulation uses a phased approach to reduce the PM emissions from in-use diesel-powered TRU and TRU generator equipment used to power the electrically-driven refrigerated shipping containers and trailers that are operated in California. A one-time facility reporting requirement, which was due January 31, 2006, applies to all facilities in California with 20 or more loading dock doors that serve refrigerated areas where perishable goods are loaded or unloaded. Several TRU facilities were audited in 2008 and found to be in violation of this reporting requirement. Three violations were settled for over \$139,000 [this is combined penalty as part of PSIP cases]. Full enforcement of the TRU registration requirement will begin August 2009.

Carl Moyer Program and Proposition 1B Goods Movement Emission Reduction Program Compliance Checks

The Carl Moyer Program provides incentive grants to reduce emissions from heavy-duty diesel engines. The incentive grants offset the cost of replacing older, high-polluting engines with newer engines certified to more stringent emission standards. Proposition 1B provides funding to cut air pollution and health risks by upgrading diesel equipment that is used to move freight in California. Before these funds are released, Enforcement Division staff performs compliance checks on the vehicle's registered owner and the vehicle's identification number (VIN) to determine if there are any outstanding violations within the various enforcement programs. If an outstanding violation is found, the vehicle owner is required to provide proof of compliance and pay all civil penalties before the funds are released.

Focused Environmental Inspections in Environmental Justice Communities/Ports

ARB participates in an ongoing program of multi-agency vehicle inspections in mixed commercial/residential locations known as Environmental Justice (EJ) areas. Due to location, these

EJ areas are disproportionately impacted by emissions of oxides of nitrogen and particulate matter from diesel-powered trucks and buses. They include but are not limited to: the residential housing areas located near the seaports of Los Angeles, Long Beach, Port Hueneme, Oakland, and Stockton; the California/Mexico border ports of entry at Otay Mesa, Calexico, and Tecate; the railroad yards; the truck stops; and the travel routes with greater-than-normal traffic flow that are used by heavy-duty diesel-powered vehicles.

ARB staff coordinates with enforcement personnel from CHP, U.S. EPA, the United States Coast Guard, the US Immigration and Customs, the California Department of Toxic Substances Control, local law enforcement and hazardous materials agencies, the California Board of Equalization, the Internal Revenue Service, and others to examine the vehicles passing through these areas. In 2008, over 10,300 vehicle inspections were conducted in Environmental Justice areas and over 1,300 violations were documented.

Program Metrics

Program Component Resources

The Mobile Source Enforcement Branch employs one branch chief, four section managers, four field supervisors, 48 full-time staff, 14 students, and three retired annuitants.

Program Outputs

| General Mobile Source Enforcement Programs ¹ | | Cases Closed ² | Penalties ³ | |
|--|--|----------------------------------|-------------------------------|------------------------|
| On-Road Vehicles (includes 49-state vehicles and limousines) | | 74 | \$278,500 | |
| Motorcycles/OHRVs | | 8 | \$575,400 | |
| After-Market Parts | | 2 | \$44,750 | |
| On-Board Diagnostics (OBD) | | 1 ⁴ | \$250,000 | |
| Diesel Fleet Enforcement Programs ^{1,5} | | Cases Closed ² | Penalties ³ | |
| PSIP, SWCV, PAU, TFV/UB, TRU, VDECS | | 145 | \$2,205,357 | |
| Diesel Field Inspection Programs | | Inspections | Citations/NOVs Closed | Penalties |
| Heavy Duty Vehicle Inspection | | 17,822 | 653 | \$249,805 |
| Solid Waste Collection Vehicles (SWCV) | | 862 | 160 | \$33,600 |
| Public Agency Utility Vehicles (PAU) | | 103 | 15 | \$5,100 |
| Engine Certification Label (AB1009) | | 17,512 | 1105 | \$212,475 ⁶ |
| Commercial Vehicle Idling | | 7,687 | 307 | \$84,325 |
| School Bus Idling | | 35 | 3 | \$300 |
| Carl Moyer Program & Prop 1B Goods Movement | | 4,152 ⁷ | 27 violations ⁸ | N/A |
| Environmental Justice ⁹ | | 10,301 | 1,357 violations ⁸ | N/A |
| TOTAL – All Mobile Source Programs ¹⁰ | | 58,474 | 2,473 | \$3,939,612 |

1. Violations are uncovered through random audits of dealers and manufacturers, fleets, referrals, informants, tips, and complaints rather than through a structured inspection schedule.

2. Includes cases/citations pending from previous years.

3. Includes SEPs.

4. This case was investigated and handled by ARB's Mobile Source Control Division and OLA. On-Board Diagnostics (OBD) is a vehicle system that monitors virtually every component that can affect emission performance. Each component is checked by a diagnostic routine in the vehicle's on-board computer system to verify that it is functioning properly. If a problem or malfunction is detected, the OBD system alerts the driver through a warning light on the vehicle's instrument panel and stores information about the malfunction so that a repair technician can accurately find and fix the problem.

5. Cases may include fleet violations for Periodic Smoke Inspection Program (PSIP), Solid Waste Collection Vehicles (SWCV), Public and Utility Vehicles (PAU), Transit Fleet Vehicles/Urban Buses (TFV/UB), Transport Refrigeration Units (TRU), and Verified Diesel Emission Control Systems (VDECS). A fleet case is closed after a company is audited/reviewed and found not to be in violation or for those companies found in violation the case is closed when all actions against a company are completed (i.e. penalties paid, settlement agreement signed, court action finalized, etc.).

6. AB1009 penalties became effective on February 15, 2008.

7. Inspections for these programs involve audits of various databases.

8. Not included in Cases/Citations/NOVs TOTAL.

9. Data reflects inspection activities for multiple programs.

10. Includes all MSEB cases, citations and NOVs closed in 2008. Cases may involve multiple violations.

Program Outcomes

Compliance rates for MSEB programs where these rates can be calculated are listed in the table below:

| Program | Compliance Rate |
|---|------------------------|
| Heavy Duty Vehicle Inspection | 98% |
| Solid Waste Collection Vehicles | 83% |
| Public Agency Utility (PAU) Enforcement | 74% |
| Engine Certification Label (AB1009) | 92% |
| Commercial Vehicle Idling | 93% |
| School Bus Idling | 91% |

Data Characteristics

This program maintains activities-based databases, which contain all relevant information about an inspection/citation. Data is organized into reports that help investigators identify multiple related parties, and gives management an easy way to manage workload.

As the Mobile Source program has grown over time, its database requirements have increased as well. In order to continue to provide management with the tools needed to navigate the program's complex dataset, a new database system is being developed. This new system will create new performance-tracking capabilities such as comparison with past years activity, real time compliance rate tracking, and case status.

2) Stationary Source Enforcement Branch

The Board's Stationary Source Enforcement Branch is responsible for: 1) enforcing regulations for motor vehicle fuels, cargo tank vapor recovery certification, and consumer products; 2) conducting special and joint investigations of cross-media environmental cases (i.e., cases involving multiple environmental areas such as air, water, toxic wastes, regular waste, or pesticides); and 3) conducting inspection, investigation, and compliance functions in conjunction with the 35 local and regional air districts and for overseeing air district enforcement programs

Stationary sources contribute substantially to emissions of criteria and toxic pollutants. Between one-quarter and one-half of the ozone-forming pollutants emitted are from stationary sources. The nature of stationary source pollution is that it may be identifiable as from a specific, or "point" source, such as a factory, or from a class of, or "area" sources, which individually emit small quantities of pollutants but which collectively emit significant emissions, such as consumer products.

Major areas of recent program growth include a number of new diesel risk reduction and goods movement regulations. These new programs areas have been shared more or less equally between the Mobile Source Enforcement Branch and the Stationary Source Enforcement Branch.

Stationary Source Enforcement Branch programs include:

Fuels Enforcement

The Fuels Enforcement Program regulates the composition of motor vehicle fuels and verifies compliance with motor vehicle fuels regulations, including California Reformulated Gasoline regulations and California diesel fuel regulations. Enforcement of this program includes: inspection of motor vehicle fuels facilities which produce, import and retail California gasoline and diesel fuel; reviewing company records of predictive models, certified fuel formulations, and fuels distributors; development and resolution of motor vehicle fuels cases; and outreach and assistance to the public and the regulated community in the form of training seminars, individual company meetings, and instructive web pages.

Red-Dyed Diesel Fuel Enforcement

Diesel fuel that is to be used solely for off-road equipment is dyed red to indicate that it is exempt from motor vehicle fuel taxes that apply to on-road vehicle fuels. Using red-dyed diesel fuel to power vehicles on roads and highways is illegal. The Internal Revenue Service estimates that about one billion dollars is lost from the national tax revenue each year due to the illegal use of non-taxed diesel fuel by on-road vehicles. The Board of Equalization (BOE) contracts with ARB to conduct field inspections to detect and deter the illegal use of non-taxed diesel fuel and to conduct laboratory tests on samples obtained by ARB inspectors to confirm the presence of dye in the fuel. These field inspections are incorporated with other regularly scheduled HDVIP roadside inspections. ARB also conducts special investigations on companies suspected of illegally using red-dyed diesel fuel. The inspection information and test results are forwarded to BOE for prosecution.

Cargo Tank Vapor Recovery Enforcement

The Cargo Tank Vapor Recovery Program is responsible for enforcing regulations to reduce Volatile Organic Compound (VOC) emissions from gasoline cargo tanks. Vapor recovery systems on cargo tanks are designed to capture the emissions produced during the transportation and delivery of gasoline. Cargo Tank enforcement staff conduct statewide random inspections of cargo tanks at terminals and loading racks. This program is also responsible for administering the annual certification compliance test program that includes: reviewing applications for compliance with the annual leak rate requirements; certifying over 5,000 cargo tanks per year; maintaining a database of ARB certified testers; and conducting inspections of ARB-certified testers to ensure that leak tests are being properly completed.

Consumer Products Enforcement

The Consumer Products program ensures that consumer products and aerosol coatings comply with the state standards in the California Consumer Products Regulations. These regulations restrict VOC emissions from over 115 consumer product categories and 36 categories of aerosol coatings. These products include aerosol cooking sprays, shaving cream, automotive waxes, hairspray, deodorants, lawn and garden insecticides, aerosol coatings (spray paints) and glass cleaners, to name a few. The regulated universe includes over 100,000 retail outlets, thousands of different products, and hundreds of consumer products manufacturers.

Portable Fuel Containers Enforcement

The Consumer Products section also ensures that portable fuel containers sold in California comply with the performance standards and certification requirements established in the statewide regulations. These regulations limit emissions from the evaporation, permeation, and spillage of fuels. These products are typically small, reusable cans with spouts that are used to store, transport,

and dispense gasoline and diesel fuel in to lawn maintenance equipment and vehicles. Program staff collects samples of spill-proof containers and spouts for testing, investigates the sale of non-complying products, and settles cases where violations are found. On January 1, 2009 the U.S. Environmental Protection Agency implemented national regulations that replicated ARB's portable fuel containers regulations. Staff anticipates that the number of violations related to non-compliant portable fuel containers will be reduced significantly in the coming years given the standardization of the state and federal regulations.

Stationary Source, Rail Yard, and Marine Investigations, Inspections, and Surveillance

This program: 1) conducts special and joint investigations of cross-media environmental cases (i.e., cases involving multiple environmental areas such as air, water, toxic wastes, regular waste, or pesticides); 2) works under a Memorandum of Understanding with Cal/EPA to provide the investigative services necessary to fulfill Cal/EPA's statutory enforcement responsibilities; and 3) provides enforcement assistance (inspections, investigations, and case preparation) to local air districts and other local and regional environmental agencies. The following program areas are included:

- Environmental Task Force Program: Staff participates in various task force meetings throughout the state. Investigative information is shared with prosecutors, law enforcement, and regulatory partners at federal, state, and local levels. Investigations are coordinated and staff work cooperatively with various sister agencies to maximize the effectiveness of limited resources.
- Surveillance Program: Staff offers surveillance services in support of various environmental investigations. A portion of this program is supported through a cooperative agreement with CIWMB. Capabilities include remote automated monitoring with video and still cameras, time lapse, motion sensing, and infrared technologies.
- ARB/Railroad Statewide Agreement: This program is also known as the "Railroad MOU." Each year, ARB staff inspects over 2000 locomotives at railyard facilities to verify compliance with standards governing locomotive idling, visible emissions, and diesel fuel standards.
- Portable Equipment Registration Program (PERP): Staff assists local districts with inspection of portable equipment units, help identify unpermitted units, and verify compliance with the Portable Engine ATCM.
- Ocean Going Vessel Program: A number of new regulations have been adopted, or will be implemented soon. These include regulations governing fuel for main and auxiliary engines, shipboard incinerators, shore power, and vessel speed reduction. Staff boards vessels to conduct physical inspections, collect fuel samples, and audit required records.
- Harbor and Marina Program: New regulations have been adopted, or will be implemented soon. These include regulations governing marine diesel fuel standards and harbor craft engine requirements. Staff collects diesel fuel samples at fuel docks, board vessels to conduct physical inspections, collect fuel samples from vessels, and audit required records.
- Asbestos NESHAP Program: Staff reviews and investigates demolition/renovation notifications in the 19 non-delegated air districts.

District Oversight and Assistance

Stationary Source Enforcement Branch staff also oversees a collection of mandatory programs and activities that provide oversight of the local and regional air districts:

- Variance Program: Staff reviews all district hearing board orders for compliance with Health and Safety Code requirements. Staff reviewed 482 orders and addressed over 388 issues in 2008.
- Air Facility System: Staff collects, inputs, and conducts quality assurance on data received from 26 of the 35 air districts for federally required compliance, permitting, and violation status of major sources. Staff reviewed 98 compliance reports and 260 high priority violator reports and addressed 95 issues.
- Complaint Investigations and Hotline: Staff responds to statewide complaints and inquiries about air pollution initiated by citizens and other agencies. These complaints and inquiries are investigated and/or referred to the appropriate agencies. Staff received and responded to 1059 complaints and inquiries in 2008.
- Continuous Emissions Monitoring Program: Staff gathers and analyzes data from emission monitoring devices required by air districts at stationary sources. Staff received and entered 2,976 continuous emissions monitoring reports in 2008.
- Rule Review: Staff reviews air district rules for enforceability, compliance with state laws, clarity and accuracy. Staff reviewed 234 rules in 2008. Staff has also actively participated in the rule-making process at ARB.
- Burn Issues: Staff investigates and responds to the complaints and inquiries specific to agricultural and other open burning. Staff addressed 44 burn issues in 2008.

Program MetricsProgram Resources

The Stationary Source Enforcement Branch employs one branch chief, four section managers, 38 full-time staff, 10 students, and one retired annuitant.

Program Outputs**Programs Involving Case Development by ARB SSEB Staff**

| Program | Activity | Settled/Closed Cases ¹ | Penalties ² |
|--------------------------|-----------------------------|--|-------------------------------|
| Fuels Enforcement | 2,140 (samples collected) | 9 | \$133,000 |
| Cargo Tanks | 749 (cargo tanks inspected) | 36 | \$16,750 |
| Consumer Products | 2,325 (samples collected) | 35 | \$1,450,650 |
| Portable Fuel Containers | 126 (samples collected) | 10 | \$352,000 |
| Stationary Source | 42 (inspections) | 2 | \$6,075,000 |
| Railroad MOU | 2,035 (inspections) | 32 | \$12,800 |

1. Cases may involve multiple violations.

2. May include early compliance costs.

Programs Requiring Field Inspections by ARB SSEB Staff

| Program | Inspections |
|------------------------------------|--------------------|
| Red-Dyed Diesel ¹ | 16,260 |
| Portable Equipment (PERP) | 103 |
| Ship Incinerator, Auxiliary Engine | 51 |
| Marine Diesel Fuel | 40 |
| Asbestos Demolition/Renovation | 54 ² |

1. This program is administered under a contract with the State Board of Equalization.
2. Includes inspections and complaint investigations.

Program Outcomes

By enforcing clear and consistent standards through inspections and investigations, the Stationary Source Enforcement Branch is able to deter violators and thereby ensure a more level playing field for all regulated parties. The potential for undiscovered violations may affect the estimated compliance rates. The Consumer Products and Portable Fuel Container programs do not calculate compliance rates due to the targeted focus of the sampling programs (new categories, revised limits, or similar violations) and the limited analysis capacity relative to the number of regulated products. Compliance rates are also not calculated for many investigations and inspection programs due to the unique nature of each stationary source investigation and case.

| Program | Compliance Rate |
|---------------------------|------------------------|
| Cargo Tank Vapor Recovery | 89.1% |
| Fuels Enforcement | 99.1% |
| Railroad MOU | 97.8% |
| Marine Diesel Fuel | 100% |

Data Characteristics

The Fuels Enforcement program maintains a database of over 3000 predictive models from producers and importers of California gasoline annually. The Fuels Certification Program maintains a list of ARB annually certified distributors of California gasoline that is accessible on the Enforcement Program web pages. The Cargo Tank Vapor Recovery program maintains a database of over 5000 ARB-certified testers annually.

The Consumer Products Enforcement program maintains a database, which contains pertinent information on every collected sample, including sample descriptions, purchase locations, manufacturer information, and laboratory test results. Data is organized into reports that help investigators quickly identify multiple related non-compliant samples, and gives management an easy way to manage the workload.

The Stationary Source Enforcement program maintains databases and generates reports in the following program areas: 1) Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP); 2) Complaint Hotline; 3) Variance Program; 4) Air Facility System (AFS); and 5) Continuous Emissions Monitoring (CEM) Program. Monthly and quarterly reports are generated in the AFS program. Ad hoc reports may be generated from most databases.

3) Training and Compliance Assistance Programs

Program Description

The Training and Compliance Assistance programs provide comprehensive education to further the professional development of environmental specialists. These programs focus on two key elements: training and compliance assistance. The nationally recognized and award-winning training courses encourage communication and networking between environmental personnel, with the goal of achieving emission reductions and solving compliance problems through professionalism and teamwork. The courses cover pollution history, the procedures required to properly evaluate emissions, the analysis of industrial processes, theory and application of emission controls, and waste stream reduction. They focus on maintaining compliance with applicable laws and regulations. Staff conducts and administers these courses throughout the state.

In August 2008, Compliance Training introduced state of the art technology with webcasting. Classes were simultaneously conducted via live classroom and the World Wide Web. This technology allows trainees to decrease travel time, expenses, and their “carbon footprint”, while reaching people throughout the United States and several foreign countries.

The Compliance Assistance Program develops and makes available, both on the internet and in print, a variety of practical, rule-specific publications that describe source processes and emission control equipment, clarify rule requirements, identify compliance issues, and promote self-regulation. Available publications include technical manuals on CD, self-inspection handbooks and job aids, and pamphlets. The technical manual CDs are primary references used in many of the training courses and provide in-depth, source-specific information for inspectors and facility environmental specialists. The handbooks and pamphlets explain source-specific regulatory and compliance programs in everyday terms. These brief, colorful, self-help resources serve as outreach and compliance assistance to the industry and are routinely used and distributed by local air districts to assist businesses in their jurisdiction.

Program Metrics

Program Resources

The Training and Compliance Assistance Branch administers these programs. The branch consists of one branch chief, two managers, 16 staff, three retired annuitants, and three students.

Program Outputs

In 2008, staff provided a total of 223 classes or multi-day training courses, representing 11,338 student days of training. Staff distributed 18,868 copies of publications. The distribution was as follows: 3,972 technical manuals (including interactive and archival CDs), 11,823 handbooks, and 3,073 pamphlets. In addition, there were nearly 131,700 hits on the Handbooks external webpage. The tables below give a breakdown of the courses taught and the top five publications distributed in 2008.

Courses and Attendance for 2008

| Classes and Programs | # of Courses | Student-Days |
|--|---------------------|---------------------|
| Introductory Air Quality Courses (100 Series) | 64 | 3,831 |
| Source-Specific Air Quality Courses (200 Series) | 55 | 1330 |
| Specialized Air Quality Courses (300 Series) | 24 | 545 |
| Advanced Air Quality Courses (400 Series) | 5 | 163 |
| Totals | 148 | 5869 |

Top Five Hardcopy Materials Distributed In 2008

| Rank | CDs | Handbooks | Pamphlets |
|-------------|---|----------------------------------|---|
| 1 | Fugitive Dust | Visible Emissions Evaluation | Asbestos-Containing Rock & Soil for Homeowners and Renters |
| 2 | Continuous Emissions Monitoring Systems | Naturally-Occurring Asbestos | Limits on Diesel-Fueled Commercial Motor Vehicle Idling |
| 3 | VOC Control Devices/Scrubbers | Asbestos Demolition & Renovation | Cleaners and Degreasers Used in Automotive Maintenance & Repair |
| 4 | Boilers | Fugitive Dust | Transport Refrigeration Units #1 Overview (English) |
| 5 | Aggregate Plants | Wood Burning | Stationary Internal Combustion Engines |

Program Outcomes

All courses are very well received and in high demand. Each course is planned, updated, and scheduled annually to meet the specific needs of most local agencies in the state. In addition, many special training courses are requested by other agencies and industries annually, and are provided as resources allow.

Current efforts include the development of web-based training courses in order to provide better coverage to local agencies in remote areas that may not be able to travel to our scheduled training courses.

Data Characteristics

This program maintains a student database comprised of over 21,000 registered students, as well as a website where training classes and publications are posted. Students can register for classes online and can easily download any handbook or pamphlet. Technical manual CDs are distributed by request and most are available for download.

4) Greenhouse Gas Enforcement Program

Program Description

In 2008, the primary focus of the GHG Enforcement Section was providing input on how to write enforceable regulations, particularly those written pursuant to AB 32, the California Global Warming Solutions Act of 2006.

Program Metrics

Program Resources

This section includes one manager, one staff air pollution specialist and four air pollution specialists.

Program Outputs

GHG Enforcement staff worked on the following regulations:

- Mandatory GHG Emissions Reporting;
- Reduction of Hydrofluorocarbon (HFC) Emissions from Do-it-Yourself Motor Vehicle Air Conditioning Servicing;
- Landfill Methane Control;
- Sulfur Hexafluoride (SF6) Reduction in Non-Semiconductor Applications;
- Tire Inflation Program;
- Heavy-Duty Vehicle GHG Emission Reduction Measure;
- Drayage Truck Regulation;
- Reduction of Fluorinated Gases from Semi-Conductor Operations;
- Low Carbon Fuel Standard;
- Reduction of High Global Warming Potential (GWP) compounds in Consumer Products;
- High GWP GHGs Tracking and Leak Limits; and
- Cool Cars Measure

In 2008, the GHG Enforcement Section developed and provided in-house training on how to write clear, concise and enforceable regulations. This four-hour class focused on word choice and interpretation from an enforcement perspective. Seven sessions were provided to ARB staff in 2008. Staff worked with regulation writers from other ARB divisions to analyze proposed regulations, provided comments for improving regulatory language, offered enforcement strategies and options, and provided estimates on resources needed to enforce each new regulation.

In addition, staff also began working with several enforcement-related Western Climate Initiative (WCI) committees² and is involved in Cal/EPA's Intergovernmental Market Enforcement Group (IMEG). Members of the IMEG include Cal/EPA enforcement officials, the state Attorney General's office, the California Energy Commission, and the ARB's Office of Climate Change, among others.

² The WCI, founded in February 2007, is a collaboration of seven U.S. Governors and four Canadian Premiers working together to promote environmental sustainability and economic growth by the reduction of greenhouse gas emissions. Specifically, the WCI calls for the reduction of emissions by 15 percent below 2005 levels by the year 2020.

Direct regulatory enforcement activities will begin for the GHGES when AB 32 regulations are implemented, beginning with ARB's Mandatory Reporting Regulation in 2009.

C. ENFORCEMENT PROGRAM DATA CHARACTERISTICS

Covered under each Program Component.

D. ENFORCEMENT PROGRAM LIMITATIONS

Enforcement programs are necessarily limited by available resources including staff and budget constraints. In addition, the complexity and dissimilarity between programs and the rapid pace of regulatory development create a unique challenge for management.

One major limitation the ARB enforcement program has is a unified case tracking system. Given the growth of air regulatory programs in recent years; especially in the general mobile sources, diesel exhaust risk reduction and green house gas program sectors, staff has had to use their legacy case tracking systems that do not effectively manage this significant additional case load. Staff is in the process of implementing new unified case tracking systems that will effectively handle this additional case load and allow for cross checking of companies under regulation and their compliance histories. These new case tracking databases will be deployed over the next three years in modules.

However, the ARB enforcement program makes the most out of every hour of staff time through extensive cross training and exposure to the regulatory development process. Enforcement program management and staff are constantly "plugged in" and provide input to the creation and revision of ARB regulations. New training courses and cross-training between programs keeps staff up to date with the various program areas, and allow management to target resources to where they are most needed. Additionally, the ARB enforcement staff work closely with allied agencies at the local, state, and federal levels to maximize its enforcement resources. For example, the ARB has entered into agreements with local air districts to enforce various programs such as vehicle idling and has worked with the California Highway Patrol and other law enforcement agencies to train them on ARB programs so they can engage in enforcement to the extent their resources allow.

E. ENFORCEMENT PROGRAM PROGRESS ON KEY INITIATIVES

Case Tracking System Development

As casework has grown more complex, often involving multiple violations by overlapping entities across several program areas, Enforcement Division management approved the creation of a case tracking system. This system will help investigative staff integrate their investigations into a broader operational context, and help senior management and legal staff better understand and pursue habitual violators. Multiple case tracking components have been under development. During 2008, the Heavy-Duty Diesel Enforcement case tracking component was developed in a beta version and is currently undergoing testing to work out any problems. It is anticipated that this system will be ready for full deployment in 2009.

Regulatory Development, Assistance, and Review

GHG Section and other ARB Enforcement Division staff worked with regulation writers from other ARB divisions to analyze proposed regulations. We provided comments for improving regulatory language, offered enforcement strategies and options, and provided estimates on

resources needed to enforce each new regulation. The Section also developed an in-house training class on how to write clear, concise and enforceable regulations. See B) 4) Greenhouse Gas Enforcement Program for more details.

III. WHAT ARE WE GOING TO DO: FUTURE DIRECTIONS

Case Tracking System Development

Development and implementation of components of this system will continue through 2009 and into 2010. In 2009, the rollout of the following components is expected:

- Cargo Tank Reporting and Tracking (on-line)
- Citation Tracking
- Low Carbon Fuel Standard Reporting
- Mobile Source Enforcement Case Tracking
- Consumer Products Case Tracking

Regulatory Development, Assistance, and Review

In addition to the Regulatory Development, Assistance, and Review functions discussed and underway, the GHG Section will be tracking the following measures and sectors in 2009:

- Fee Regulation
- Cap and Trade
- Western Climate Initiative (WCI) Offsets Committee
- WCI Reporting Committee
- Electricity Sector

Diesel Risk Reduction/Goods Movement Program

In addition to enforcement of existing diesel program regulations (see above), a number of additional regulations associated with the Diesel Risk Reduction and Goods Movement Programs will become effective in 2009. Some of these new requirements increase the stringency of existing regulatory programs. The Enforcement Division is strategizing as to how to deploy existing staff resources to enforce these ever-increasing mandates. Programs with new compliance actions required in 2009 are as follows:

- Fleet Rule for Transit Agencies (Urban Bus)
- Spark-Ignition Marine Regulation
- Off-Road Large Spark-Ignited Engine Regulation
- In-Use Off-Road Diesel Vehicles
- Cleaner Fuel for Ship Main and Auxiliary Engines and Boilers
- TRU Operator Reports and Reporting
- Cargo Handling Equipment and Ports and Intermodal Facilities
- Harbor Craft
- Port Drayage Trucks
- Public Agencies and Utilities Fleet Rule
- Solid Waste Collection Vehicles Rule

Webcasting training will be significantly increased to reach a wider audience and reduce the overall carbon footprint associated with travel by students and training staff.

Other Planned Enforcement Activities

- **Composite Wood Products Program:**
The Composite Wood Products ATCM reduces public exposure to formaldehyde by setting strict standards for composite wood products and any finished goods containing them destined for use in California. The Enforcement Division will conduct physical inspections, collect wood samples, and audit required records to verify compliance with formaldehyde emission standards and labeling requirements.
- Development of enforcement and auditing procedures for the new GHG Mandatory Reporting and Fee Regulation programs.
- **After-Market Critical Emission Control Parts for On-Highway Motorcycles:**
Manufacturers, distributors, and dealers/retailers must obtain ARB approvals/exemptions to sale aftermarket on-highway motorcycle exhaust systems. These regulations were passed by the Board in 2009.
- **After-Market On-Board Diagnostics II (OBD II) catalyst enforcement:**
On January 1, 2009, new regulations became effective that require all aftermarket catalysts sold in California to meet more stringent performance and durability standards. All aftermarket catalysts now sold in California must have an Executive Order issued pursuant to these new regulations. The older style (OBD I) catalysts are no longer legal for sale or installation in California. Since the cost of the newer, more effective catalysts is higher, we anticipate a large increase in non-compliant catalyst sales.
- **2007 Amendments to the California Reformulated Gasoline Regulations:**
In August, 2008 the Board adopted new procedures for certifying alternative formulations of California reformulated gasoline. These new procedures will replace the older procedures on December 31, 2009. The Enforcement Division will conduct regular inspections to verify compliance with the new procedures.
- **Enhanced Vapor Recovery:**
EVR regulations adopted by the Board in March 2000 require approximately 11,000 service stations to upgrade equipment to reduce gasoline vapor emissions by April 1, 2009. The new Phase II systems will reduce gasoline vapor emissions that contribute to ozone formation to protect public health and meet California clean air attainment requirements. The Enforcement Division will continue to work with districts to enforce the new requirements.

Training and Compliance Assistance

Training and Compliance assistance and will be an integral component of the enforcement efforts for the following programs:

- Off-Road Large Spark-Ignited Engine Regulation
- In-Use Off-Road Diesel Vehicles
- TRU Operator Reports
- Public Agencies and Utilities Fleet Rule
- Solid Waste Collection Vehicles Rule
- AB 233: Verification & Audit Program
- Diesel Idling Regulation

- Enhanced Vapor Recovery
- In-Station Diagnostics
- Off-Highway Vehicle Anti-Tampering:
In 2009, MSES staff will be focusing on a program similar to the street-racing enforcement assistance, but for off-road vehicles. Training will be offered to California Department of Parks and Recreation officers and DMV investigators to help them identify tampered off-road vehicles and assist them with writing comprehensive tampering citations.

Environmental Justice

Staff will continue to participate in agency enforcement efforts in Environmental Justice (EJ) communities. This will involve vehicle inspections for compliance with ARB emissions requirements as well as collaboration on multi-media pollution issues. Staff will participate in Cal/EPA coordinated community “toxic tours” and “community workshops”. They will work with community members to address specific air pollution concerns and enlist the assistance of the local air districts, as applicable. Considerable focus will be directed at air emissions from ports and distribution centers in the EJ communities.

IV. APPENDICES

Any discussion about compliance rates contained in this report should be used for comparative purposes within the specified program area only. Since each regulation has its own specific and unique requirements, each program uses an enforcement approach that is tailored to those requirements. Therefore, any compliance rate comparison between programs would be highly qualified and of limited value.

More comprehensive information relating to inspection statistics, case dispositions, and local air district enforcement activities is included in our "2008 ARB Annual Report of Enforcement Activities," available both online and in print. For more information, please visit our Enforcement Report web page <http://www.arb.ca.gov/enf/reports/reports.htm>

Please note that it is the ARB’s practice to keep confidential the names of those entities involved in pending enforcement actions. Specific case settlement summaries can be viewed at ARB’s Enforcement Program web site <http://www.arb.ca.gov/enf/casesett/casesett.htm>.

For more information on the Enforcement Division or its programs, please contact James R. Ryden, Chief, at (916) 322-7061 or jryden@arb.ca.gov.

###

LIST OF ACRONYMS

| Acronym | Full Name |
|----------------|---|
| AB | Assembly Bill |
| AFS | Air Facility System |
| ARB | Air Resources Board |
| ATCM | Air Toxic Control Measure |
| ATV | All-Terrain Vehicles |
| BACT | Best Available Control Technology |
| BOE | Board of Equalization |
| CARB | California Air Resources Board |
| CEM | Continuous Emission Monitoring |
| CHP | California Highway Patrol |
| CIWMB | California Integrated Waste Management Board |
| DMV | Department of Motor Vehicles |
| DRRP | Diesel Risk Reduction Plan |
| ECLP | Engine Certification Label Program |
| EJ | Environmental Justice |
| EO | Executive Order |
| EPA | Environmental Protection Agency |
| EVR | Enhanced Vapor Recovery |
| GHG | Greenhouse Gases |
| GWP | Global Warming Potential |
| HDD | Heavy Duty Diesel |
| HDVIP | Heavy Duty Vehicle Inspection Program |
| HFC | Hydrofluorocarbon |
| LSI | Large Spark Ignition |
| IMEG | Intergovernmental Market Enforcement Group |
| MSEB | Mobile Source Enforcement Branch |
| NESHAP | National Emissions Standards for Hazardous Air Pollutants |
| OBD I | Onboard Diagnostics I |
| OBD II | Onboard Diagnostics II |
| OEM | Original Equipment Manufacturer |
| OHRV | Off-Highway Recreational Vehicle |
| OLA | Office of Legal Affairs |
| PAU | Public Agency Utility |
| PERP | Portable Equipment Registration Program |
| PSIP | Periodic Smoke Inspection Program |
| SEMA | Specialty Equipment Manufacturers Association |
| SEP | Supplemental Environmental Project |
| SF6 | Sulfur Hexafluoride |
| SIME | Spark-Ignition Marine Engine |
| SORE | Small Off-Road Engine |

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| SSEB | Stationary Source Enforcement Branch |
| SWCV | Solid Waste Collection Vehicle |
| TCAB | Training and Compliance Assistance Branch |
| TRU | Transport Refrigeration Unit |
| UB | Urban Bus |
| U.S. EPA | United States Environmental Protection agency |
| VDECS | Verified Diesel Emission Control System |
| VIN | Vehicle Identification Number |
| VOC | Volatile Organic Compound |
| WCI | Western Climate Initiative |

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AIR POLLUTION CONTROL DISTRICTS

I. EXECUTIVE SUMMARY

Air Pollution Control programs for stationary sources in California are implemented and enforced by thirty-five local air pollution control and regional air quality management districts. As part of an ongoing effort to characterize enforcement programs at the local level, the California Air Pollution Control Officers Association (CAPCOA) surveyed eleven of its larger member districts.

Enforcement of, and compliance with, air pollution control requirements is undertaken and measured through a variety of activities, approaches, and tools. This report reviews select program elements and data. Overall, the data describe a robust enforcement and compliance assistance program with substantial funding and staff resources that achieve a high degree of compliance with applicable requirements. Compliance assistance and outreach programs proactively prevent violations from occurring, but when violations do occur, robust enforcement actions bring about a prompt return to compliance.

A) Major Program Highlights

The following statistics measure performance of select enforcement and compliance program elements at the eleven largest local air districts over a five-year period (from 2002 through 2006). These districts include within their jurisdictions over 93% of California's residents. As described in greater detail below, these data were gathered through an extensive survey process. They describe a robust and effective enforcement and compliance program for stationary sources of air pollution. Program achievements include:

- Over 510,000 inspections at traditional stationary sources between 2002 and 2006,
- Over 55,000 inspections of Major Permitted Sources (a.k.a. Title V Facilities);
- Facility compliance rate about 95%;
- Over \$130 million in monetary violation settlements;
- More than \$37 million in non-monetary violation settlements;
- Over 185,000 special purpose inspections;
- Nearly 33,000 inspections for asbestos pursuant to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos;
- More than a 5-fold increase in the number of inspections of portable equipment;
- More than 500 full time employees (FTE) conducting field inspections;
- Over 4,000 days of training for field staff, or approximately 825 training days per year;
- Approximately 25% of total district budgets dedicated to enforcement.

B) What the Reported Data Tells Us

The reported data show that local air districts dedicate substantial resources to enforcement of stationary source requirements, and other special requirements, such as federal standards for hazardous air pollutants. The data also show that the resources are efficiently deployed to produce measurable enforcement and compliance presence, and that this presence results in a high degree of compliance.

C) How the Program Will Use This Information

Each individual air district uses its inspection, enforcement, and compliance statistics to establish future program goals and to guide the prioritization and deployment of resources. Collectively, through CAPCOA, the districts share information about enforcement and compliance to identify broader issues and problems, and to leverage their collective experience. CAPCOA also works collaboratively with the Air Resources Board (ARB) to identify areas for joint program improvement efforts.

D) How Future Compliance Statistics Will Be Gathered and Reported

The data reported here are derived from the CAPCOA survey of 11 air districts. The survey covered fifty-three discrete measures of compliance program performance from each of these districts in each of the five years reviewed, for a total of more than 2,900 data points. These included information on agency resource commitments, compliance rates, repeat violations, civil penalty averages, case disposition, and criminal referrals. The data covered the 5 year period between 2002 and 2006 inclusive. Because each air district collects, stores, and reports compliance using unique technology platform and database design, there is currently no common database to track District level compliance statistics for reporting compiled statewide information. CAPCOA recognizes that having the capacity to readily and timely report statewide air district compliance statistics would be useful for keeping the public informed of statewide air district activities and performance. In order to facilitate such reporting capacity, CAPCOA has embarked on a project to design and develop a compliance statistics database. The project includes the development of a common set of data definitions and the design of a database in which the data would be stored and processed and from which statistics would be reported.

II. THE ENFORCEMENT PROGRAM AT LOCAL AIR DISTRICTS

A) Overview

There are 35 local air pollution control and air quality management districts in California. The earliest local air districts were created in response to urban air pollution problems, notably in the San Francisco Bay Area and in Los Angeles. In 1970, legislation established a local air pollution control or air quality management district in every county in California. State law recognizes multi-county districts that were already in existence, and provides for districts to unify into regional agencies.

Local air districts run monitoring networks to measure pollution in ambient air. They develop plans to attain state and federal ambient standards, and adopt regulations and other measures that implement the plans. Districts issue construction and operating permits or registrations for stationary and portable equipment or activities that emit air pollution, and inspect equipment and activities to ensure compliance with applicable requirements. This permit review includes requirements for new or modified sources of air pollution to use the best pollution control technology for criteria pollutants and a risk-based review of toxic air pollutants.

Districts review the toxic emissions from facilities and the associated impacts on the public, and require facilities that pose significant risks to implement risk reduction plans. Districts also regulate activities like open burning on agricultural or forested lands, and activities that cause a public nuisance. Local districts regulate agricultural sources of air pollution, including livestock operations,

field operations that generate dust, and certain agricultural engines. They also review the air pollution impacts of projects under the California Environmental Quality Act (CEQA). In addition to programs mandated by federal and state law, local air districts develop programs to respond to specific local air pollution problems and concerns. These can include measures to reduce emissions from indirect sources of air pollution, such as residential or commercial development, programs to support development of new, low or zero emission technologies, efforts to address global warming, and work to reduce impacts on communities, especially low-income communities and communities of color. Districts collaborate with local governments, business and the public to reduce transportation-related air pollution through better planning and infrastructure, and voluntary programs to reduce motor vehicle trips. They also implement financial incentive programs to reduce emissions from motor vehicles and heavy-duty diesel engines, lawn mowers, fireplaces, woodstoves, and other sources.

An important, but non-regulatory component of enforcement and compliance programs is the outreach made by the district to the regulated community to the public in general. The goal of outreach is to improve the general and specific knowledge of the people who operate sources that are subject to regulation, and to assist them in complying with their requirements. It also improves the understanding of the general public and allows them to more knowledgeably report concerns about non-compliance. Outreach efforts encompass a number of activities. These include, for example, the distribution of printed materials that address air pollution issues broadly, or specific regulations and how to comply with them; workshops and community meetings; the staffing of public information lines to respond to phone inquiries; the development and maintenance of on-line, electronic information; and individual meetings when appropriate or requested. Data on compliance assistance programs are not included in this reporting, however.

Organizational Structure

Local air districts operate at the direction of their Boards of Directors. The Board at each air district has, at a minimum, county Supervisors of the county or counties within the jurisdiction of the agency. Districts meeting the criteria of the Hauser Act also have representation of cities (by city council members) within their jurisdiction. A few of the larger districts also have members appointed by the governor, legislators, or a mayor. Other than this small number of appointees, all members of district governing boards are locally elected officials.

The Air Pollution Control Officer / Executive Officer of the air district is appointed by the governing board. He or she directs the district staff. The size and organization of air district staff varies considerably across the 35 local air districts. The largest air district has a population exceeding 16 million, and over 800 full time employees. The smallest air district has a population less than 10,000 people, and one employee who also performs other functions (such as acting as the Agricultural Commissioner, for example). The larger air districts have full time legal counsel, and in some cases full time prosecuting attorneys as well. Smaller air districts contract for legal services, typically with counsel for the county or counties within their jurisdiction. Some of the smaller, rural air districts also work with the Circuit Prosecutor Program established by Cal/EPA, and consult with legal counsel at the Air Resources Board or at other air districts if additional, specific legal expertise is needed.

Each local air district also has a hearing board, established pursuant to the Health and Safety Code, with membership appointed by the governing board and restricted to specified areas of expertise. The hearing boards review petitions for variances from local rules and regulations, proposed orders

of abatement in cases of non-compliance, and appeals of permitting decisions made by the Air Pollution Control Officer.

B) Enforcement Program Components

There are several important components in a robust enforcement program. This report focuses on field enforcement activities, namely inspections and investigations. The data are based on a review of enforcement and compliance conducted by CAPCOA. CAPCOA reviewed and compiled enforcement data from 11 local air districts (“the/these districts”) for the years 2002 through 2006. The review focused on the five largest districts in California and six medium size districts. These 11 districts – the Bay Area AQMD, Mojave Desert AQMD, Monterey Bay Unified APCD, Sacramento Metro AQMD, San Diego County APCD, San Joaquin Valley Unified APCD, San Luis Obispo County APCD, Santa Barbara County APCD, South Coast AQMD, Ventura County APCD, and Yolo-Solano AQMD -- represent nearly 93 percent of the population in California -- see Appendix A, Population By Air District. Since air pollution has a direct link to population in terms of causes and impacts, CAPCOA chose to use its limited resources to study only these districts because they best represent local district activity in California in terms of population and air pollution sources. (It should be noted that CAPCOA is currently undertaking a project to include the majority of the 35 air districts in data summaries that will be provided in future reports.)

The 2002-2006 survey covered fifty-three discrete measures of compliance program performance from each of these districts in each of the five years reviewed, for a total of more than 2,900 data points. These included information on agency resource commitments, compliance rates, repeat violations, civil penalty averages, case disposition, and criminal referrals.

Generally, the data reported here concern field inspections and investigations. An inspection entails a visit to the actual facility site, and observation of the equipment during operation. The inspector will review the operation against the requirements listed in the permit and, for sources not required to have a permit, as well as for permitted sources, against the requirements contained in any applicable federal, state, or local air regulation. Depending on the type of operation, and the regulations of the air district with jurisdiction, there may be a small or large number of individual requirements and limitations, and they may apply across the facility, or only to a specified activity or piece of equipment. Requirements and limitations may include direct limits on emissions as measured at a specified point; restrictions on throughput, production, or hours of operation; restrictions on raw materials or fuels used; specifications for temperature, pressure, or other operating parameters; prohibitions against certain actions; requirements to install, operate, and maintain pollution control equipment; requirements to undertake specified mitigation actions; and requirements to measure, record, and/or report emissions or process parameters.

Inspection of a source in the field involves direct verification that all applicable requirements are being met. This may entail observation of emission streams, including visual reading of opacity, measurement of emissions content with various analyzers, and observation of emissions monitoring data. The inspector will also measure or observe the monitoring of specified operating parameters, including mitigation requirements, such as sweeping, watering, and other such actions. He or she may also conduct testing of equipment performance using specified test methods. Visual inspection of equipment and emissions control devices is done to ensure everything is in proper operating order, and that changes have not been made in equipment or operations without agency review and approval. Stockpiles or other storage of feed materials and product are also examined and samples may be taken to verify content. Data review include examination of emissions and parametric monitoring records,

source testing results, operational logs (including production data), mitigation logs, excursion reports, and any other relevant information.

1) Major Permitted Source Inspection

Major Sources are defined under the federal Clean Air Act (CAA). The definition is based on the magnitude of the potential emissions from the source. The emissions threshold at which a source is considered “major” varies according to the attainment status of the air district in which the source is located. In areas that attain the National Ambient Air Quality Standards (NAAQS), or are moderate non-attainment, major sources are those that have the potential to emit at least 100 tons per year of any regulated air pollutant, or 10 tons of any single hazardous air pollutant (HAP), or 25 tons of any combination of HAPs, as defined under the CAA. That threshold is lowered in areas with more significant non-attainment problems, becoming increasingly more restrictive as the non-attainment problem becomes more severe. In areas with extreme non-attainment problems (indicating the most extensive problem), a source is considered major if it has the potential to emit at least 10 tons per year of a regulated air pollutant.

All such major sources are required to hold permits under Title V of the federal CAA. These sources are also subject to extensive monitoring, recordkeeping, and reporting requirements and they are required to submit annual certifications of compliance. Most of these sources have continuous emission or continuous parametric monitors. The local air district issues and enforces the terms of this permit.

This inspection category represents the number of periodic Title V facility compliance determinations conducted in a given period (as required by EPA). One inspection would be assigned for each Title V facility inspection completed. Some of these facilities are inspected quarterly, and a few, such as petroleum refineries, are so large and complex, with tens of thousands of pieces of equipment and/or potential emission points, that inspectors are on-site almost full time because it can take a full year or more to review the entire facility. It should be noted that, in many instances, Title V sources not only have routine compliance inspections but other inspections as well including, equipment breakdown investigations, complaint investigations, witnessing or conducting source tests, continuous emissions monitors (CEMs) review, and reviewing records/Title V reports. If a certain category of equipment is prone to be in non-compliance, it likely will receive additional scrutiny at all applicable sources.

2) Minor Permitted Source Inspection

Minor Permitted Sources are sources that not considered “major” according to the federal definition. Many of these are smaller sources, such as gas stations, drycleaners, and auto body shops. Others are relatively large, in spite of the title “minor” and may include such operations as aggregate mining, combustion equipment, coating operations, printing, and circuit board manufacturing.

Minor sources are not required to have federal Title V permits. They do, however, hold local air permits. Some of these sources have continuous monitoring, however most do not. The recordkeeping and reporting requirements are typically less extensive as well. They may be inspected once a year, or even more frequently than that, but if the emissions are relatively low, their toxic emissions are not significant, and they do not present other issues of concern (such as public nuisance), they may be inspected less than annually.

The designation of “minor” does not necessarily mean the sources are unimportant, however. There are tens of thousands of stationary sources whose emissions are not above “major source” thresholds, but which present a potentially significant risk to human health and the environment because of the toxicity of the pollutants emitted. These include chrome plating operations, sterilizers that use ethylene oxide, drycleaners that use perchloroethylene, gas stations, coating operations with toxic metals in the coating, and internal combustion engines that are fueled with diesel. Not only are the emissions hazardous, the sources are frequently located much closer to residential areas than large industrial sources are, because zoning often permits their operation in business and commercial areas, and even co-located with higher density housing. Because of this, these sources are typically inspected at least once a year. Minor sources with the potential to emit significant or toxic emissions and/or have had a prior history of non-compliance will receive extra scrutiny from districts.

This category would encompass any “complete inspection” conducted of any non-Title V facility that is subject to district permitting or registration requirements i.e., all permitted/registration equipment and all processes subject to source-specific requirements. Typical compliance activities would include annual or recurring inspections; or inspections stemming from a complaint investigation, visible emission observation, or environmental justice-related issue. One inspection would be assigned for each non-Title V permitted facility inspection completed.

3) Non-permitted Source Inspection

Some sources are subject to regulation, but not required to obtain permits. The sources involved here will vary somewhat from district to district. In areas that attain most or all standards and there is not a significant nonattainment problem, small sources may not require permits where they would in areas that have more substantial nonattainment problems. There are also rules that affect many ubiquitous sources that are enforced without permits. These may include such regulations as restrictions on residential wood combustion, limitations on the content of coatings offered for sale, or limitations on idling engines; in some areas, open outdoor burning is regulated but not subject to permits. Some districts require permits/approval to conduct burning of agricultural waste, prescribed burning of forest land, or hazard reduction burning in remote rural areas. The compliance departments work closely with in-house/local/state meteorologists to ensure emissions from such burns are minimized.

Some of these inspections involve reviewing shelf-stock at retail operations, while others may involve driving around looking for smoke on days when burning has been restricted. Some districts will take samples of coatings and other products and have analyzed by a laboratory to ensure they meet rule requirements. Enforcement of anti-idling rules is done in places like ports, outside schools, or at truck stops or job sites. This category includes the “complete inspection” of any source not subject to written permit requirements, but where source specific requirements do apply. This category would also include many area source categories such as open burning, agricultural operations and excavation/demolition sites. One inspection would be assigned for each non-permitted facility inspection completed.

4) Investigation of Upset/Breakdown Reports

Local regulations provide for limited protection from enforcement if emissions limits are exceeded during a qualifying upset/breakdown event. In order to qualify, the emissions have to be the result of a non-routine event, such as the malfunction of a piece of equipment or upset conditions in a process that is outside the control of the operator. The facility operator is required to report the

event within a specified time period and provide a written report documenting the cause of the event and the subsequent actions taken. Coverage, or protection from enforcement, may be approved by the Air Pollution Control Officer (APCO) for up to 96 hours in order to allow for repairs and restoration of normal operating conditions. If the repairs will take longer than 96 hours, further protection can only be granted by the hearing board in the form of a variance.

When upset/breakdown reports are received, districts investigate the cause of the event, to ensure that it was in fact outside of the operator's control, and not the result of an error, negligent actions, or poorly maintained equipment. Other conditions checked by inspectors include whether or not this is a recurring situation and whether this causes a violation of air quality standards or a public nuisance. This category would reflect the number of breakdown investigations undertaken and completed by the 11 districts surveyed. One inspection would be assigned for each breakdown investigation completed, although an investigation may require multiple site visits. Reports of breakdowns are tracked by some districts in databases which allow for tracking to ensure reported events are not recurring.

5) Investigation of Complaints

All air districts have programs to receive, log, and respond to complaints from the public about air pollution problems. Complaints frequently involve objectionable odors, dust, or smoke, but other causes are also seen. The complainant may or may not know where the source of the problem is. Sometimes complaints are reports of health symptoms that the complainant believes are attributed to air pollution from a known or unknown source. Complaints may be lodged about activities or emissions that occurred in the past, in which case an investigation is not possible or can, at best, yield only limited results. In these cases, complainants are instructed to call when the activity, emission, smell, dust, or smoke is actually occurring or present. Some districts have inspectors available twenty-four hours a day to respond to complaints. Others respond after hours only to significant events (that is, where multiple people are impacted or where hazardous emissions are involved), or if a pattern of off-hours complaints indicates off-hours operations requiring inspection or that an offender may be intentionally timing activities to avoid detection.

The air districts, working through CAPCOA and with the ARB, developed and implemented a complaint resolution protocol that sets forth appropriate complaint response procedures and outlines when and how complaints are referred between the districts and ARB. Typically, the district receives the complaint and enters it into a complaint log. The inspector may review permit files to determine if there are likely sources of the problem in the area, as well as complaint logs to see if other similar complaints have been received in the past. If additional information is needed, the inspector may contact the complainant and interview him or her before visiting the site.

The inspector will note the wind direction and speed at the site, and attempt to confirm the complaint (that is, does he or she observe the odor, dust, smoke, or other emission of concern, or note physiological symptoms similar to those reported in the complaint?). When complaints are directed at a specific source, the investigation may largely resemble a stationary source inspection, but specifically involving activities or equipment that would result in the odor, dust, or other emission that is the subject of the complaint. Efforts are also made to rule out other potential sources, and if the complaint did not identify a possible source, the initial investigation will involve attempts to locate one.

Once a source is located, the inspector will review the operation to determine if it involves the violation of any applicable rules, regulations, or permit conditions. Even if there is not a specific requirement limiting the activity, there is a general prohibition against creating a public nuisance.

When investigation of a public nuisance or other air quality violation is triggered by a complaint, the inspector documents the results of the investigation, and reports back to the complainants if requested.

This category includes all complaints assigned to and investigated by field staff. One inspection would be assigned for each complaint investigation completed, even though the investigation may involve multiple site inspections.

6) Verification of Compliance with Variance Terms and Abatement Orders

When the hearing board issues a variance from a requirement, the source is generally subject to alternative limitations and required to document progress towards returning to compliance with the otherwise applicable requirement(s). Similarly, when an order of abatement is imposed, it contains requirements to document progress towards compliance, typically at intervals or based on completion of specified actions (such as the ordering of control equipment, followed by installation, testing, and certification of compliance). There may be alternative production limits that apply in either case, or limitations of hours of operation, either generally reduced, or restricted to avoid exposing sensitive receptors (e.g., not operating during school hours to avoid exposing children).

These inspections typically resemble a routine stationary source inspection. This category would include all activities associated with determining compliance with a variance or stipulated/contested abatement orders, including any applicable increments of progress.

7) Inspection of Portable Equipment

The ARB registers and regulates portable engines and equipment, under its Portable Equipment Registration Program (PERP). These engines operate for limited periods of time at any single site and may operate more frequently at multiple sites over long distances. Program requirements are enforced by local air districts. Initially, the program was voluntary, the enforcement provisions difficult to apply, and the program was under-funded. Statutory and regulatory changes in 2006 significantly enhanced the enforcement provisions and funding, and the program is now mandatory for any equipment that is not covered by a valid permit or registration with the air district it is operated within.

Under the revised program, engines and equipment are assigned to a “home district” and routine inspections are required once every three years. Inspections are also conducted to locate unregistered equipment and to verify proper operation in the field. Certain types of equipment are also subject to enhanced notification and inspection provisions.

This category reflects all pieces of equipment inspected in accordance with the PERP, as specified by ARB. Unlike the other categories above, these inspections are conducted and counted consistent with the reporting format specified by ARB.

8) Inspections Pursuant to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos and the Air Toxic Control Measure for Naturally Occurring Asbestos

The US EPA promulgates regulations under Section 112 of the federal CAA called National Emission Standards for Hazardous Air Pollutants (NESHAPs). They were historically directed at a specific pollutant, although regulations adopted after 1990 generally affect a source category and all

of the hazardous pollutants emitted by those sources. Implementation and enforcement of these rules is delegated by US EPA either to the local air districts or to the ARB.

The NESHAP for Asbestos regulates the renovation or demolition of structures where asbestos is present, including notification, testing, containment, and disposal. In California, 16 air districts have accepted delegation of the program (remaining areas are delegated to ARB). Inspections are conducted in response to complaints and to verify proper asbestos removal and containment procedures during the renovation or demolition activities.

In addition, the ARB has established an Air Toxic Control Measure (ATCM) for Naturally Occurring Asbestos (NOA) that governs construction and mining in soils where NOA may be found. The ATCM specifies testing of the soil and requires enhanced dust mitigation plans where asbestos is present. It also prohibits the use of asbestos containing materials for purposes where exposure could occur (for example, NOA-containing gravel on roadways, paths, or parking areas unless it is fully enclosed within concrete or under pavement). Inspections are done to review testing records and verify implementation of mitigation measures. Areas of known NOA may be surveyed periodically for signs of activity such as residential housing construction. If activity is occurring, an on-site investigation occurs.

This inspection category reflects both NESHAP inspections of renovation/demolitions for those delegated districts as well as ATCM inspections for naturally occurring asbestos.

9) Conducting and Observing Source Tests

As used here, the term “source test” refers to a formal measurement of source emissions (or the content of fuels, raw materials, or product) using methods established by ARB or US EPA, or in some cases, an air district. Some districts have staff that perform a variety of source tests. Other air districts require source tests to be performed by third parties (or in some cases by the source), and observe the conduct of the tests.

This category would include situations where field staff are either conducting field testing using portable equipment or observing source tests conducted by a third party.

C) Program Metrics

Program Metrics

Air districts use a variety of tools and methods to measure and verify compliance. Each tool provides an important measure of compliance, but also has certain weaknesses. The robustness of the compliance program depends on the coordinated use of all of the available tools. By the same token, a complete evaluation of compliance programs must, necessarily, consider the use of all of these tools together. These include annual emissions and compliance reports that are submitted by facilities under permit; data from continuous emissions monitors (CEMs); direct measurement of emissions according to specified protocols (source tests); inspections of sources in the field (periodic and targeted); air monitoring; response to, and investigation and resolution of complaints; and review of data from other agencies or entities.

Reports: As a condition of their operating permits, and as a requirement of many regulations, sources of air pollution submit periodic emissions and compliance reports to their local air district. In almost all cases these reports are submitted annually, in some cases (such as very large sources) they are submitted as frequently as quarterly and in other cases, the reports are made biennially or even

triennially. In the case of the regional credit market program, the largest sources must report emissions electronically to the district on a daily basis. Periodic emissions reports detail criteria and toxic pollutants emitted by the source over a specific period of time. The emissions may be directly measured by emissions monitors, calculated from data from parametric monitors or through mass balance, or estimated from approved emission factors. Compliance reports include statements of overall compliance with applicable requirements, as well as specific reports on the performance of required activities, such as replacement of equipment, compliance with operational restrictions, and performance of maintenance and housekeeping.

Continuous Monitors: Sources of air pollution may also have some sort of continuous compliance monitoring. The majority of the largest sources and some of the smaller sources are equipped with CEMs or parametric monitoring systems. Where CEMs are used, such as power plants and refineries, the equipment measures the concentration of certain pollutants in the exhaust streams as they pass through an outlet to the atmosphere. As the name implies, these monitors operate continuously, twenty-four hours per day, 365 days per year. In some cases, this data is reported directly to the district; in other cases it is summarized and provided in periodic reports. In addition to CEMs, there are continuous monitors of other compliance parameters (such as temperature or pressure) that indicate that source or abatement equipment is operating properly. In some cases this information is supplemental to CEMs data; in other cases, this is in lieu of CEMs data.

Source Testing: Some sources are required to have third party testing firms perform tests on equipment at the site to determine actual in-use emissions from equipment that is not equipped with continuous monitors. Air districts can also require a source test be done to demonstrate compliance at any time, and some districts have a source testing team that can arrive at a site, unannounced, to conduct tests.

Field Inspections: Districts maintain trained staff to conduct inspections of sources in the field. Field inspectors are certified to assess visible emissions (i.e., smoke) from exhaust points, and trained to review in-field operations. A typical inspection begins with a review of applicable requirements, including the permit conditions. At the site, the inspector observes the operation of all pollution-emitting equipment and activities and looks for visible emissions and for compliance with operational standards. The inspector ensures that all emissions control devices are operating properly, reviews data logs to verify emissions limits are being met and operational and maintenance activities are performed as required. The inspector also looks for any new equipment or activities that have not been permitted, and to verify that required replacements have actually occurred. After completing the field review of compliance, the inspector writes an inspection report that becomes part of the source's permanent compliance record; reports for some sources are also submitted to ARB and EPA.

Complaints: Air districts respond to complaints from the public about unusual odors, smoke, dust, or operation at times or locations that are not permitted. ARB and the air districts have a mutually agreed upon protocol for responding to complaints. When a complaint is received, a field inspector is dispatched to the site to interview the complainant, attempt to verify the complaint, and identify the source responsible. After completing the investigation, the inspector prepares a report and follows up with the complainant (if requested). If a considerable number of persons are impacted and complain, the situation may be deemed a public nuisance.

Air Monitoring: Air districts operate networks of air monitoring equipment that measure criteria and toxic pollutants in ambient air. Although not typically considered in the enforcement and compliance program, data from these monitors may be used by inspectors in response to complaints, for example, in determining wind direction with respect to an odor complaint; or in regard to conditions related to outdoor burning, in districts where such burning is allowed. Many of these monitors are regional in scale, but some give a very good indication of air quality in the near vicinity to the monitor. Regional scale monitors show large and long term trends in air quality of a region. Although this is not a good metric for determining compliance by an individual source, clean air in a region or clear trends towards clean air would not be possible without effective regulations and good overall compliance. Some monitors are sited in such a way that they detect short term variations in pollutants near the monitor. Examples of this include an urban monitor showing unusually high concentrations of perchloroethylene that field investigation ultimately attributed to non-compliance by a drycleaner located a block from the monitor, and spikes in hydrogen sulfide that investigation ultimately linked to failure of control equipment at a power plant a mile upwind. By themselves, ambient air monitors do not demonstrate source compliance; however, they supplement other available information and can confirm trends or show isolated non-compliance. Some districts utilize portable ambient monitors that are not regional in scale to measure particulate matter downwind of sources who may be causing a public nuisance.

Data Review: Air districts coordinate with each other to review compliance issues across sectors (such as gasoline dispensing), and with other regulatory agencies to review their inventories (where information is readily available and relevant) as a means of cross-checking air-related information. For example, hazardous waste manifests can verify solvent disposal and sanitation district sewer monitoring or interagency inspection reports may bring to light air quality regulation violations.

Data Characteristics

As stated above, the data reported here are derived from the CAPCOA survey of 11 air districts covering 93% of California's population. The survey covered fifty-three discrete measures of compliance program performance from each of these districts in each of five years, 2002 through 2006, for a total of more than 2,900 data points. These included information on agency resource commitments, compliance rates, repeat violations, civil penalty averages, case disposition, and criminal referrals.

Select Program Inputs

The survey shows that local districts devote substantial resources to program enforcement efforts. As summarized in Table 1, below, nearly 25 percent of the annual budget for these agencies is devoted to enforcement, and the funds dedicated have increased from \$55,911,667 in 2002 to \$62,766,708 in 2006. Unfortunately, because budgets are constrained and labor costs have risen sharply in recent years (especially in regards to health insurance, workers compensation, and retirement liability), the overall increase in enforcement budgets has not been sufficient to sustain staffing levels. It should be noted here that the data included in these tables reflects only those positions conducting in-field compliance verification. Typically, other staff members at a district contribute to the review of compliance as well as enforcement actions. These other positions supporting compliance and enforcement may include engineers, specialists, source-test personnel, laboratory personnel, and legal and administrative staff.

| Select Enforcement Resource Commitments at 11 Local Air Districts | | | | | |
|---|---------------|---------------|---------------|---------------|---------------|
| Year | 2002 | 2003 | 2004 | 2005 | 2006 |
| Total Agency Budgets | \$225,284,490 | \$231,662,030 | \$248,781,560 | \$259,231,141 | \$267,238,772 |
| Enforcement Budget | \$55,911,667 | \$57,983,390 | \$61,277,241 | \$61,219,323 | \$62,766,708 |
| Funded Positions for Field Enforcement | 515.0 | 514.0 | 522.0 | 517.0 | 512.0 |

Select Program Outputs

The following field inspection statistics were reported for the 11 air districts:

| Activity | 2002 | 2003 | 2004 | 2005 | 2006 | TOTALS |
|-------------------------------------|--------|--------|--------|--------|--------|---------|
| Major Permitted Source Inspections | 11,183 | 9,777 | 9,764 | 11,876 | 13,020 | 55,620 |
| Minor Permitted Source Inspections. | 80,723 | 84,141 | 82,228 | 84,672 | 82,580 | 414,344 |
| Non-Permitted Source Inspections | 8,833 | 7,669 | 8,567 | 9,717 | 8,147 | 42,933 |
| Breakdown Investigations | 1,777 | 1,821 | 2,280 | 2,253 | 2,253 | 10,384 |
| Complaint Investigations | 17,286 | 16,804 | 16,592 | 16,225 | 14,842 | 81,749 |
| Variance/Increments of Progress | 319 | 369 | 377 | 666 | 421 | 2,152 |
| CARB Registered Equipment | 79 | 323 | 418 | 619 | 687 | 2,126 |
| Asbestos Inspections | 6,297 | 7,009 | 6,653 | 6,749 | 5,588 | 32,296 |
| Number of Source Tests | 2,323 | 2,502 | 2,764 | 2,522 | 2,568 | 12,679 |

The following violation statistics were reported for the 11 air districts:

| Activity | 2002 | 2003 | 2004 | 2005 | 2006 | TOTALS |
|---|-------------|-------------|--------------|--------------|--------------|---------------|
| Number of Violations Found for Facilities | 5,580 | 4,576 | 4,380 | 5,203 | 4,213 | 23,952 |
| Number Settled | 4,527 | 4,996 | 3,795 | 4,880 | 4,511 | 22,709 |
| Cash Value of Violations Settled | \$9,921,852 | \$8,123,396 | \$15,895,935 | \$71,777,534 | \$24,834,097 | \$130,552,814 |
| Non-Cash Settlement Value | \$2,891,429 | \$2,802,245 | \$1,538,550 | \$28,414,620 | \$1,667,600 | \$37,314,444 |

Select Program Outcomes

Based on the above data, the survey finds an overall facility compliance rate over 95%.

III. WHAT ARE WE GOING TO DO: FUTURE DIRECTIONS

The air districts are continually updating methodologies, policies, and procedures in order to make the best use of available resources. Specific program improvement activities are determined by each individual district under the direction of its governing board. The air districts do, however, collaborate through CAPCOA to identify source categories for coordinated enforcement efforts. Examples of these include vapor recovery at retail service stations, stationary internal combustion engines, and portable equipment. In addition, the CAPCOA has recently embarked on a process to share approaches and resources for information management and security.

CAPCOA is in the process of conducting a major project to design and develop a compliance statistics database. The project includes the development of a common set of data definitions and the design of a database in which the data would be stored and processed and from which statistics would be reported. Once completed, it is expected that compliance data from the majority of the 35 air districts could be readily assembled on an annual basis for future reports.

Other specific projects are delineated below:

A) Vapor Recovery

CAPCOA has a standing committee devoted to vapor recovery program issues, including enforcement. The committee meets regularly with ARB staff to review draft executive orders, assess field compliance rates, and discuss program improvement opportunities. CAPCOA is currently working with ARB to identify appropriate enforcement protocols for stations equipped with In-Station Diagnostics for enhanced vapor recovery systems.

B) Stationary Internal Combustion Engines

As part of the ARB Diesel Risk Reduction Program, a number of Air Toxic Control Measures have been established, affecting tens of thousands of stationary engines, including emergency standby and agricultural engines. The CAPCOA Enforcement Managers Committee and Engineering Managers Committee have jointly reviewed the new requirements and prepared summaries and support materials to assist member districts. There is some overlap between some of the regulations, and CAPCOA has worked, and continues to work, with ARB staff to determine appropriate interpretations and applications of ambiguous or overlapping requirements.

C) Portable Equipment

The CAPCOA Enforcement Managers Committee and Engineering Managers Committee have jointly reviewed the revised PERP requirements, including the requirements of the new ATCM for portable equipment, and prepared summaries and support materials to assist member districts. In addition, districts have committed to increase staff resources devoted to field inspection and enforcement of the PERP as new fees are collected by ARB and distributed to the districts. It is anticipated that the next three years will see a continuing increase in the number of PERP inspections.

IV. PROGRAM LIMITATIONS

Enforcement programs are necessarily limited by available resources including staff and budget constraints. Increasingly, air districts are collaborating through CAPCOA to share approaches and resources to improve enforcement and compliance efforts.

The PERP is a prime example of a program area where poor compliance and insufficient enforcement were identified, and are now being addressed. By sponsoring legislation and working with ARB on rule amendments, CAPCOA enhanced the underlying enforcement provisions and provided a platform for enhanced program funding through fees. Implementation of the revised program is only beginning, because of delays in the review by the Office of Administrative Law (OAL), time needed to make administrative changes at the state level, and time for fees and other program elements to be phased in with the registration cycle. New inspection fees are now being distributed, but it will likely be three years before they are fully implemented.

As previously mentioned, however, CAPCOA committees are engaged in improving enforcement of, and compliance with, PERP requirements. As funding increases, additional staff resources will be devoted to field efforts for this program, and improved outcomes are anticipated.

V. APPENDICES

The data and conclusions contained in this report were collected by CAPCOA as part of an ongoing effort to characterize local enforcement programs. A more comprehensive discussion will be released by CAPCOA at a later date, when the study is completed. Inquiries about the study with respect to the data reported herein, or the efforts for future data, should be directed to CAPCOA. Inquiries about enforcement programs or actions at individual districts should be directed to the district of interest.

Information about CAPCOA can be found at www.capcoa.org or by contacting Mel Zeldin, Executive Director of CAPCOA, at (916) 441-5700 or melz@capcoa.org.

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APPENDIX A**POPULATION BY AIR DISTRICT**

| District | 2007 Population |
|---------------------------------|--------------------|
| Amador County APCD | 37,863 |
| Antelope Valley AQMD | 324,910 |
| Bay Area AQMD | 7,151,022 |
| Butte County AQMD | 220,769 |
| Calaveras County APCD | 45,980 |
| Colusa County APCD | 21,848 |
| El Dorado County AQMD | 179,969 |
| Feather River AQMD | 168,892 |
| Glenn County APCD | 29,286 |
| Great Basin Unified APCD | 32,939 |
| Imperial County APCD | 177,820 |
| Kern County APCD | 139,592 |
| Lake County AQMD | 64,069 |
| Lassen County APCD | 35,763 |
| Mariposa County APCD | 18,297 |
| Mendocino | 90,051 |
| Modoc County APCD | 9,727 |
| Mojave Desert AQMD | 480,426 |
| Monterey Bay Unified APCD | 754,253 |
| North Coast Unified AQMD | 175,989 |
| Northern Sierra AQMD | 123,165 |
| Northern Sonoma County APCD | 59,938 |
| Placer County APCD | 338,750 |
| Sacramento Metropolitan AQMD | 1,427,885 |
| San Diego County APCD | 3,161,477 |
| San Joaquin Valley APCD | 3,835,229 |
| San Luis Obispo County APCD | 270,046 |
| Santa Barbara County APCD | 429,109 |
| Shasta County AQMD | 182,470 |
| Siskiyou County APCD | 46,017 |
| South Coast AQMD | 16,834,907 |
| Tehama County APCD | 62,466 |
| Tuolumne County APCD | 56,470 |
| Ventura County APCD | 830,343 |
| Yolo-Solano AQMD | 330,756 |

APPENDIX B
LIST OF ACRONYMS

| Acronym | Full Name |
|----------------|--|
| APCD | Air Pollution Control District |
| APCO | Air Pollution Control Officer |
| AQMD | Air Quality Management District |
| ARB | Air Resources Board |
| ATCM | Air Toxic Control Measure |
| CAPCOA | California Air Pollution Control Officers Association |
| CAA | Clean Air Act |
| CEMs | Continuous Emission Monitors |
| CEQA | California Environmental Quality Act |
| EPA | Environmental Protection Agency |
| FTE | Full Time Employee |
| HAP | Hazardous Air Pollutant |
| NAAQS | National Ambient Air Quality Standards |
| NESHAP | National Emission Standards for Hazardous Air Pollutants |
| NOA | Naturally Occurring Asbestos |
| OAL | Office of Administrative Law |
| PERP | Portable Equipment Registration Program |

THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL

I. EXECUTIVE SUMMARY

The Department of Toxic Substances Control (DTSC) is responsible for restoring the safety and health of communities by: 1) cleaning up sites contaminated by toxic substances from the legacy of California's industrial past; 2) ensuring that hazardous materials generated in California's present industrial economy are managed safely so they do not pose a threat to people or the environment; and 3) preventing pollution to ensure a safe and healthy future for California. These responsibilities are implemented by four core programs: Site Cleanup, Hazardous Waste Management, Enforcement and Emergency Response, and Pollution Prevention.

"The mission of the Enforcement and Emergency Response Program is to promote a healthier environment for all Californians through fair, consistent, and timely enforcement." The Enforcement and Emergency Response Program (Enforcement Program) is comprised of multiple program components. The Enforcement Program conducts inspections and takes enforcement action at facilities for which permits have been issued by DTSC. The Enforcement Program inspects and takes enforcement against transporters, some generators of hazardous waste, and electronic waste handlers. And, the Enforcement Program conducts Certified Unified Program Agency (CUPA) oversight, leads Environmental Justice activities, implements the Toxics in Consumer Product Laws, provides compliance assistance and has the only sworn peace officer, criminal investigators in Cal/EPA.

In addition to these enforcement activities the Enforcement Program is responsible for various emergency response activities such as certain emergency off-highway and illegal drug lab clean-ups. This program component is not discussed further in this report.

A) Major Program Highlights

The following statistics provide highlights of the achievements of DTSC's Enforcement Program in 2008.

- 562 core work inspections
- 286 CUPA inspections
- 2962 Mexican Border truck stops
- 56 complaint investigations closed
- 74 enforcement cases settled
- \$3,548,634 total settlement dollars
- \$1.7 billion of financial assurance funds managed
- 14 Environmental Justice events
- 56 training classes provided resulting in more than 350 CUPA inspectors, governmental officials and industry personnel trained
- 343 criminal cases initiated
- 257 criminal cases completed
- 89 arrests
- Landfill initiative conducted

B) What the Reported Data Tell Us

The data collected in the Enforcement Program's various data bases allows the program to track all of its inspections, investigations and enforcement actions. Information includes the numbers and types of inspections, which legal requirements were violated, the compliance rate for various sectors (e.g., refineries, transporters, electronic waste handlers, etc.), numbers and types of enforcement actions and enforcement settlement amounts.

C) How the Agency Will Use This Information

The Enforcement Program has been using the data for the development of performance measures. The data is also used to make resource allocation decisions based on the compliance rates of various sectors.

II. THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL'S ENFORCEMENT PROGRAM

A) Overview of the Enforcement and Emergency Response Program

The universe of businesses in California subject to hazardous waste requirements easily exceeds 120,000 entities. Thus the enforcement of hazardous waste requirements in this universe is split among three levels of government: federal, state, and local. The US Environmental Protection (US EPA) conducts a limited number of generator and permitted facility inspections and takes enforcement where appropriate. DTSC's Enforcement Program is responsible for the inspection and enforcement of permitted hazardous waste facilities, transportable treatment units, transporters, and electronic waste recyclers, processors and collectors. The Certified Unified Program Agencies (CUPAs) conduct most of the inspections and enforcement of hazardous waste generators and on-site treatment units as provided in SB 1082 (1993). All CUPAs are local entities except for Imperial and Trinity Counties. DTSC is the designated CUPA in these two counties.

In addition to enforcing hazardous waste requirements, the Enforcement Program is responsible for enforcing the state's Toxics in Packaging Prevention Act and the Lead in Jewelry Act, laws enacted to protect consumers from toxics in products.

The Enforcement Program implements its responsibilities through 10 program components: Facility, Generator, and Transporter Program; California-Mexico Border 2012 Program; Environmental Justice Initiative; Financial Assurance Unit; Electronic Waste Program; Compliance Assistance Team; DTSC as the CUPA in Imperial and Trinity Counties; CUPA-State Oversight Program; Criminal Enforcement Program; and, Toxics in Consumer Products Program. These components are discussed in section B below.

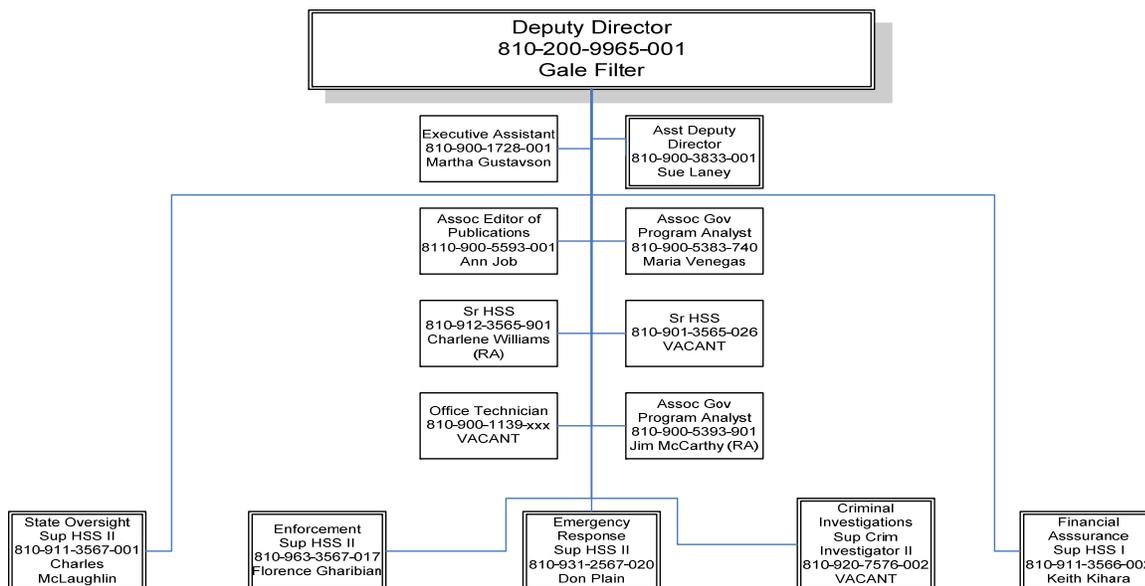
In addition to the work of the Compliance Assistance Team, compliance assistance is provided by many of the other Enforcement Program components in the form of training, developing and distributing educational materials. Specific compliance assistance activities are discussed in each component's portion of this report found in section B.

The Enforcement Program takes both a proactive as well as a reactive approach to the enforcement of hazardous waste and the toxics in consumer product requirements. The proactive approach is applied to the permitted facilities, transportable treatment units, transporters, generators and electronic waste recyclers and collectors. The regulations and requirements for these entities have been designed to prevent the release of hazardous waste into the environment and to ensure the safe handling of this waste by employees. This universe of hazardous waste handlers is regularly inspected to ensure they are in compliance with the applicable requirements. Entities subject to the toxics in consumer product requirements are also inspected on a scheduled basis.

Additionally, the DTSC Environmental Justice Initiative uniquely promotes proactive enforcement through work with affected community organizations whose members identify potential toxic harms in their individual communities. Community members actively participate in identifying polluters in their neighborhoods and actively assist DTSC in establishing investigation priorities within DTSC's Enforcement Program. Potential violators that are identified become the subject of public health and environmental complaints that are then resolved through investigation.

The reactive approach is applied through the investigation of specific public health or environmental complaints received from citizens or another government agency concerning any entity thought to be violating hazardous waste or toxics in consumer product laws and regulations. Complaints may be received by phone, mail, e-mail, or through the Cal/EPA complaint tracking system that allows Internet users to file an environmental complaint online. All inspections or criminal investigations are conducted on an unannounced basis.

Following is an organization chart of the Enforcement Program to the Performance Manager (second level supervisor) level.



DTSC's Enforcement Program has 158.5 positions of which 138.5 are in the Enforcement Program and 20 are in Emergency Response. Of the 138.5 in enforcement, 101 positions perform inspections/investigations. The Enforcement Program was budgeted at \$13,714,724 for calendar year 2008. The funding came from the following sources:

- Hazardous Waste Control Account (HWCA)
- Electronic Waste Recovery and Recycling Account
- U. S. Environmental Protection Agency (US EPA) Resource Recovery and Recycling Act grant (RCRA grant)
- Cal/EPA Unified Program Account
- Used Oil Account
- State as a CUPA Account (State CUPA Account)
- General Fund

Many of the Enforcement Program staff conduct activities in more than one program area described in section B below. Several of the program components are funded from more than one revenue source. The specific details as to staffing and funding are explained under each component.

The work of the Enforcement Program could not be successful without the close cooperation of DTSC's Environmental Chemistry Laboratory and Office of Legal Affairs. The Environmental Chemistry Laboratory analyzes the samples collected by the Enforcement Program staff as evidence of violations. The Office of Legal Affairs attorneys work with Enforcement Program staff to settle administrative cases or to refer civil cases to the Office of the Attorney General. The Office of Criminal Investigations within the Enforcement Program refers criminal cases to District Attorneys.

DTSC has nine offices and two branches of the Environmental Chemistry Laboratory (ECL) throughout California. Enforcement staff are located in all but the ECL offices. A map of DTSC locations is located on the next page.

Department of Toxic Substances Control



The public and interested parties can view the last three years of enforcement actions taken by DTSC on DTSC’s website <http://www.dtsc.ca.gov/EnforcementOrders.cfm>

Environmental compliance information for air, water, and waste can be found at US EPA’s website entitled Environmental Compliance History Online (ECHO).
<http://www.epa-echo.gov/echo/>

A statewide complaint system has been created so that the public and other interested parties can file a complaint with DTSC regarding potential illegal hazardous waste activity. Calls can be made to the WASTE ALERT HOTLINE a statewide toll free complaint number 1-800-698-6942. Alternatively complaints can be filed online at DTSC's website

http://www.dtsc.ca.gov/database/CalEPA_Complaint/Index.cfm

DTSC maintains a public Internet web site which provides access to an extensive range of Fact Sheets, publications, forms, and enforcement program information as well as the pertinent laws and regulations. General publications information may be accessed through the following web link: <http://www.dtsc.ca.gov/PublicationsForms/index.cfm>. DTSC maintains a network of Regulatory Assistance Officers (RAOs) who are based in three regional offices and are located in Sacramento, Cypress, and Chatsworth. The RAOs offer statewide public and industry assistance.

DTSC is currently updating its Strategic Plan for 2008-2013. The original plan became effective as of July 1, 2008 and is available for public review at

http://www.dtsc.ca.gov/InformationResources/upload/ESP_REP_StrategicPlan.pdf

B) Enforcement Program Components

1) Permitted Facility, Generator, and Transporter Program

Description

California's Hazardous Waste Control Act (HWCA), passed in 1973, was the first law in the country to regulate generators, transporters and facilities that handle, treat, store or dispose of hazardous waste. The federal law, the Resource, Conservation and Recovery Act (RCRA), was passed in 1976 and was modeled after the HWCA.

RCRA requires that states be authorized to implement the RCRA program. DTSC is authorized by the federal government to implement RCRA in California. The California hazardous waste program goes beyond RCRA in that it is broader in scope (i.e., regulates additional waste streams and treatment types) and is more stringent (i.e., regulates certain waste chemicals to lower levels). California must follow the mandated RCRA minimum inspection frequencies for hazardous waste facilities subject to RCRA regulatory requirements. These frequencies are yearly for permitted federally-owned facilities or permitted facilities receiving offsite wastes from superfund cleanups, and biennially for all other permitted facilities. DTSC receives a grant from the US EPA to implement RCRA in California.

The Enforcement Program reports to US EPA on its grant commitments through three mechanisms: data submittals, written reports, and periodic meetings. Data concerning inspections and enforcement actions are collected in the Enforcement Program's Inspection, Complaint and Enforcement (ICE) data system and periodically uploaded to US EPA's RCRA*Info* data system.

US EPA provides oversight for and evaluation of the authorized California program through several mechanisms. US EPA periodically accompanies Enforcement Program staff on inspections in order to evaluate their field capabilities. US EPA reviews two self-assessments provided by the DTSC and responds in a formal report, both to a DTSC-prepared End of Year report as well as the periodic

meetings discussed above. Every three years US EPA conducts an extensive in-depth review of California's program through a process known as the State Review Framework. The next State Review Framework evaluation will take place in 2010.

Facilities with a permit to handle, transport, treat, store, or dispose of hazardous materials/waste are subject to regulatory oversight by DTSC. They are periodically inspected to ensure compliance with the applicable laws and regulations. In addition to scheduled compliance inspections DTSC enforcement work is also performed via focused initiatives, complaint investigations, monitoring, compliance assistance, and by quick response to emergency toxic-material situations that arise around the state.

As noted in the chart below, California had 162 hazardous waste businesses with a permit from DTSC to treat, store, or dispose of hazardous waste in 2008. This universe includes facilities that are subject to the federal RCRA permitting standards as well as those subject to state permitting standards. Among these 162 facilities are three landfill sites for the regulated, safe burial of hazardous materials/wastes. DTSC is the sole entity which can inspect these permitted facilities to ensure they are following their permit requirements.

| HAZARDOUS WASTE BUSINESSES REGULATED BY DTSC | |
|--|-----|
| Facilities with a permit to treat, store or dispose of hazardous waste | 162 |
| Transportable Treatment Units (approximate number) | 50 |
| Hazardous Waste Transporters (approximate number) | 964 |

DTSC is also the sole entity which can inspect transportable treatment units and hazardous waste transporters. In 2008, over 2.4 million tons of hazardous waste were produced in California and transported by the 964 California-authorized hazardous materials/waste haulers using 463,165 hazardous waste manifests. DTSC uses these hazardous waste manifests to track each shipment of hazardous waste from the point of origin to its safe treatment or disposal.

In California, CUPAs conduct most of the inspections of hazardous waste generators. However, a limited number of generators are inspected by the Enforcement Program as part of the CUPA-State Oversight Program (see section 8 below). Due to the complex recycling laws that apply to refineries, the Enforcement Program also inspects refineries who are generators.

The Enforcement Program inspectors invite CUPA regulators to participate in all compliance inspections. When investigating a complaint the Enforcement Program may also coordinate with other federal, state, and local agencies.

The 2008 goals and objectives of the Permitted Facilities, Generators, and Transporters program component were to meet the required inspection frequencies for RCRA facilities as well as to inspect some state-only permitted facilities and transporters, and to streamline the Enforcement Program's inspection and investigation process.

Program Metrics

Program Resources

As a portion of their regular duties, staff in 51.5 positions perform permitted facility, generator, and transporter inspections. [These staff also participate in the Environmental Justice Initiative (see section 3 below) as well as conduct Electronic Waste Program inspections (see section 5 below).]

The permitted facility, generator and transporter program is funded by HWCA and the RCRA grant. Activities involving used oil facilities and transporters are funded by the Used Oil Account from the California Integrated Waste Management Board.

Program Outputs

- 119 permitted facilities, 12 generators, and 66 transporters were inspected.
- 56 complaints were closed.
- 27 enforcement cases were settled for a total of \$700,406.

Atlas Iron & Metal Co, Inc settled for \$350,000. Violations included illegal disposal of PCB, lead and other heavy metals. The facility had two illegal waste piles some of which had migrated onto the Jordan High School athletic field. Atlas was required to pay for the remediation of both its property as well as the Jordan High School property and to construct a new wall to separate the remediated Atlas site from the high school.

Compliance rates by facility sector are shown in the “Compliance Rate for Compliance Monitoring Actions” chart in Appendix A.

Program Outcomes

Through proactive enforcement, the potential illegal handling and release of hazardous waste has been decreased by the Enforcement Program’s inspections.

2) California- Mexico Border 2012 Program

Description

The California Border region constitutes an area 62 miles north and 62 miles south of the United States/Mexico border in San Diego and Imperial counties.

The Border Program investigates complaints and addresses conditions found in California’s border region with Mexico as part of the California-Mexico Border 2012 Program. The Border Program tracks hazardous waste in the border region, conducts truck inspections at the border crossings (Ports of Entry), oversees a contract with the San Diego CUPA for conducting truck inspections, and conducts training in the border region and in Mexico to promote compliance with the hazardous waste/materials laws and regulations. The Border Program is proactive in promoting hazardous materials reduction and implementing pollution prevention programs through outreach and training. DTSC partners with the San Diego CUPA to develop training curricula, training literature and training delivery. The Border Program also provides support to other state, local and federal agencies as well as to the State of Arizona.

Shipments of hazardous materials (including hazardous waste) are allowed to enter the United States at the Otay Mesa Port of Entry three days a week and the Calexico Port of Entry one day a week.

Border Program inspectors conduct truck stops at these Ports of Entry three of these four days with the San Diego CUPA inspectors conducting truck stops the fourth day. The inspectors select truck traffic entering California from Mexico and classify the cargo while they are inspecting the shipments for compliance with California and United States environmental laws and regulations. The inspectors classify cargo into three categories used by the U.S. Border Customs Service: RCRA & Non-RCRA hazardous waste, American Product Returned and Non-regulated Material. DTSC and the San Diego CUPA do not regulate the latter two.

The 2008 goals and objectives for the Border component were to continue its training, education, outreach, industry, and compliance assistance in the Border Region as part of its year 2012 objectives that include: assessing and responding to citizen complaints, increasing compliance assistance and compliance incentives; emphasizing compliance monitoring and enforcement to reduce the risks from non-compliant entities; and encouraging voluntary pollution prevention. The Border Program will continue conducting inspections, taking enforcement actions against violators, and promoting pollution prevention in the U.S. and Mexico.

Program Metrics

Program Resources

Two staff are devoted to conduct border related activities as described above.

The border work is funded by the RCRA grant.

Program Outputs

EERP MEXICAN BORDER TRUCK STOPS

| | NUMBER OF TRUCKS | VIOLATIONS |
|---|-------------------------|-------------------|
| RCRA and Non-RCRA Waste | 647 | 25 |
| Non-Regulated Materials/Non-Hazardous Waste | 1529 | No Jurisdiction |
| American Products Returned | 786 | No Jurisdiction |
| TOTAL | 2,962 | 25 |

Of the 2,962 Border truck stops that were conducted, after examination of shipping papers and related documents, 647 trucks contained waste shipments that were regulated by DTSC. Twenty-five violations were detected that resulted in four enforcement cases. The violations were resolved and the cases were settled for a total amount of \$48,000 in administrative penalties. Additional enforcement actions are pending as of December 31, 2008.

The Border Program presented training at three locations in Mexico. The trainings presented were “An Overview of California Hazardous Waste Management Standards and Pollution Prevention Practices” and “The Management of the Electronic and Universal Waste in California.” One hundred and twenty-three (123) people attended these training sessions.

Future DTSC performance measures will include identifying the number of individual businesses that received training from the Border Program, identifying number and type of training courses delivered to each individual business, and identifying businesses that are high-risk entities within the border region that will benefit from training.

Program Outcomes

Approximately 250 tons of hazardous waste were prevented from illegally entering the United States.

3) Environmental Justice Initiative

Description

Government Code section 65040.12(e) defines Environmental Justice as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation and enforcement of environmental laws, regulations and policies.” Consistent with the statutory definition, DTSC further elaborates that Environmental Justice is the “equal application of environmental protection for all communities and citizens without regard to race, national origin or income”. DTSC has a very strong commitment to Environmental Justice (EJ) as California has the highest concentration of minorities living near hazardous waste facilities in the country. The Enforcement Program enlists residents of low-income and often minority communities suffering environmental damage to serve as government’s eyes and ears in combating polluters and enforcing environmental laws via a five step plan:

- Engage community residents and groups particularly those who feel ignored and stymied by government;
- Learn community perspective by listening and encouraging sharing by residents;
- Establish relationships and build public trust;
- Serve as facilitator and resource as residents and groups prioritize environmental harms;
- Within 100 days, provide update on activities and inspections; continue dialogue and information-sharing to develop ongoing environmental task forces.

The EJ program works by connecting people who live closest to the environmental problems to the regulators in California’s complex environmental enforcement structure (DTSC, local environmental health, water boards, air quality regulators, etc.). Residents, environmental activists and government join for daylong bus tours of local sites that are suspected of environmental and health dangers. All sites are selected by community people, and they present the problems and issues. At workshops held immediately after the tours, everyone works together to set strategy and priorities for inspection/enforcement efforts. DTSC enforcement staff, along with staff from other state, local and federal environmental agencies, return within 100 days to report on inspections and other activities and work with communities on further action plans. This sets the foundation for a partnership of sharing information and recognizing and dealing with environmental problems on an ongoing basis with community help.

The 2008 goals and objectives of the EJ program were to conduct EJ activities in three locations: Imperial County, Wilmington and Fresno.

Program Metrics

Program Resources

Approximately 8 staff positions are used on a part-time basis to conduct inspections, outreach and coordination for the Program. DTSC also has an Environmental Justice Enforcement Ombudsman to assist with community concerns and issues.

The EJ program is funded by the RCRA grant and HWCA.

Program Outputs

The Enforcement Program conducted or participated in 14 EJ events. These events included bus tours, workshops and follow-up meetings.

| Community | Population | Events | Examples of Environmental Concerns |
|--------------------|-------------------|--|--|
| Imperial County | 162,000 | March—tour & workshop May— follow-up meeting Sept.—follow-up meeting | Illegal dumping, exposure to chemicals |
| Wilmington | 53,300 | June—tour Nov.—follow-up meeting (Additional inspections scheduled for 2009.) | What's causing rising rates of illness |
| Fresno County | 899,300 | October—tour | Neighborhood lead exposure, abandoned factory site |
| Los Angeles County | | The Environmental Justice Enforcement Ombudsman was invited and participated in nine of the monthly meetings of the Los Angeles Environmental Justice Forum. | |

13 inspections were conducted.

Program Outcomes

Targeted inspections and pending enforcement have resulted in enhanced environmental protection for 1,100,000+ people in environmental justice communities.

4) Financial Assurance Unit

Description

The purpose of the Financial Assurance Unit is to affirm that hazardous waste facilities maintain sufficient financial resources to pay for facility closure, post-closure, third party liability (sudden and non-sudden accidental occurrences), corrective action, and operation and maintenance agreements.

There are currently 279 facilities which are required to maintain financial assurance. The Financial Assurance Unit performs detailed analyses (reviews) of financial assurance mechanisms, initiates enforcement actions where mechanisms are deficient, maintains the inventory of financial assurance mechanisms, prepares financial releases when a facility closes, processes requests from companies for reimbursement of costs associated with facility closure or post-closure, prepares reports, and provides training and assistance.

Financial assurance reviews are conducted whenever a facility, which is required to maintain financial assurance, is inspected as discussed in B (1) above. These reviews are considered to be inspections and are tracked in the ICE database. Financial assurance reviews are also conducted prior to the permitting of a new facility or renewal of an existing facility's permit, when a facility changes its financial mechanism, and after a corrective action plan or operation and maintenance agreement is approved. These reviews are not considered to be inspections and thus are not currently tracked in the ICE database.

The 2008 goals and objectives were to continue the training of the CUPAs on financial assurance requirements they are required to implement, provide more scrutiny to facilities using the financial test mechanism and prepare draft regulations to address certain financial assurance issues.

Program Metrics

Program Resources

The Financial Assurance Unit consists of four analysts and a supervisor and is funded by the RCRA grant, HWCA, Used Oil funds, E-waste funds and various Site Cleanup funds. The four analysts work full time conducting Financial Assurance activities.

Program Outputs

The unit conducted 86 financial reviews which are considered to be inspections. Financial reviews were also conducted for permitting, corrective action and operation and maintenance agreements but the number is unknown as there is no formal tracking mechanism for these types of reviews.

The unit processed 25 reimbursement actions or releases of funds.

The unit provided four training sessions to DTSC staff and one training session to CUPA staff at the 2008 annual CUPA conference.

Program Outcomes

Compliance with the financial assurance requirements assures that private funds will be available to pay for those obligations, thus avoiding the need to use public funds for such purposes. The total amount of money that the unit oversees is approximately \$1.7 billion.

5) The Electronic Waste Program: The E-Waste Team and E-Waste Fraud Unit

Description

The California Electronic Waste Recycling Act (SB 20), as amended by SB 50 and subsequent regulations, established that electronic equipment such as televisions (cathode ray, LCD and plasma), computer monitors (cathode ray and LCD) and portable DVD players with LCD screens are

hazardous waste. These devices may contain metals such as lead, arsenic, mercury, chromium, cadmium and beryllium. Enforcement of e-waste laws and regulations is funded by an advanced recycling fee paid by consumers at the time of first sale of specific electronic devices defined by statutory and regulatory requirements. The California law and regulations are broader in scope and more stringent than the corresponding federal regulations.

The Electronic Waste Team (E-Waste Team) conducts inspections of electronic recyclers and collectors and takes enforcement against those found to have serious violations. Recyclers who receive money from the California Integrated Waste Management Board (CIWMB) Covered Electronic Waste (CEW) payment program are inspected yearly; e-waste collectors are inspected periodically (approximately once every three or four years). The Team also prepares and provides guidance documents and technical assistance to e-waste facilities.

As a result of fraud uncovered during the CIWMB's review of payment claims submitted by approved recyclers, DTSC added an E-Waste Fraud Unit (known as the Forensic Fraud Unit in the 2007 Cal/EPA Enforcement Report) to conduct fraud investigations involving the CEW payment system. The E-Waste Fraud Unit is located within the Office of Criminal Investigations (OCI). DTSC and the CIWMB jointly developed the concept of a multidisciplinary effort to detect and investigate fraud in the Electronic Waste Recycling program, which consists of over 645 approved collectors (and an additional estimated 350 "unapproved collectors") and 65 participating recyclers and processors of electronic waste (and approximately an equal number of nonparticipating recyclers and processors). The E-Waste Fraud Unit is designed to work with the CIWMB independently of the regulatory inspections conducted by the E-Waste Team. OCI also has a criminal investigator position to assist the E-Waste Fraud Unit in any criminal fraud investigations.

The 2008 goals and objectives for both the E-Waste Team and E-Waste Fraud Unit were to:

- 1) ensure the universe of Recyclers and Collectors continue to be identified and inspected; and
- 2) increase the compliance rates for both groups through a combination of education, outreach, and training as well as inspections.

Program Metrics

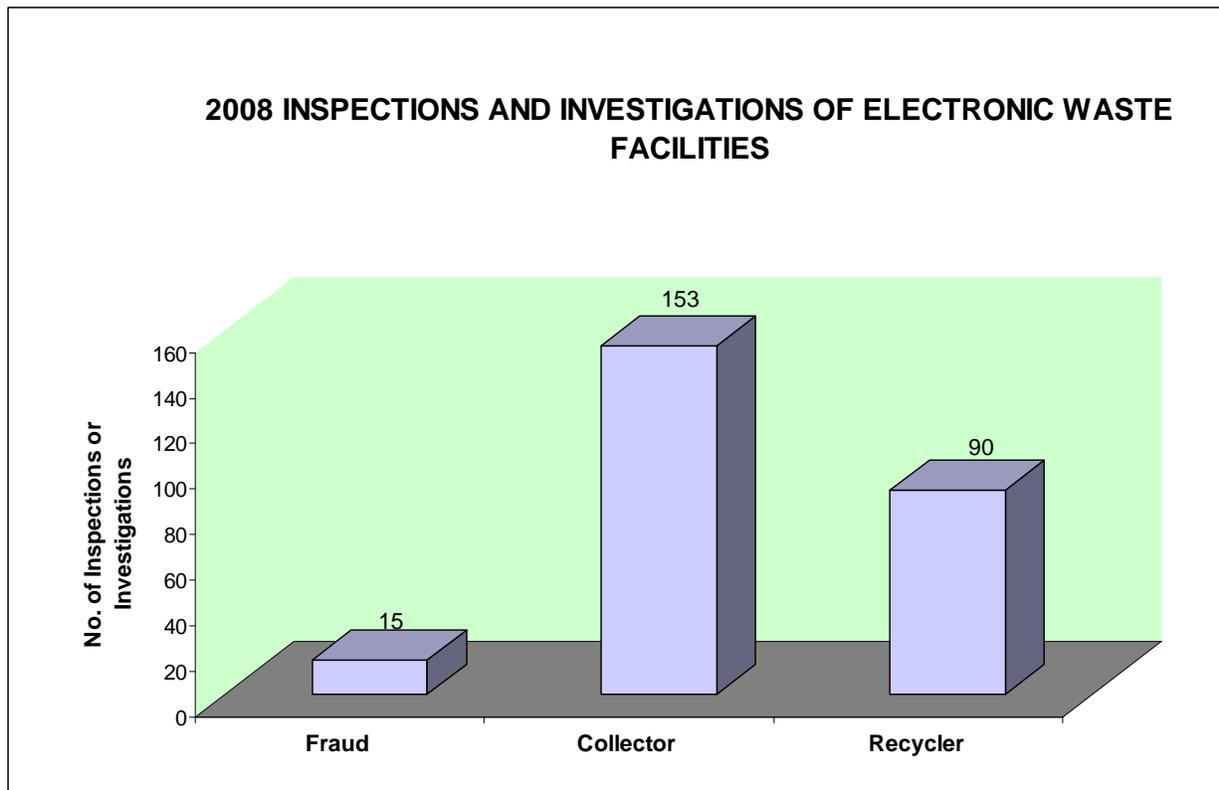
Program Resources

Nine staff are assigned to the E-Waste Team. All nine participate on the E-Waste Team on a part-time basis. Eight of the staff conduct inspections, develop enforcement cases and investigate complaints. The Team Leader serves as coordinator for the E-Waste Team as well as the point of contact with the CIWMB.

The E-Waste Fraud Unit consists of five staff, a supervisor, three auditors, and a computer forensics specialist. All members of the E-Waste Fraud Unit conduct investigations and all work full time on fraud issues.

The E-Waste Team and E-Waste Fraud Unit are funded by the Electronic Waste Recovery and Recycling Account.

Program Outputs



Three enforcement cases against e-waste recyclers settled for a total of \$91,500 in administrative penalties.

Program Outcomes

A reduction of waste mishandling and releases to the environment of mercury and other toxic heavy metals was accomplished by the Enforcement Program's increased number of inspections of e-waste collectors and recyclers.

6) Compliance Assistance Team

Description

Due to resource constraints the Compliance Assistance Team (CAT) was reorganized and refocused in 2008. The CAT now focuses on identifying and responding to chronic compliance issues related to specific industry sectors, or areas of regulatory requirements where a focused educational effort can help to increase compliance rates. Criteria to be used to target projects include:

- sectors experiencing high levels of past non-compliance,
- businesses that have limited resources,
- assistance requests from industry groups,
- sectors or facilities facing difficult or new regulatory requirements.

The CAT will accomplish its responsibilities by conducting outreach efforts, workshops, presentations and facility visits as well as developing and distributing printed and electronic materials. At the conclusion of the first compliance assistance project, the team will conduct a self-assessment to evaluate the effectiveness of the project and prepare recommendations for project modifications as needed.

The 2008 goals and objectives were to focus on a specific industry sector and develop a process which will serve as a model for future projects.

Program Metrics

Program Resources

The CAT consists of eight staff all of whom participate on a part-time basis and the team leader who is full time. Four of the members are Enforcement and Emergency Response Program staff and the others are from other Programs within DTSC including the Regulatory Assistance Officer, the Office of External Affairs, the Office of Legislative and Regulatory Policy, the Pollution Prevention and Green Technology Program and the Office of Legal Affairs.

The CAT is funded by the HWCA.

Program Outputs

The CAT began coordinating with the California New Car Dealer Association and the California Certified Unified Program Agencies Forum on a new car dealer project proposal and collecting baseline compliance information on the new car dealers.

Program Outcomes

No outcomes are available for the CAT's activities because they were only begun in 2008. Outcomes of this first project are anticipated to be available in late 2009 or 2010.

7) DTSC as the CUPA in Trinity and Imperial Counties

Description

The Enforcement Program serves as the CUPA in Imperial and Trinity Counties. Cal/EPA, exercising its authority, designated DTSC as the CUPA for these two counties beginning January 1, 2005. In this CUPA capacity, the DTSC Enforcement Program is responsible for implementing the six elements of the Unified Program (UP) as if it were any other local jurisdiction.

The purpose of the UP is to consolidate the administration, including permits, inspections and enforcement, of six environmental programs formerly administered by various state and county agencies as listed: hazardous waste generators and onsite treatment facilities; above ground storage tank program; underground storage tank program; hazardous material release response plans and inventories (business plans); California Accidental Release Prevention Program (CalARP); and hazardous materials management plans and inventories.

The size of the regulated universe in Imperial County is 781 facilities. The size of the regulated universe in Trinity County is 141 facilities. All CUPA facilities must generally be inspected on a three year inspection schedule with annual inspections of facilities with underground storage tanks.

Cal/EPA has a triennial CUPA Evaluation Program. In 2007, the DTSC Imperial and Trinity CUPAs underwent their triennial Cal/EPA Evaluations. The Summary of Findings and Recommendations for the Imperial CUPA was “satisfactory performance with some improvement needed”. The target goals for Imperial were to meet the required inspection frequencies and to prepare a county-wide area plan. In 2008 the Imperial CUPA successfully corrected three of the ten deficiencies noted and anticipates correcting the remaining seven in 2009.

The Summary of Findings and Recommendations for the Trinity CUPA was “unsatisfactory performance with improvement needed”. The target goals for Trinity included several areas such as fee collection, CalARP, not meeting inspection frequencies, and failure to request and obtain documents submitted from businesses. As part of the response from the Trinity CUPA to the Findings and Recommendations a decision was made to raise its fees as the original fees would not support all program activity such as having resources to oversee and conduct inspections for CalARP; and ensuring it can meet its three year inspection schedule and properly manage documents submitted from businesses. On August 18, 2008, the rating of the Trinity CUPA was modified to “satisfactory with some improvement needed” as seven deficiencies had been corrected and substantial progress had been made toward correcting the remaining deficiencies. Final corrections are anticipated to be completed in 2009.

The goals and objectives for 2008 for both CUPAs were to correct some of the deficiencies from the Cal/EPA Triennial Evaluations and to continue identifying new businesses which are subject to regulation.

Program Metrics

Program Resources

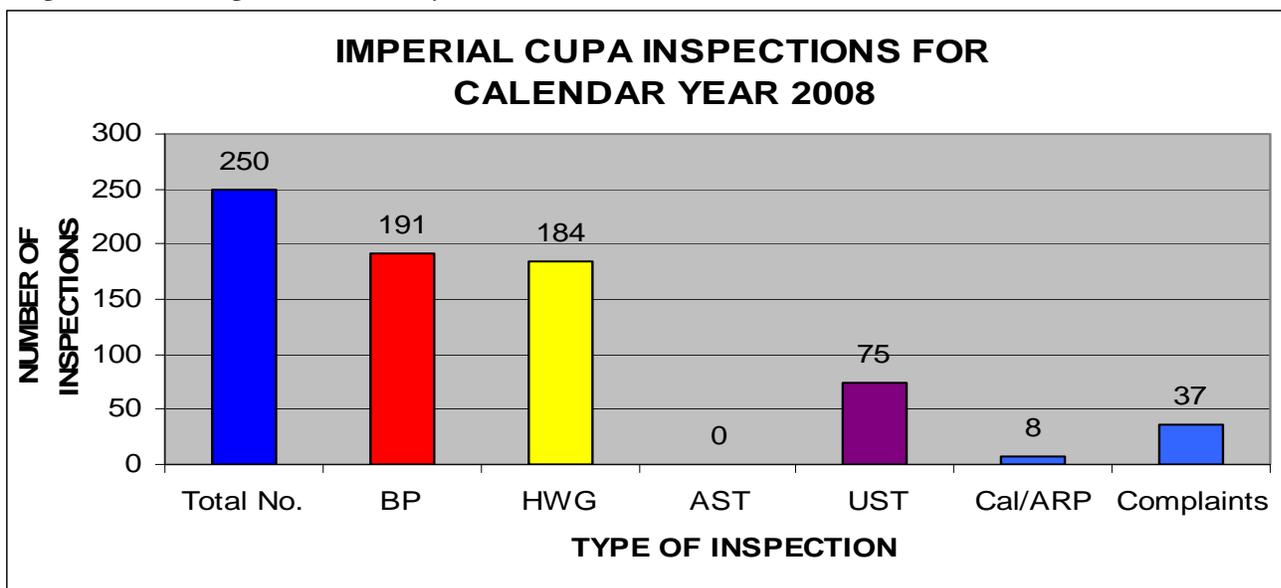
The Trinity CUPA has one position with the work performed part time by several staff. This one position also includes a portion of a supervisor’s time as well as administrative staff time. The Trinity CUPA staff are located in the Sacramento DTSC Cal Center office and travel to Trinity County to conduct work activities. The Imperial CUPA has eight full time positions (1 supervisor, 6 field staff and 1 clerical) devoted solely to CUPA activities. The Imperial CUPA has its office in Calexico, but plans to relocate to El Centro in 2009.

The Imperial and Trinity CUPAs are funded by the State CUPA Account. The money in this account comes from fees charged to the businesses subject to the CUPA programs.

Program Outputs

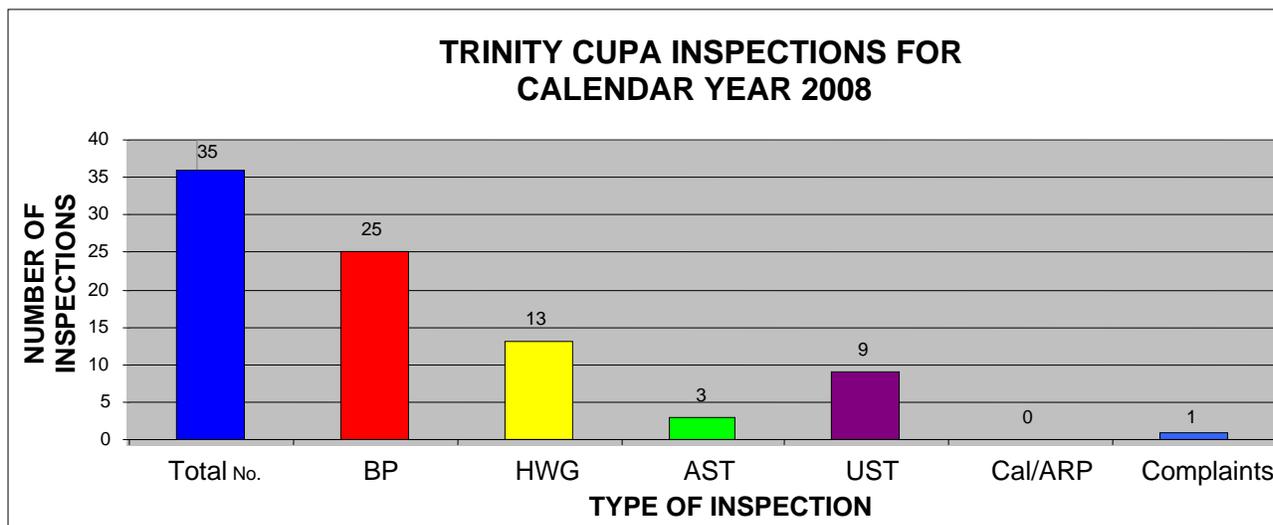
Both the Trinity and Imperial CUPAs continued to work on identifying their universes of regulated facilities. The Imperial CUPA inspected approximately 32% of their universe (250 facilities) and the Trinity CUPA inspected approximately 20% of their universe (28 facilities).

Outputs for the Imperial and Trinity CUPAs are shown below.



BP = Hazardous Materials Business Plan, HWG = Hazardous Waste Generator, AST = Aboveground Storage Tank, UST = Underground Storage Tank, Cal/ARP = California Accidental Release Prevention, Complaints = inspections in addition to the required inspections.

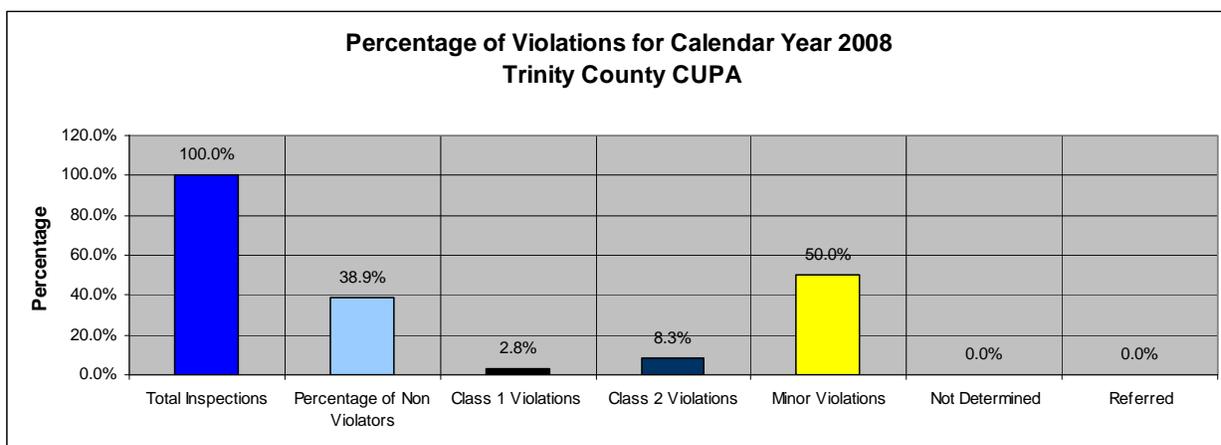
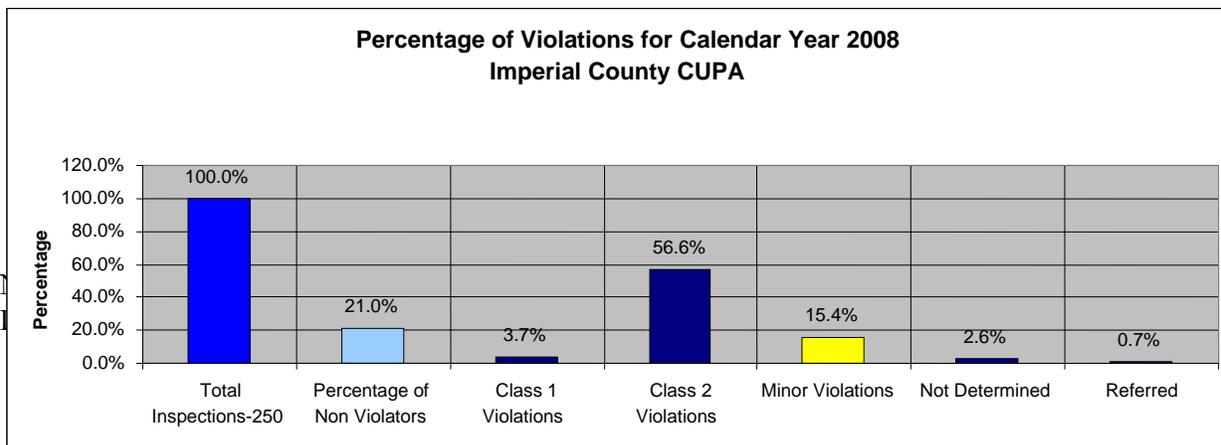
- Since some of these businesses have several program elements, the total of the types of inspections will exceed the total number of inspections.



BP = Hazardous Materials Business Plan, HWG = Hazardous Waste Generator, AST = Aboveground Storage Tank, UST = Underground Storage Tank, Cal/ARP = California Accidental Release Prevention, Complaints = inspections in addition to the required inspections.

- Since some of these businesses have several program elements, the total of the types of inspections will exceed the total number of inspections.

Compliance rates for Imperial and Trinity County CUPAs are shown in the charts below.



Non-Violators = 14, Class I Violators = 1, Class 2 Violators = 3, Minor Violators = 18

No enforcement cases were settled by Imperial or Trinity CUPAs. Two cases are pending settlement in early 2009.

Imperial CUPA presented eight training sessions.

Program Outcomes

The illegal handling and release of hazardous waste has been decreased by DTSC’s inspections in Imperial and Trinity counties.

8) DTSC’s CUPA-State Oversight Program

Description

There were 84 CUPAs in California including the Imperial and Trinity County CUPAs described in 7 above. For the 84 CUPAs DTSC performs oversight functions which include: assisting them with regulatory interpretations on inspections and enforcement; providing training; evaluating each

CUPA on the hazardous waste portions of the CUPA program during the Cal/EPA triennial evaluation of each CUPA; collecting and reviewing large quantity generator inspection/enforcement data on a quarterly basis; participating in various CUPA forum meetings and workgroups; coordinating with other local, state, and federal agencies regarding the CUPA Program; and conducting independent oversight inspection.

The key goals and objectives for 2008 were to provide training on areas of the regulations that CUPAs have been found to be deficient in regulating businesses, and to review files to ascertain that CUPAs have properly identified and classified violations, ensured that all violations have returned to compliance, and that appropriate enforcement actions were taken.

Program Metrics

Program Resources

Two staff are assigned full time to conduct CUPA oversight inspections and evaluations. Another eight staff conduct training, consultation, and technical assistance to CUPAs part time.

CUPA Oversight activities are funded by the Cal/EPA Unified Program Agency Fund. The funding also includes \$146,000 for a training contract. Independent oversight inspections are funded by the RCRA grant.

Program Outputs

Accomplishments of the State Oversight and Enforcement Branch in DTSC's Enforcement Program included:

- Conducted 20 oversight inspections.
- Participated in 20 triennial evaluations of CUPAs.
- Conducted eight independent oversight inspections.
- Settled four enforcement cases for a total of \$2,105,000:

Kyocera America, Inc. settled for \$1,400,000. Violations included: treatment without a permit; storage of incompatible hazardous wastes; failure to have tank assessments; storage greater than one year; and failure to provide a minimum of two feet of freeboard.

Trident Plating settled for \$285,000. Violations included: failure to comply with a previously issued Consent Order; failure to have tank certifications; storage without a permit; treating and storing incompatible wastes (acid and cyanide); and failure to have secondary containment.

Gardena Specialty Products settled for \$250,000. Violations included: treatment without a permit; no tank certifications; no secondary containment; unlabelled, bulging drums; and failure to respond to DTSC's request for written information.

Aviation Equipment settled for \$170,000. Violations included: illegal disposal, open containers, storage without a permit; and no training plan.

The CUPA-State Oversight Program conducted 12 separate training sessions for CUPAs throughout the year and presented or participated in 29 training sessions at the yearly CUPA Conference. More than 250 CUPA inspectors as well as some industry representatives were trained during these sessions.

Additionally, although not a CUPA-State Oversight function, the CUPA-State Oversight Program provided training on generator requirements to the Alameda Environmental Crimes Task Force and to members of industry through the Labor Occupational Safety and Health Group (LOHP), a group associated with the University of California system. Three sessions were provided through LOHP, one of which was in Spanish. These training sessions were funded by HWCA.

In November, 2007, the CUPA-State Oversight Program began an initiative to determine the regulatory status of “wet floors” at plating facilities. A “wet floor” is a situation where plating process liquids are allowed to accumulate on the floor of a plating facility or the floor is used as a conveyance of the liquid wastes to a collection point where they are accumulated and pumped elsewhere for reuse, reclamation, treatment, and/or disposal. A workgroup formed and focused on three aspects: (1) whether or not the waste on the plating floor is hazardous; (2) the regulatory framework of the plating floor area (i.e., a sump, a surface impoundment, a tank, or a miscellaneous unit); and (3) available regulatory options to determine the regulatory status of the wet plating floor. The draft report was reviewed by DTSC staff and the California CUPA Forum’s Technical Advisory Groups. The final report is scheduled to be released in 2009.

Program Outcomes

The CUPAs have improved their inspections and enforcement as a result of the CUPA Oversight provided by DTSC. The results of the DTSC CUPA evaluations and the related evaluation data indicate that more consistent inspections and more consistent enforcement actions are occurring among CUPAs.

9) Criminal Enforcement Program

Description

Criminal investigations are carried out by sworn peace officers in the Office of Criminal Investigations (OCI). These peace officers primarily investigate criminal violations of HWCA, and in doing so, prepare and execute search warrants, carry firearms and make arrests. Prior to appointment, these peace officers are required to pass an extensive background investigation including psychological screening and medical examination. Within the first year of employment, they are required to successfully complete a 17 week law enforcement training program certified by the Commission on Peace Officer Standards and Training in addition to health and safety training and other specialized training mandated by DTSC. OCI is also staffed by Hazardous Substances Scientists who investigate complaints, provide scientific expertise in criminal investigations conducted by OCI’s peace officers, support environmental crime task forces throughout the state and coordinate enforcement efforts involving Toxics in Consumer Products (see section 10 below). OCI also includes an Electronic Waste Fraud Unit staffed by auditors (see section 5 Electronic Waste Team and Electronic Waste Fraud Unit above).

The 2008 goals and objectives were to compel comprehensive, voluntary compliance with the provisions of the HWCA through effective and efficient criminal enforcement as a deterrent, and to support the activities of many environmental crimes task forces throughout California. A landfill initiative was planned to be conducted. (See the discussion of this initiative under Program Outputs below.)

Program Metrics

Program Resources

There are 13 criminal investigator positions as well as six supervising criminal investigator positions. All 19 staff conduct investigations. There are 15 Hazardous Substances Scientist/Senior Hazardous Substances Scientist positions which also conduct investigations and assist the criminal investigators.

OCI is funded by HWCA and occasionally other accounts depending on the activity.

Program Outputs

- 343 criminal investigations initiated
- 257 criminal investigations completed
- 12 search warrants served
- 6 criminal case referrals
- 89 arrests
- 21 citations
- supported 42 Environmental Task Forces by attending 159 meetings
- 36 cases settled: 30 by District Attorneys, 2 by the Attorney General's Office, and 4 by DTSC's Office of Legal Counsel for a total of \$603,728 in fines and penalties.
- 30 cases settled by District Attorney's defendants resulted in 10 years and 135 days of jail time, 39 years probation and 1,365 hours of community service.

Landfill Initiative: OCI conducted an electronic waste enforcement initiative at the Puente Hills Landfill in conjunction with the County Sanitation Districts of Los Angeles. The initiative was aimed at commercial haulers who surreptitiously bring electronic and other hazardous waste to the landfill for illegal disposal. During the three-day event, 21 haulers were cited for dumping several hundred pounds of electronic and other hazardous wastes such as paint, solvents, pesticides and batteries. One individual was arrested. In addition, OCI's scientists and criminal investigators made almost 500 contacts with customers visiting the landfill, educated them on what can and cannot be dumped there, provided them with alternatives for legal disposal and passed out more than 150 fact sheets on electronic, universal and hazardous waste management.

Program Outcomes

Several hundred pounds of hazardous waste were prevented from being illegally disposed at the Puente Hills Landfill by the Landfill Initiative.

10) Toxics in Consumer Products Program

Description

The Toxics in Consumer Products Team (Team) is located within OCI and is composed of hazardous substances scientists. The goal of the Team is to establish an all-encompassing strategy for the implementation and enforcement of all regulated consumer products within DTSC's purview. Laws such as the Toxics in Packaging Prevention Act and the Lead in Jewelry statutes define the regulated consumer products. The Team works to ensure effective internal and external communication and coordination with affected programs and stakeholders as new products become subject to regulation. There is no federal legislation on toxics in consumer products.

The 2008 goals and objectives were to focus Lead in Jewelry enforcement efforts on body piercing jewelry.

Program Metrics

Program Resources

Three to four hazardous substances scientists within OCI conduct these activities on a part time basis. The work is funded by HWCA.

Program Outputs

The Team conducted 84 product investigations.

The Team settled the first enforcement action under the provisions of the California Toxics in Packaging Prevention Act (TIPPA). The action was taken against Forever 21 for circulating shopping bags with up to 7,000 ppm lead. As part of the \$165,000 settlement, Forever 21 paid penalties in the amount of \$80,000 and paid \$35,000 to DTSC as reimburse for investigative costs. Forever 21 also paid \$50,000 to the Toxics in Packaging Clearinghouse (TPCH) as a Supplemental Environmental Project. TPCH conducted the initial testing of the non compliant plastic bags and notified DTSC of a potential violation when Forever 21 failed to respond to its correspondence. Forever 21 also failed to respond to initial inquiries from DTSC and to take prompt and effective action to replace the problematic bags in circulation. Although 19 other states have now implemented Toxics in Packaging statutes, this enforcement action under provisions of California's TIPPA was the first of its kind in the country.

The Team participated in the Lead Toy Exchange in Pacoima, an Environmental Justice community in Southern California. This toy exchange promised up to two \$25 gift cards for people whose toys tested positive for lead. The money was to pay for safer replacement toys. Nearly 100 toys were scanned using DTSC's X-ray fluorescence devices. Fifty-three (53) toys were found to contain levels of lead up to 2,233 ppm. Toys were also found where no lead was detected.

Program Outcomes

900,000 non-compliant grocery bags, 5,000 tainted jewelry items and 53 toys were removed from commerce in California thus reducing the public's exposure to hazardous materials as well as reducing the impact of heavy metals on the environment.

C. Enforcement Program Data Characteristics

Currently the Enforcement Program does not have a single data base to track its activities. Several Access databases and an Envision database are used by the Office of Criminal Investigations, California–Mexico Border Program and DTSC as the CUPA Program. The Inspection, Complaint, and Enforcement database, also known as ICE, tracks data for its complaint investigations and permitted facility, transporter, transportable treatment unit, generator, and electronic waste handler inspections and enforcement actions.

DTSC is in the process of consolidating and merging all of its separate internal enforcement databases (except for the Envision database) to a single platform to allow the development of a more comprehensive picture of compliance and enforcement. The Enforcement Program has been working with the company, EcoInteractive, to develop a database for both regulatory and criminal enforcement activities. Selected data from these enforcement activities will then be made available to the public through EnviroStor.

D. Enforcement Program Limitations

The Enforcement Program is currently challenged in its ability to quickly produce reports regarding inspections, investigations, and enforcement because its data resides in several separate databases as discussed above. This situation should be remedied by the end of calendar year 2009 with the advent of the new EcoInteractive product.

The new, single platform database described above will also allow the Enforcement Program to more easily transfer data to US EPA's RCRA*Info* data system, improving the Enforcement Program's data management function. DTSC's contractor, EcoInteractive, will begin development of XML data transfer capabilities to RCRA*Info* once the new data system has been completed, U.S. EPA completes the development of their data transfer process, and U.S. EPA has completed their RCRA*Info* Version 4 changes.

In order to address the recommendations from the Imperial CUPA Triennial Evaluation from Cal/EPA, additional staff resources are needed in order to inspect the increasing number of regulated facilities that continue to be identified within Imperial County. All CUPA facilities must be inspected as part of the mandated three-year inspection schedule and annual inspections of facilities with underground storage tanks.

No new staff positions were created through the passage of the Toxics in Packaging Prevention Act and the Lead in Jewelry Act, but the Enforcement Program was able to reorganize its resources in order to enforce these mandates. However, should new toxics in consumer products laws or laws regulating spent fluorescent lamps be proposed, DTSC will need to seek additional staff in order to implement the new requirements. Additionally, DTSC may need to seek additional staff in the future in order to implement the dental amalgam program.

E. Enforcement Progress on Key Initiatives

1) Performance Measures

The Enforcement Program's Performance Measures were discussed in the 2007 Cal/EPA Enforcement Report. In 2008 these measures continued to be refined.

2) Green Chemistry

DTSC's efforts in Green Chemistry were described in the 2007 Cal/EPA Enforcement Report. DTSC continued its efforts on this program during 2008 and is developing regulations to implement Green Chemistry statutes. A comprehensive and evolving discussion, along with detailed information about the DTSC Green Chemistry program, is available on the DTSC web site at <http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/index.cfm>

3) Lighting Efficiency and Toxics Reduction Act Task Force

As required by AB 1109 (Huffman, Chapter 534, Statutes of 2007), DTSC convened a task force in 2008 to consider and make recommendations on the management of spent fluorescent lamps. The Lighting Task Force included representatives from lamp manufacturers, lamp retailers, utilities, environmental groups, and local and State government. The Task Force's recommendations, which are contained in a report delivered to the Legislature on October 30, 2008, address convenient and cost-efficient collection and recycling of fluorescent lamps; consumer education and outreach; and designation and labeling on lamps and lamp packaging. The Task Force recommended a shared responsibility system for managing end-of-life lamps, funded by electric utilities and lamp manufacturers and administered by an independent third-party organization. Should the Legislature act on the report's recommendations and write them into law, the Enforcement Program would be responsible for conducting inspections and enforcement for this program.

4) Dental Amalgam Program

In the 2007 Cal/EPA Enforcement Report DTSC states that as a part of the Compliance Assistance program DTSC was identified as the department that would oversee the enforcement of dental amalgam. Waste dental amalgam is considered to be a hazardous waste because it contains nearly 50% mercury. Due to resource constraints DTSC was not able to create a team which would do outreach, education and inspections and enforcement of the regulated community. Such a team will be formed in 2009.

5) DTSC Environmental Indicators

Environmental Indicators were discussed in the 2007 Cal/EPA Enforcement Report. In 2008 the DTSC Environmental Indicators webpage continued to be refined.

III. WHAT WE ARE GOING TO DO: FUTURE DIRECTIONS

The Enforcement and Emergency Response Program has designated the following as key 2009 Objectives: Some of these may be found in DTSC's Strategic Plan which is located at: http://www.dtsc.ca.gov/InformationResources/upload/ESP_REP_StrategicPlan.pdf

- By June 2010, increase compliance rates for a selected type of DTSC-regulated treatment/storage/disposal facility or hazardous waste transporters.
- Continue with the Lead in Jewelry enforcement efforts with an emphasis on jewelry items labeled as lead and nickel free and by 2010, achieve compliance with laws regarding lead-containing jewelry available to the public.
- Streamline EERP's inspection and investigation processes.
- By March 2009, develop, test, and finalize a plan for how to identify and reduce environmental harm in Environmental Justice communities, while at the same time building public trust in government.
- Edit and update all EERP policies.
- Public notice draft Financial Assurance regulations to address negative assurance language in the financial test, add additional requirements to the financial test, strengthen the requirements for the use of captive insurance, and clarify the length of the post closure.
- Imperial and Trinity County CUPAs will complete correction of remaining deficiencies from the 2007 Cal/EPA Triennial Evaluations.
- Release the "Wet-floor" Plating Operations report.
- Convert the ICE and OCI databases to databases maintained by EcoInteractive and make portions of this data available to the public via EnviroStor.
- Establish the dental amalgam team
- Continue partnering with the Toxics in Packaging Clearinghouse to receive complaints on packaging alleged to exceed California's regulatory standards.

IV. APPENDICES

A) Compliance Rate for Compliance Monitoring Actions

###

APPENDIX A

Compliance Rate for Compliance Monitoring Actions

State: California
 Program Area: SCD
 Time Period: 2008
 Is the time period the same for all data? Yes

Key  Blue highlights indicates text for you to enter
 Yellow indicates columns that are calculated and do not need to be changed

| column 1 | column 2 | column 3 | column 4 * | column 5 | column 6 | column 7 | column 8 * | column 9 | column 10 | column 11 * | column 12 |
|--|-------------------------------------|---------------------------------------|-----------------------------|---------------------|-------------------------------|---|-----------------------------------|---------------------------------|--|--|--|
| Sector, facility type or program focus | Compliance Monitoring Actions (CMA) | No. of facilities with CMAs conducted | Reason for CMA | Methodology for CMA | No. of facilities in category | Percent of facilities where CMAs were conducted | No. of facilities with violations | Total number areas of violation | Compliance rate (%) for facilities where CMAs were conducted | No. of facilities w/ significant violations (i.e. Class 1) | Percent of Facilities without Significant Non-compliance |
| Transporters | 66 | 65 | Regularly Scheduled/General | Unannounced | 964 | 6.74 | 23 | 38 | 64.62 | 11 | 83.08 |
| Refineries | 13 | 11 | Regularly Scheduled/General | Unannounced | 28 | 39.29 | 4 | 6 | 63.64 | 3 | 72.73 |
| Facilities requiring FR | 87 | 79 | Regularly Scheduled/General | Unannounced | 240 | 32.92 | 26 | 30 | 67.09 | 1 | 98.73 |
| Universal Waste Elect. | 88 | 86 | Regularly Scheduled/General | Unannounced | 134 | 64.18 | 59 | 75 | 31.40 | 14 | 83.72 |
| Commercial Off-Site | 42 | 34 | Regularly Scheduled/General | Unannounced | 50 | 68.00 | 25 | 62 | 26.47 | 7 | 79.41 |
| Used Oil Facilities | 22 | 19 | Regularly Scheduled/General | Unannounced | 39 | 48.72 | 13 | 31 | 31.58 | 3 | 84.21 |
| All Standardized Perm. | 15 | 11 | Regularly Scheduled/General | Unannounced | 32 | 34.38 | 8 | 33 | 27.27 | 6 | 45.45 |

* Use the standard definitions for these columns.

[Definitions are on the "notesanddefinitions" page of this workbook.](#)

For more information review the proposed "Enforcements/Compliance" data standards at --->

http://www.epa.gov/edsc/data_standards.htm

Reasons

- Complaint Driven
- Correction Check-up
- Critical Area/Sensitive Ecosys. (e.g. NH wellhead protection program)
- Geographic
- Regularly Scheduled/General
- Suspected Problem

Methodology

- Announced
- Random
- Statistically Valid
- Subset (default code, for those not random or statistically valid)
- Unannounced
- Whole Universe Sample
- other

###

UNIFIED PROGRAM

I. EXECUTIVE SUMMARY

California law consolidates several but not all hazardous material environmental programs in California into a single unified regulatory program referred to as the Unified Program. Under this Unified Program, the California Environmental Protection Agency (Cal/EPA) has delegated the bulk of inspection and enforcement activities for these programs to certified local agencies, called Certified Unified Program Agencies (CUPAs) under the supervision of the Secretary of Cal/EPA. A CUPA is a local agency, generally a local fire department, environmental health agency, or a designated state agency, that is responsible for the implementation of all the unified program elements in a coordinated and consistent manner within the local jurisdiction. Differing from other environmental areas, the Secretary of Cal/EPA is directly responsible for the implementation of the Unified Program. The Secretary certifies Unified Program Agencies, and has oversight of state agency partners who set program element standards and ensure program consistency.

The Unified Program consolidated the administration, permits, inspections, and enforcement activities of the following environmental and emergency management programs. The responsible state agencies for each program element are listed.

- Hazardous Materials Release Response Plans and Inventories (Business Plans) – California Emergency Management Agency (CAL EMA)
- California Accidental Release Prevention (CalARP) Program - (CAL EMA)
- Underground Storage Tank Program – State Water Resources Control Board (SWRCB)
- Aboveground Petroleum Storage Act (APSA) Program - (Cal/EPA)
- Hazardous Waste Generator and Onsite Hazardous Waste Treatment (tiered permitting) Programs – Department of Toxic Substances Control (DTSC)
- California Uniform Fire Code: Hazardous Material Management Plans and Hazardous Material Inventory Statements – Office of the State Fire Marshal (OSFM)

A CUPA must establish a program that consolidates, coordinates and makes consistent the administrative requirements, permits, inspection activities, enforcement activities, and program fees. A number of CUPAs also work with other local governments that implement one or more of the regulatory programs. These other local governments are referred to as Participating Agencies.

There are now 84 CUPAs and 36 Participating Agencies (PAs) for a total of 120 reporting entities. They are a well-organized group and provide effective management of the local elements of their oversight and regulatory responsibilities. (See <http://www.calcupa.net> for information on the California CUPA Forum).

The California CUPA Forum was formed by the CUPAs to represent all CUPAs or Participating Agencies with a single voice. The Cal-CUPA Forum strives to achieve statewide consistency, consolidation, and coordination in the implementation of the Unified Program. The Cal-CUPA Forum has established Technical Advisory Groups and Work Groups, to further aid the statewide management of the program..

The Unified Program Administration and Advisory Group commonly referred to as UPAAG was created to foster effective working partnerships between local, state and federal agencies. The purpose of the UPAAG is to provide a forum to gather, process, discuss, refine, and develop policy concerning implementation of the State-wide Unified Program. UPAAG serves at the request of the Secretary of Cal/EPA. In the

UPAAG, members of the CUPA Forum work with state and federal agencies on policy decisions, education and problem-solving. UPAAG has established Steering Committees and Work Groups to aid in this undertaking.

A) Major Program Highlights

Assembly Bill 2286 which requires Unified Program electronic reporting was entered into law in 2008. It requires the electronic submittal of Unified Program data from regulated businesses to CUPAs and the state by 2013. The web based reporting programs will allow the regulated community to submit data directly to their local Unified Program Agency (UPA) who will share it with Cal/EPA. Alternatively, multi-jurisdictional businesses will be able to exchange data with Cal/EPA who will in turn share the data with the UPA. Cal/EPA will serve as a virtual data warehouse and have the ability to exchange data with US EPA and create a public access website

In state fiscal year 2007/2008 (July 1, 2007 thru June 30, 2008), the CUPAs completed a total of 507 administrative enforcement orders (AEOs) against regulated entities or individuals that were in violation of environmental laws. This is significant because the statutory law that provides authority to CUPAs for taking such action was only enacted five years ago. Each year has seen a growth in the use of this enforcement tool, from less than 200 actions the first year to over 500 actions the last two consecutive years. Total fines collected in fiscal year 2008 rose to \$7.6 million, an increase of almost 50% from the \$5.4 million that was collected in 2007.

In November 2008, the Sacramento County Environmental Management Department (EMD) reached a settlement with Georgia-Pacific (GP) Chemicals for violations of the State Health and Safety Code relating to the management and treatment of hazardous waste at the company's Elk Grove plant. The agreement includes the payment of \$2.4M in penalties over a 2 year period. The settlement amount is in addition to the annual total for fiscal year 2007/2008 identified in Section II (B) of this chapter because it occurred outside of the fiscal year reporting timeframe, but occurred within the 2008 calendar year.

Implementation of Aboveground Petroleum Storage Act (APSA) commenced as the CUPAs started inventorying above ground storage tanks facilities. In 2008, Cal/EPA coordinated with California Specialized Training Institute and California Emergency Management Agency to develop training modules for certification of CUPA inspectors to meet aboveground stage tank inspection requirements. The APSA inspector certification training has been scheduled to occur and be completed during 2009.

B) What the Reported Data Tells Us

Overall, the CUPAs are generally well staffed by our local government partners and continue to have a high level of activity. Statewide there are about 875 full time CUPA staff working on the Unified Program, including over 500 full time field inspectors. This is the first time that the staffing level of the CUPAs has been measured. In context, prior to 1994, there were a few local governments under agreement with DTSC and limited state staff doing inspections for the hazardous waste program. Similar processes existed for USTs. The hazardous materials disclosure program was being overseen by local Administering Agencies, but no metrics were being gathered on the numbers of site inspections. Having 500 local field inspectors is a major increase and a stable presence for these local programs.

The implementation of an Administrative Enforcement Order Process for the Unified Program in the 2003 (AB 2481) added a formal administrative enforcement tool directly usable by CUPAs to their other referral based formal enforcement options. That means, instead of having to choose between issuing minor violations or convincing a local prosecutor to pursue a case, the CUPA can pursue its own administrative

cases. The number of Administrative Enforcement Orders has steadily risen as more CUPAs use this enforcement option. There are 73 CUPAs, about 87 percent, that have taken some type of formal enforcement action against persons and regulated entities. The use of formal enforcement by CUPAs is slowly growing as more CUPAs become more knowledgeable about these processes.

In 2008, local field inspectors conducted inspections of over 51,000 facilities, up by about 10 percent since 2000. They also pursued over 37,495 informal enforcement actions in 2008, up by 30 percent since 2000, and there were over 2,210 formal local enforcement actions (administrative, civil and/or criminal), almost doubling what was reported in 2007, resulting in the collection of \$7,623,316 in penalties as the result of those activities. Formal enforcement actions are actions that mandate compliance and initiate a civil, criminal, or administrative process which results in an enforceable agreement or order for what are determined to be the most serious types of environmental violations. Informal Enforcement is an action other than a formal enforcement action that notifies the regulated business of its non-compliance and establishes a date by which that non-compliance is to be corrected. Examples include letter, notices of violation and verbal warnings or notices, informal actions do not impose sanctions.

At the end of 2008, there remained 11 CUPAs (Imperial County, Mendocino County, Colusa County, Tehama County, Amador County, Lassen County, Inyo County, Mariposa County, Trinity County, Modoc County, and Alpine County), about 13 percent of the CUPAs, that historically have never used any type of formal enforcement against regulated businesses in the history of their program. These 11 CUPAs are mostly the smallest and most rural programs. These rural jurisdictions with small business bases continue to have major difficulty maintaining staffing levels sufficient to support the required program activities, including enforcement. There are 19 rural county-level CUPAs that have populations fewer than 70,000 and with business bases of fewer than 300 businesses. Most of these CUPAs' program issues relate to inadequate staffing driven by the lack of sufficient fee-based funding, and four of the five CUPAs with unsatisfactory evaluations were in this group. Of note is that of these four CUPAs with unsatisfactory programs at the end of 2008, none of them are receiving State subvention in any manner and one is still struggling with program start-up.

The federal government recently reviewed our state program in 2007 and found it to be strong. US EPA Region 9 completed the Federal Enforcement Evaluation of the RCRA Hazardous Waste Generator program in California in August 2007, also called the [State Review Framework](#). California is scheduled for its next State Review Framework audit to occur in 2010.

C) How the Program Will Use This Information

The Unified Program Administration and Advisory Group met for two days in mid-March 2008 to review and revise the Unified Program Strategic Plan using the information summarized above. The results of that meeting are included in this report in the form of the new prioritized "Ten Strategic Directions" that are included in Section II (B) (1) (e) of this chapter.

Data in 2007 showed that 13 CUPAs have never done formal enforcement, and another 12 CUPAs have done only one (1) or two (2) formal enforcements. Cal/EPA is looking to help those local CUPAs improve. In most cases, these CUPAs are smaller rural jurisdictions with a small number of businesses. However, there are a few medium CUPAs that may need technical training and others that might require more effort to educate local elected officials as to the importance of consistent local enforcement in their jurisdiction.

When the summary enforcement data was analyzed, it became apparent that some larger CUPAs are not taking any formal enforcement action in specific media programs where a significant number of violations were identified. CUPAs that have not taken formal enforcement action will be divided into 3 categories that will take into account their size and risks to the public. Depending on each CUPAs individual underlying reasons Cal/EPA has developed an action plan that will formally address the issue by following defined processes as outlined below:

1. Set meetings with program directors to identify barriers and actions to reduce them.
2. Work with CUPAs, potential mentors and the CUPA Forum Board to broker arrangements and training.
3. The Unified Program manager will report to the Assistant Secretary for Local Programs on a monthly basis on progress on this action plan

Another concern is that most analysis of the inspection data indicates that significant program activity is focused on compliant facilities and does not look at the facilities that operate illegally without government regulation. The Unified Program Administration and Advisory Group's Enforcement Steering Committee is undertaking a project to identify a potentially better model program that would use standardized indicators, other than just inspection activity and the results, to help focus local resources.

II. CAL/EPA UNIFIED PROGRAM'S ENFORCEMENT PROGRAM

A) Overview

The Unified Program's mission is to protect public health and safety, and to restore and enhance environmental quality, and sustain economic vitality through effective and efficient implementation of the hazardous material and waste programs within the Unified Program. The Unified Program's vision is that all participants of the program at the federal, state, and local level will continue to play an active role in policy oversight and implementation of the Unified Program. The vision includes that all Unified Program participants at the federal, state and local level will engage in a quality of communication, to enhance mutual trust, and more effective implementation.

The Unified Program takes its fundamental enforcement structure from the implementing statutes of the six unified program elements. However, the 84 CUPAs introduce a significant level of complexity. Not only is each CUPA's enforcement program governed by the federal and state statutes and regulations, but also by local ordinances and codes. Section II of this chapter focuses on the federal and state requirements as implemented in the Unified Program, not included are any reviews of the local ordinances that might augment these requirements.

Cal/EPA and the CUPAs, working together, finalized a Guidance Document for Inspections and Enforcement that covers the fundamentals of a complete and sound local inspection and enforcement program. The document is an update and expansion of a 2000 version and is intended to establish a broad framework for UPA's inspection and enforcement programs. In addition, this document has included many resources that were developed within the last few years and links to other training, guidance, protocols, and

tools regarding inspection and enforcement topics and concerns. The guidance document is published on the Cal/EPA Unified Program Inspection and Enforcement Resources web site. CUPAs determine or verify compliance utilizing a variety of tools such as inspections, investigations, service requests, complaints, record reviews, and/or surveillance.

Cal/EPA and the CUPAs also developed guidance on penalties and supplemental environmental programs that is published on the Cal/EPA Unified Program Inspection and Enforcement Resources web site (www.calepa.ca.gov/CUPA/Resources). CUPAs use an array of methods for enforcement response, both informal and formal, including but not limited to notices of violation, administrative enforcement orders, civil and criminal case referrals to the city or district attorney.

CUPA programs are evaluated every three years by Cal/EPA and authorized state agencies. In 2008, the Unified Program conducted program evaluations at 26 of the 84 CUPAs. The CUPA evaluation process consists of: 1) on-site records review for completeness and implementation of their Inspection and Enforcement Plans; 2) a review of facility enforcement and compliance files, field oversight inspections to evaluate their actual field inspection process; and 3) reviews of self-audit reports and annual summary report submissions. At the end of the evaluations which are generally a total of 2 days, a final report is prepared summarizing the findings of the evaluation, and the CUPA program receives a rating as either “meets or exceeds program standards,” “satisfactory, with some improvement needed,” or “unsatisfactory, with improvement needed.” Results of CUPA evaluations conducted in 2008 show that 4 met or exceeded program standards, 20 were considered satisfactory with improvements needed, and 2 were unsatisfactory with improvements needed. At the end of 2008, 5 of the 84 CUPAs were still rated as unsatisfactory with improvements needed.

California’s CUPA programs are in a unique position to provide for direct interface with a majority of California’s regulated businesses because of their local ties to the community. They have the advantage of being locally based in comparison to state and federal agencies, and according to surveys, businesses state they feel the most comfortable when dealing with local enforcement agencies for answers to their questions. A requirement of Unified Program’s Inspection and Enforcement Plan provides for public participation procedures that ensure receipt and consideration of comments from regulated businesses.

The Unified Program and the CUPA Forum Board annually evaluate deficiency trends from the data gathered from the CUPA Evaluation reports and use the information to develop and prioritize training courses that are offered at the Annual CUPA Conference. The Annual CUPA Conference is a four day event that has in attendance over 1,200 participants from local, state and federal agencies, businesses, industry representatives, and a growing number of college students who are sponsored through scholarships by the CUPA Forum Board. In addition, outstanding program implementations that are noted in the CUPA Evaluation Reports are used in training courses at the conference to provide examples of innovative projects or resources that individual programs have developed that address key program elements within the CUPA program.

In 2008, approximately half of the 30 CUPA evaluations that were conducted by the Unified Program identified outreach activities as part of their outstanding program implementations. Many local programs have expanded the use of their websites to provide information covering; biodiesel, lead in jewelry, hazard categorization, Aboveground Petroleum Storage Act, compliance at schools, plating shops, underground storage tank facilities and CalARP sites. As an example, the County of San Diego CUPA has a Children’s Community Outreach Program which offers presentations in the classroom or at science fairs to raise

awareness about careers in Environmental Health, to promote Pollution Prevention, and to promote proper managements of hazardous materials and waste. In 2008 they conducted over 30 outreach sessions that reached over 2000 students (elementary, middle and high school) through classroom presentations and table demos at science fairs.

Many CUPAs have started Green Business Programs that recognizes business that have implemented pollution prevention practices as well as meeting and/or exceeding environmental compliance standards. Generally, the businesses involved in the program are in automotive body and repair, printing, hospitals, or businesses that are specific to certain regions such as; wineries or metal plating shops. Businesses that participate in the program receive public recognition, marketing resources, and in some cases qualify for fee reductions for their CUPA fees. There are currently fourteen (14) counties in California with active Green Business Programs. The expansion of Green Business Programs is one of the six key initiatives outlined in Cal/EPA's Green Chemistry Initiative. In 2009, CAL/EPA will begin collecting data on outreach activities provided by CUPAs throughout the state in an effort to quantify the type and availability of outreach activities that are provided throughout the state.

B) Enforcement Program Components

1. Description: Cal/EPA requires that each of the 84 CUPAs develop and maintain an Inspection and Enforcement Plan, which allows each CUPA to operate within its own local enforcement program structure developed in accordance with the guidelines established by Cal/EPA. CUPAs must review the plan annually and update the plan as necessary. Evaluation of each CUPA's program has been measured against these guidelines for the past ten years. The recently published Guidance Document for Inspection and Enforcement includes the following preface, which more specifically describes the requirements.

“Unified Program Agencies (UPA's) are charged under the California Health and Safety Code (Health & Saf. Code) with responsibility for enforcement of the legal requirements of the six underlying environmental and public safety programs. To “...ensure coordinated, efficient, and effective enforcement ...” of these six programs (Health & Saf. Code, § 25404.2), each UPA is required to develop and implement a single unified inspection and enforcement program meeting the specific requirements in both statute and regulation.”

a. Basic responsibilities

The responsibilities are laid out in each program element's statute and regulation and more specifically in the Unified Program statutes and regulations. The Unified Program statute specifies:

- All aspects of the Unified Program related to the adoption and interpretation of statewide standards and requirements are the responsibility of the state agency which is charged with that responsibility under existing law.
- Those aspects of the Unified Program related to the application of statewide standards to particular facilities, including the issuance of Unified Program facility permits, the review of reports and plans, environmental assessment, compliance and correction, and the enforcement of those standards and requirements against particular facilities, shall be the responsibility of the CUPAS and PAs.

Specific Programs

- Hazardous Materials Release Response Plans and Inventories (Business Plans) - California Emergency Management Agency is responsible for providing technical assistance and evaluation of the Hazardous Material Release Response Plan (Business Plan).
- California Accidental Release Prevention (CalARP) Program - California Emergency Management Agency is responsible for providing technical assistance and evaluation of the California Accidental Release Response Plan Programs.
- Underground Storage Tank (UST) Program - The State Water Resources Control Board provides technical assistance and evaluation for the underground storage tank program in addition to handling the oversight and enforcement for the aboveground storage tank program.
- Aboveground Petroleum Storage Act (APSA) Program - The State Water Resources Control Board provides technical assistance and evaluation for the underground storage tank program in addition to handling the oversight and enforcement for the aboveground storage tank program.
- Hazardous Waste Generator (HWG) and Onsite Hazardous Waste Treatment (tiered permitting) Programs - The Department of Toxic Substances Control provides technical assistance and evaluation for the hazardous waste generator program including onsite treatment (tiered permitting).
- California Uniform Fire Code Program: Hazardous Material Management Plans and Hazardous Material Inventory Statements - The Office of the State Fire Marshal is responsible for ensuring the implementation of the Hazardous Material Management Plans and the Hazardous Material Inventory Statement Programs. These requirements are covered by the Business Plan Program.

b. Relationship to local counterparts

The Unified Program takes its fundamental enforcement structure from the implementing statutes of the six unified program elements. However, the 84 CUPAs introduce a significant level of complexity. Not only is each CUPA's enforcement program governed by the federal and state statutes and regulations but also by local ordinances and codes.

c. Size of the regulated "universe"

The number of regulated businesses reported by the CUPAs in fiscal year 2007/2008 by program element are:

- Total Regulated Businesses – 139,290
- Business Plan Program – 116, 871
- CalARP Program – 2,500
- Hazardous Waste Program – 89,158
- UST Program – 15,292
- APSA Program – 9,000

Note: the figures above other than the number of total regulated businesses include overlapping program elements, for example, businesses with more than one program element.

d. Relationship to Federal programs

The federal hazardous waste generator program is delegated to DTSC. Through the Unified Program, a large portion of program requirements are further delegated to the CUPAs. There are however, significant portions of this program that remain under DTSC's control such as hazardous waste Treatment, Storage and Disposal facilities, transportable treatment units, hazardous waste transporters, the Brownfields Cleanup programs, the schools sites program, and site cleanup. No other federal programs under the Unified Program are formally delegated to the state. The Unified Program statutes delegate the implementation of the six noted programs to the CUPAs.

1. Delegation/authorization status

In January 1994, a California law restructured six environmental programs in California into a single unified hazardous waste and hazardous materials regulatory program referred to as the Unified Program. Under the Unified Program, the California Environmental Protection Agency (Cal/EPA) has delegated the bulk of inspection and enforcement activities for these programs to local agencies, called Certified Unified Program Agencies (CUPAs)

2. Extent of Unified Program

The six programs implemented by the CUPA are significantly larger in scope than the related federal program. A short description of each follows.

- Hazardous Materials Release Response Plans and Inventories (Business Plans) – This program meets the requirements of the federal Emergency Planning and Community Right-To-Know Act (EPCRA) for disclosure of inventories of hazardous materials. The federal program uses a specific listing of hazardous substances and reporting quantities generally higher than those required by the state. Unlike the federal program, the state program uses characteristics to define a hazardous material. In addition, the state reporting quantities are much lower, which together result in a far larger universe of regulated substances and more regulated businesses.
- California Accidental Release Prevention (CalARP) Program - This program meets the requirements of the federal Risk Management and Prevention Program (RMPP) for manufacturing processes that involve the use of toxic and flammable chemicals on the federal list of Regulated Substances. The state program uses a different list of regulated substances that includes the federal list and more, resulting in a larger regulated business universe.
- Underground Storage Tank (UST) Program – The state program covers about the same universe of regulated businesses as the federal program. The state program has far more stringent requirements for tank monitoring, cleaning up leaking tanks, and requires more information be reported on tanks. All USTs are mandated to be inspected annually.
- Aboveground Petroleum Storage Act (APSA) Program – The state program covers about the same universe of regulated businesses as the federal program.
- Hazardous Waste Generator (HWG) and Onsite Hazardous Waste Treatment (Tiered Permitting) Programs – The state HWG program regulates far more hazardous waste generators than the federal program. The federal program accounts for about 18,000 of the 85,200 reported HWGs. There is no federal equivalent to the Tiered Permitting program. The Tiered Permitting program regulates about

6,000 hazardous waste generators that treat onsite small quantities of specific hazardous wastes using specific technologies.

- California Fire Code Program - The Office of the State fire Marshall is responsible for ensuring the implementation of the Hazardous Materials Management Plans and the Hazardous Material Inventory Statements by regulated businesses meet the California Fire Code requirements. This program ties in closely with the Business Plan Program.

3. Federal Grant funding /reporting

Environmental Data Exchange: Cal/EPA was awarded a US EPA grant to expand the use of an existing internal cross BDO Environmental Data Exchange Pilot project into a more robust search tool that will make the information from 18 environmental data bases available to CUPAs and other local governments. Project planning started in late 2008, and actual programming work is expected to be completed in late 2009. This unique project will support components of Cal/EPA's Enforcement Initiative Data Projects to ensure consistency of standards, ease of cross-organizational data exchange, and expand public access to environmental performance information, including information about U.S. EPA and state regulatory activities.

4. Comparison State mandated inspection frequencies and federal standards.

State inspection mandates require much more frequent inspections than their corresponding federal counterparts. A comparison of the two follows.

- Hazardous Materials Release Response Plans and Inventories (Business Plans) – There is no federal standard. The state standard is once every three years.
- California Accidental Release Prevention (CalARP) Program - There is no federal standard. The state standard is once every three years.
- Underground Storage Tank (UST) Program – The new federal standard is once every three years. The state standard is once every year.
- Aboveground Petroleum Storage Act (APSA) Program – There is no federal standard. The state standard is once every three years.
- Hazardous Waste Generator (HWG) and Onsite Hazardous Waste Treatment (Tiered Permitting) Programs – There is no federal standard or state standard. State guidelines suggest once every three years.

5. Federal oversight and evaluation

The federal government recently reviewed our state program and found it to be strong. US EPA Region 9 completed the Federal Enforcement Evaluation of the RCRA Hazardous Waste Generator program in California in August 2007, also called the [State Review Framework](#). The next State Review Framework evaluation is scheduled in 2010 for California.

e. Program goals/desired outcomes:

The CUPA Forum and the state agencies, working through the Unified Program Administrative and Advisory Group, developed in 2008 a Unified Program Strategic Plan to guide efforts over the next few

years (July 1, 2009 to June 30, 2013) to develop and improve the Unified Program. This Plan contains the 10 strategic directions listed below in rank order. These projects are as follows:

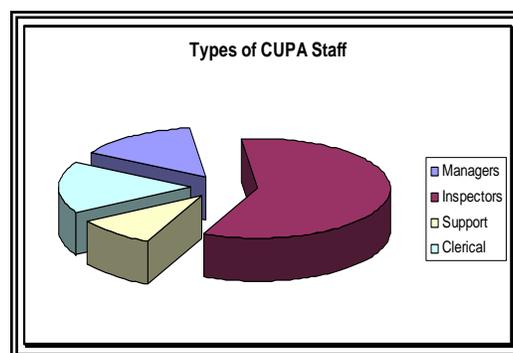
1. Fully implement electronic reporting systems and e-government. The benefits of electronic reporting systems to all Unified Program stakeholders are enormous and impact all aspects of the Unified Program.
2. Level the playing field - all CUPAs fully implemented; streamline compliance. Unified Program success can only be fully realized when a high level of compliance is achieved in all parts of the state.
3. Develop new and effective performance measures. Performance measures are critical to identifying areas of program success and opportunities for program improvement. They are also necessary to communicate program value to policy makers.
4. Improve training delivery. Training is a cornerstone of successful programs, and significant opportunity exists to improve this aspect of the Unified Program.
5. Plan for succession. Program demographics clearly demonstrate that Unified Program agencies are facing a significant amount of attrition in the near future due to retirements. Continued program success relies upon the availability of qualified and interested job applicants.
6. Eliminate single-wall underground storage tanks. Single walled tanks present the highest risk of all underground tanks. It is critical to take into account the challenges faced by tank owners, especially in rural low through put areas, who deal with the cost of tank system replacement.
7. Establish disaster strike teams. Recent incidents, such as the Southern California wildfires, have illustrated the need to have readily available, trained and equipped environmental resources to deal with hazardous materials issues during the recovery phase of these events.
8. Reduce hazardous materials releases. While reduction in releases is one of the primary goals of the Unified Program and its program elements, much of the feasible progress has already been made in this area.
9. Integrate green chemistry into the program. Green chemistry will certainly have a significant impact on the use of chemicals, but it is unclear at this time how it will affect the Unified Program.
10. Foster growing and/or emerging partnerships. Partnerships between Unified Program agencies and other stakeholders are a critical aspect of managing the Unified Program, and many partnerships are in place. As new opportunities arise, they will be explored.

2. Program Component metrics

a. Resources

There are 873 local staff in the 84 CUPAs and Participating Agencies broken down as follows.

- Enforcement Staff – There are 510 field inspectors.
- Supervisors and Management – There are 129 managers or supervisors that are not field staff.
- Technical Support Staff - There are 88 technical support staff that are not field staff.
- Non-Technical Support Staff (Clerical) – There are 146 non-technical support staff



b. Program Component Outputs

Data Characteristics

CUPAs conduct inspections all of the programs noted earlier in the report. The number of inspections mentioned in the executive summary is close to 51,000 routine inspections for all programs per year. Many of these inspections are multimedia and are combined for efficiency, resulting in a total of 34,320 facility inspections conducted in 2008.

Outputs measure activity and while not directly related to outcomes, the following outputs indicate an active and robust program.

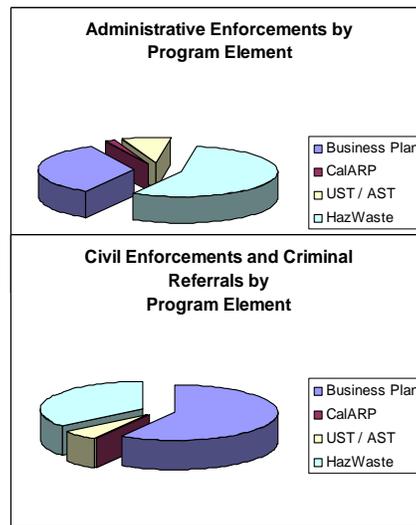
- Business Plan facility routine inspections and follow up inspections – 59,267
- CalARP facility routine inspections and follow up inspections – 1,149
- UST/AST facility routine inspections and follow up inspections – 8,140
- Hazardous Waste Generator routine and follow up inspections – 46, 602

Administrative enforcement actions – Total of 507 actions

- Business Plan facility - 155
- CalARP facility - 7
- UST/AST facility - 119
- Hazardous Waste Generator facility –226

Civil enforcement and Criminal Referrals

- Total of 709 actions
- Business Plan facility - 415
- CalARP facility - 0
- UST/AST facility - 42
- Hazardous Waste Generator facility – 252

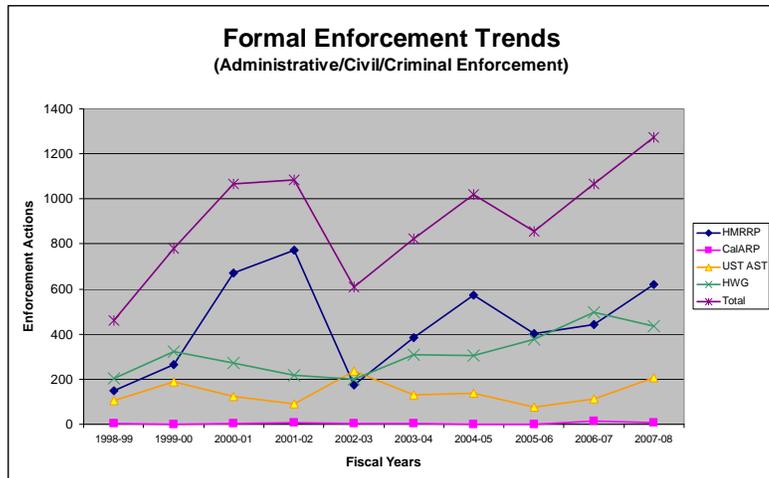


Output Trends

1. Formal Enforcement

The chart below shows a generally increasing trend in formal enforcements overall with a large spike in fiscal years 2000-01 and 2001-02. The spike was created by the enforcement specific to the HMRRP, or Business Plan, program. Additional research shows that a single CUPA may have reported very high levels of activity, in the high two hundreds, for these years in the Civil Enforcement category. This CUPA’s activity for civil enforcement dropped by a factor of ten in 2002-03 into the high twenties. Additionally, only three CUPAs were responsible for the vast majority of activity in this area for these spike reporting years, leading to a significant sensitivity to reporting errors. Finally, these spike reporting years were also the first two years of information gathered for administrative enforcement under the newly enacted Administrative Enforcement Order statutes. If the chart were to be adjusted for this anomaly, there is a generally continuing upward trend in the use of formal enforcement. In 2008, there is a significant rise in formal enforcement action due to a significant increase in the use of local AEO’s as

enforcement in the Business Plan program, in addition to increased efforts to identify farming facilities that have should be in the Business Plan Program.

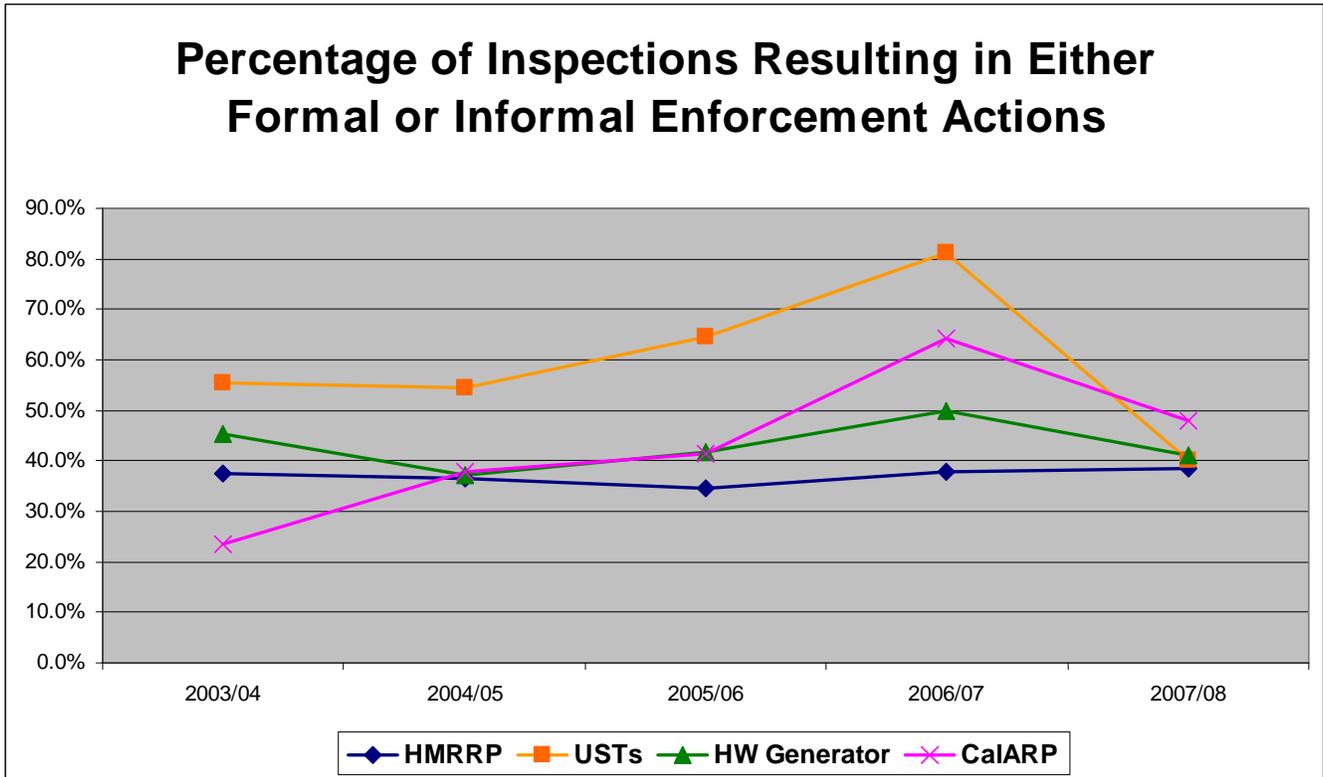


This increased trend in the use of formal enforcement actions by the CUPAs is consistent with the Unified Program goal to increase compliance through the increased use of appropriate enforcement actions.

2. Enforcement Actions as a Percentage of Inspections

The percentage of inspections which result in an enforcement action (informal and formal) shows an increasing trend over the past four years of reported activity in three of the four program elements. This generally shows that CUPAs are more active in finding violations, documenting those violations and taking some type of enforcement in the UST and CalARP program elements. The HW Generator program saw a drop in enforcement initially, but a gradual climb for the past three years. The HMRRP element has remained relatively flat over these years. Of note is the significantly larger percentage of enforcements for the UST program over past years that have recently normalized to a ratio similar to other program elements. All programs either flattened out or showed a slight decrease which may be a result of escalating enforcement numbers from the previous years.

Formal enforcement actions are actions that mandate compliance and initiate a civil, criminal, or administrative process which results in an enforceable agreement or order for what are determined to be the most serious types of environmental violations. Informal Enforcement is an action other than a formal enforcement action that notifies the regulated business of its non-compliance and establishes a date by which that non-compliance is to be corrected. Examples include a letter, notices of violation and verbal warnings or notices. Informal actions do not impose sanctions and are used to address minor violations.

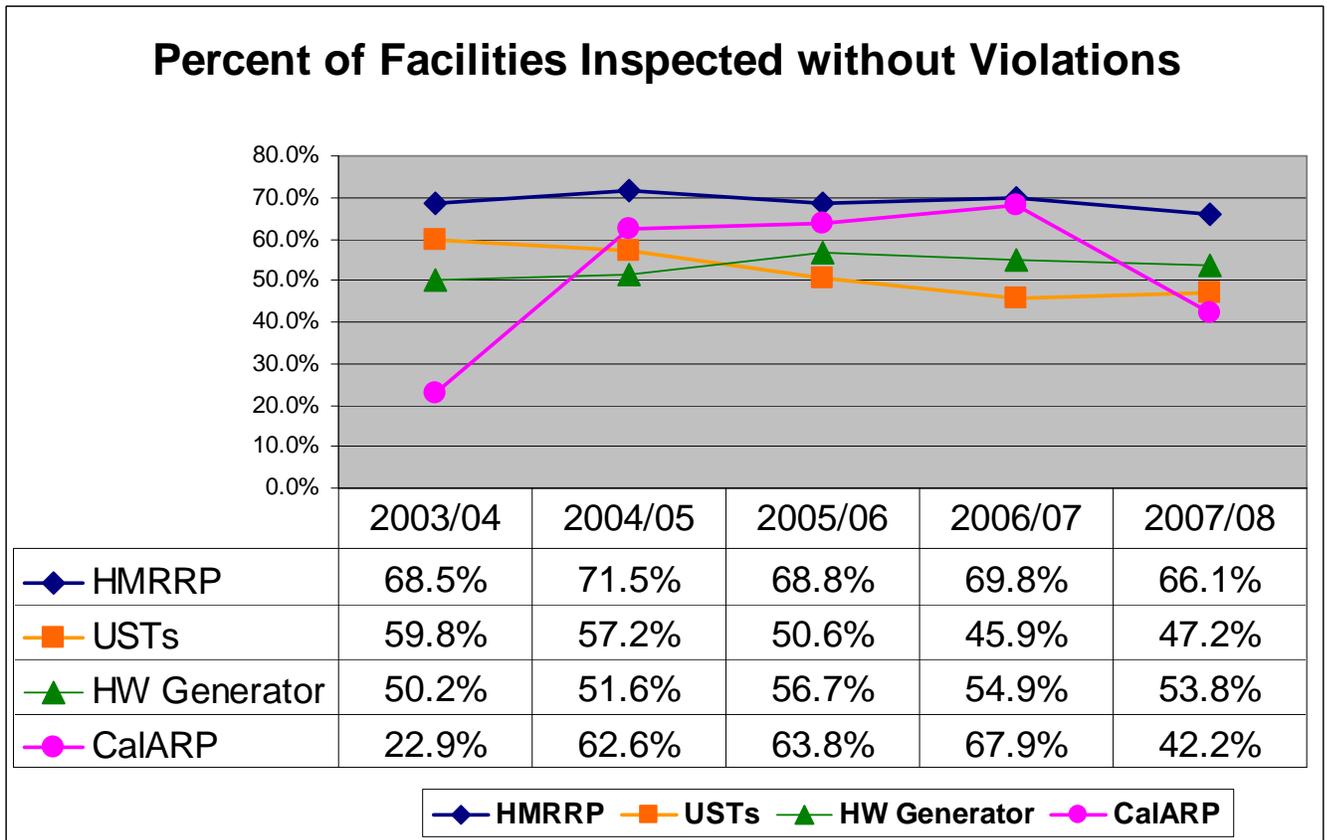


3. Facilities Inspected Without Violations

Cal/EPA collects information on the number of facilities with violations and the number of facilities that are inspected each fiscal year. One measure of program success could be the percent of facilities inspected that did not have any violations. These facilities would be deemed to be fully in compliance with all applicable laws. Since CUPAs track violations that are minor as well as serious violations, there is good reason to believe that this could be a reasonable indicator.

The compliance rate graph below shows that there has been a generally flat trend for the HMRRP and HW Generator programs. The initial rise in the CalARP is consistent with program implementation followed by a flattening. The exception to the flat trend is the UST program. That program shows a clear and significant

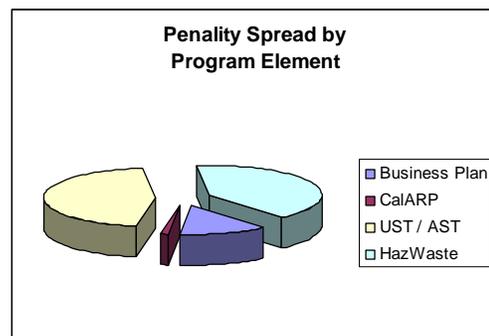
drop in the number of violations over the past four years. This may be related to the previous trend showing an increasing enforcement trend for USTs and be related to the following penalty information showing significantly higher penalties associated with USTs as well.



4. Penalty Information

The Unified Program has not historically accounted separately for the monetary value of supplemental environmental projects (SEPs). Starting with fiscal 2009/10, SEPs will be reported separately. Therefore, the total dollars reported below may contain some SEPs. The total of penalties assessed across all program elements for fiscal year 2007/08 was \$7,623,416. By program element they were:

- Business Plan facilities - \$975,199
- CalARP facilities - \$85,688
- UST/AST facilities – \$3,438,777
- Hazardous Waste Generator facilities - \$3,120,270



5. Major Cases for 2008

In November 2008, the Sacramento County CUPA reached an Administrative Enforcement Order (AEO) agreement with Georgia-Pacific (GP) Chemicals for violations of the State Health and Safety Code relating the management and treatment of hazardous waste at the company's Elk Grove plant. The agreement includes the payment of \$2.4M in penalties over a 2-year period. The penalty amount is believed to be the largest ever paid to a city or county in the nation as a result of an environmental administrative enforcement action.

March Global Port, the developer of former March Air Base property, and the facility's commercial fueling company have paid more than \$100,000 in fines to settle a criminal case brought against them last year for operating a hazardous jet-fueling system. The Riverside County's fire chief shut down the fuel station and called it "absolutely dangerous." Investigation by the Riverside County CUPA resulted in criminal charges being filed by the Riverside DA who obtained a \$100,000 fine and guilty plea to three misdemeanor charges on Global Port Fueling Services. The Global Port fuel-station manager pleaded guilty to two misdemeanor charges for failing to report a spill and improperly storing hazardous material and paid a \$16,300 fine.

The California Department of General Services paid \$93,350 to a Sacramento County CUPA after violating rules that govern the operation of its underground fuel storage tank at the Capitol. Sacramento County's environmental management department said it took the Department of General Services to Sacramento County Superior Court after a review by its inspectors found "multiple violations" of the state's health and safety code as well as other state regulations.

The state Attorney General and eleven county District Attorneys obtained a [civil judgment](#) against Jiffy Lube International, resolving allegations that some of its oil change centers did not follow precautions to protect the environment from oil and antifreeze spills. The company paid \$500,000 in civil penalties, costs and attorney's fees. District Attorneys prosecuting the cases included: Alameda, Los Angeles, Marin, Monterey, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, Solano, Ventura, and City Attorney of Los Angeles City.

c. Program Component Outcomes

The Unified Program Administration and Advisory Group is currently working on developing a set of outcome measures for the Unified Program. Since there are no outcome metrics defined across the Unified Program, this limits the state's ability to only measuring outputs, such as the number of facility inspections and the types of violations, rather than compliance improvement across the Unified Program. In 2009, Cal/EPA will restart meetings of its' the performance measures team/steering committee as an effort to develop enforcement program outcome measures that relate program activities of Cal/EPA, state agencies, and local partner's progress in achievement of program strategic plans.

Compliance Rate for Compliance Monitoring Actions*

| | | |
|------------|--|---|
| Key |  | Routine Site Inspection |
| |  | Undefined site inspections - they may be follow-up, complaints, or referrals. |

| Time Period | CUPA | | | | | | | |
|--|-------------------------------------|---------------------------------------|------------------------------------|-----------------------------------|----------------------------|--|---|---|
| | 2008 | | | | | | | |
| column1 | column 2 | column 3 | column 4 | column 5 * | column 6 | column 7 | column 8 * | column 9 |
| Sector, facility type or program focus | Compliance Monitoring Actions (CMA) | No. of facilities with CMAs conducted | No. of facilities in each category | No. of facilities with violations | total number of violations | compliance rate (%) for facilities where CMAs were conducted | No. of facilities w/ significant violations | Significant Violation Non-compliance rate (%) |
| HMRRP | Combined | 51384 | 116871 | 16242 | 18419 | 68.39 | 1973 | 3.84 |
| | Routine Site Inspections | 47884 | 116871 | 16242 | 18419 | 66.08 | 1973 | 4.12 |
| | Other | 11289 | 116871 | | | | | |
| CALARP | Combined | 1450 | 2500 | 535 | 444 | 63.10 | 9 | 0.62 |
| | Routine Site Inspections | 926 | 2500 | 371 | 444 | 59.94 | 9 | 0.97 |
| | Other | 524 | 524 | 164 | | 68.70 | | |
| UST | Combined | 16180 | 15292 | 7877 | 5967 | 51.32 | 250 | 1.55 |
| | Routine Site Inspections | 14929 | 15292 | 7877 | 5967 | 47.24 | 250 | 1.67 |
| | Other | 6619 | | | | | | 0.00 |
| HWG | Combined | 38833 | 85150 | 16610 | 14947 | 57.23 | 654 | 1.68 |
| | Routine Site Inspections | 37678 | 85150 | 16610 | 1497 | 55.92 | 654 | 1.74 |
| | Other | 10176 | | | | | | |
| LQG | Combined | 995 | 2152 | 430 | 317 | 56.78 | 16 | 1.61 |
| | Routine Site Inspections | 1031 | 2152 | 430 | 317 | 58.29 | 16 | 1.55 |
| | Other | 179 | | | | | | |
| HWT | Combined | 776 | 1599 | 305 | 187 | 60.70 | 12 | 1.55 |
| | Routine Site Inspections | 807 | 1599 | 305 | 187 | 62.21 | 12 | 1.49 |
| | Other | 295 | | | | | | 0.00 |
| HHW | Combined | 156 | 257 | 76 | 66 | 51.28 | 3 | 1.92 |
| | Routine Site Inspections | 136 | 257 | 76 | 66 | 44.12 | 3 | 2.21 |

*Compliance monitoring actions for this chart are defined by the actions described below:

- Routine Site Inspections are direct facility visits by an inspector for the purpose of gathering information to determine compliance, including direct observations of facility operations as part of a CUPAs planned inspection frequencies.
- Other inspections are defined as facility inspections that are either follow-up inspections, referrals from state or federal agencies, or as a follow-up investigation to a citizen complaint.

C) Enforcement Program Data Characteristics

The CUPAs' interpretation of reporting requirements continues to be unclear for a number of summary elements. Varied interpretations by the CUPAs lead to data quality issues with the summary data when all CUPA reports are compiled by Cal/EPA.

Cal/EPA is currently building an information exchange system that will ultimately make detailed activity data available to assist in evaluating program effectiveness, and in the development of meaningful performance measures. In 2008, the passage of AB 2286 (Unified Hazardous Waste and Hazardous Materials) provided resources to the Unified Program to develop an automated electronic reporting database for reporting of program information by businesses to the CUPAs, and to relay that information from CUPAs to the state. The three-year project will receive funds starting Fiscal Year 2009/10 to Fiscal Year 2012/13, and the online reporting shall occur in 2013. The added flexibility of the new reporting system will help significantly in providing the detailed data necessary to better measure Unified Program impacts.

D) Enforcement Program Limitations

Regulatory resources within the CUPAs are slow to keep pace with the overall concept of establishing and implementing a uniform and consistent enforcement model among all the programs within the Unified Program. Based upon the data, enforcement and compliance rates vary among CUPAs within California. Consistency among compliance rates and formal enforcement actions as linked to facility inspections, continue to be issues that the program will address.

1. What we do not know.
 - Data – The Unified Program currently does not have identified performance outcome indicators. It continues to use activity counts only.
 - Program – Effects enforcement has on public health and the environment is not measured. It is inferred that the programs are succeeding because of the activity outputs discussed above.
2. What is not being done?
 - CUPA Evaluation Deficiencies – While Cal/EPA is identifying specific deficiencies during the evaluation of CUPAs, it is not currently grouping the specific deficiencies so as to identify program deficiency trends.
 - CUPA Evaluation Outstanding Practices – During the evaluation of a CUPA Cal/EPA identifies what are considered unique and outstanding practices by a CUPA, however, Cal/EPA is not yet publishing the outstanding program portions of the evaluation to provide identified resources to other CUPAs.
 - CUPAs Not Doing Formal Enforcement – There are a number of CUPAs that are not using formal enforcement actions as a normal part of their program. As noted in Section I.B., these CUPAs are generally the smaller more rural CUPAs that have the smallest business densities, presenting less overall risk. When looking at program specific information, there is at least one large CUPA, and perhaps more, that are not doing any formal enforcement in three program elements. Cal/EPA has implemented a formal approach to address this issue, aside from formal correspondence and meetings.

E) Enforcement Program Progress on Key Initiatives

In March 2008, the Unified Program Administration and Advisory Group met to develop a revised strategic plan for the next three to five years, July 1, 2009 to June 30, 2013. In late May 2008, they met to finalize the strategic plan. Out of those meetings came eight specific prioritized strategic directions. They are listed here in priority order.

1. Fully implement an electronic reporting capability that provides for easy efficient data reporting, electronic field-based reporting support, access to data for analysis, access for planning and strategic direction development, and provides for public access.

Cal/EPA's project to move the business to government electronic reporting program called Unidocs to Cal/EPA's control was approved in 2008. The overall project plan is to use the resulting state system for business plan, inventory, underground storage tanks, and hazardous waste onsite treatment reporting, and to expand the existing UP Data System Inspection and Enforcement reporting capability to include all program elements. The state level application is now expected to become available in August 2009.

2. Work with the CUPAs so that CUPAs consistently implement all program elements with an evaluation rating of "meets program requirements."

The Unified Program Administration and Advisory Group established an Evaluation Workgroup comprised of state agency and CUPA representatives to address consistency concerns with the statewide evaluation process. In December 2008, the work group completed its analysis and presented its findings and recommendations to Unified Program Administration and Advisory Group. The recommendations were with recommended actions, which include:

- Recommend that Cal/EPA lead the development and implementation of a Unified Program Evaluation Training Program for all state evaluators.
- Recommend that Cal/EPA lead the development and promulgation of a Unified Program CUPA Evaluation Guidance Manual, which documents all aspects of the CUPA Evaluations.
- Recommend that each Unified Program State Agency be requested to review and analyze the specific program element requirements and standards for CUPA implementation, as identified by the workgroup, to document and confirm their applicability based on state law.
- Recommend that Cal/EPA, as the lead state agency, ensure that:
 - o "Observations/Recommendations" in the Evaluation Summary of Findings are outlined by functional categories established for CUPA performance standards (i.e., data management, reporting, inspections, enforcement, permitting, etc.).
 - o Examples of outstanding CUPA implementation should be documented in the "Examples of Outstanding CUPA Performance" section, these examples should reflect actions that are clearly above and beyond the minimum standards of performance measures expected of CUPAs.

3. Develop effective Performance Measures to measure the impact of the Unified Program on public health and the environment.

The Unified Program has developed a new set of enforcement program review criteria to be used by the evaluation teams to determine the scope and effectiveness of each CUPA's enforcement program. The criteria identify state and federal regulatory requirements of CUPA program elements, in addition to state and federal enforcement policies. The criterion is expected to be incorporated into the existing evaluation process in the beginning of April 2009. Its purpose is to identify key criteria and assure a consistent assessment from one evaluation to the next. The evaluation criteria will provide the Unified Program with specific enforcement metrics that are currently not available from the existing CUPA evaluation reports.

4. Improve training delivery by creating a variety of training venue alternatives that meet state and local staff development and program needs.

This project is currently in the planning phase by the UPAAG.

5. Plan for succession so as to provide continuity with a new diverse and knowledgeable work force.

The CUPA Forum developed a work group to identify short term and long term action items needed for succession planning at the local CUPA level. The work group is currently reviewing the below action items for appropriateness in the existing economic climate in addition to those which may have overlap with other strategic goals such as "Training Delivery."

Short Term (6-24 months):

- Knowledge Transfer
- Recruitment
- Coaching and Mentoring

Long Term (2-5 years)

- Statewide Outreach for Diversity
- Develop a Succession Planning Template
- Implement a Training Track for Supervisors and Managers

6. Eliminate single walled underground storage tanks to reduce releases and enhance environmental protection.

Cal/EPA and the SWRCB continue to work towards resolving issues that have delayed passage of legislation to eliminate single walled tanks.

7. Establish disaster strike teams to increase assets available for mutual aid.

This has been forwarded to the UPAAG Hazmat Technical Advisory Group for discussion; a formal policy recommendation has yet to be formalized to present to the CUPA Forum Board and Unified Program Administration and Advisory Group for approval.

8. Understand the impact of green chemistry on the local program and take advantage of emerging opportunities to integrate green chemistry into all programs.

The California Green Chemistry Initiative identifies six policy recommendations in the report that build upon present environmental protection laws, shift the focus from end-of-pipe cleanup to up-front design and prevention. Of the six policy recommendations made in the California Green Chemistry Initiative, only the "Expansion of Pollution Prevention" element references CUPA activities. Two activities specifically within the "Expansion of Pollution Prevention" that cross-over with the CUPA program are:

- Expansion of the statewide Green Business Programs
- Improvement of pollution prevention planning at CAL/ARP facilities

The Unified Program Agency has an active presence at Green Chemistry Workshops, in addition to discussions with DTSC to outline how CUPA programs can utilize their resources to complement the above Green Chemistry goals. Currently, many of the California Green Chemistry Initiative policy recommendations remain in the early planning phase at this time.

III. WHAT WE ARE GOING TO DO: FUTURE DIRECTIONS

- Develop a risk-based regulatory program plan that outlines actions to be included in a risk-based inspection and enforcement plan. The plan would allow local agencies to develop regulatory programs that most effectively meet the needs of their individual jurisdictions, rather than being strictly required to meet standardized inspection criteria. The UPA is interested in a cooperative effort between expansion of Green Chemistry's Green Business Programs and a risk-based compliance model as a component of this goal.
- Analyze legislation to sunset single walled underground storage tank systems. Single walled tank systems present a more significant environmental threat than do double walled systems. About 10% of the underground storage tank systems in California are partially or entirely single walled. The Unified Program Administration and Advisory Group continue to explore possible avenues for requiring the removal of single walled systems. It is a complex issue, especially in rural areas with few gas stations and small throughputs.
- California Environmental Reporting System - Cal/EPA's project to move the Unidocs system to the state began in earnest in December 2008. The overall project plan is to use the resulting state system for business plan, inventory, USTs, and HW onsite treatment reporting and to expand the existing UP Data System Inspection and Enforcement reporting capability to include all program elements. The state level application is now expected to become available in August 2009. Additionally the development of the California Environmental Reporting System is being coordinated with Cal/EPA's Enforcement Initiative Data Projects to allow the exchange of environmental databases between all Cal/EPA environmental programs.

- Unified Program Data System - There are 25 CUPAs using the web based hazardous waste Large Quantity Generator reporting system to some degree and Cal/EPA continues to enter the paper Large Quantity Generator reports into the system for the other CUPAs. We are now working on expanding the Unified Program Data System to include underground storage tank, and business plan inspections and enforcement. The design work will be completed in winter of 2009, and modifying the application will happen later summer 2010.
- Identify and secure other funding sources, such as US EPA grants.
- Resolve electronic signature issues, both for inspection reports and submission of electronic documents.

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DEPARTMENT OF PESTICIDE REGULATION

I. EXECUTIVE SUMMARY

The California Department of Pesticide Regulation's (DPR's) mission is to protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. Since its creation in 1991, DPR has made significant strides to:

- Enhance worker and environmental protections
- Strengthen uniformity of enforcement in the field while maintaining local discretion and flexibility
- Streamline the regulatory process to encourage registration of safer materials
- Encourage the development and use of reduced-risk pest management practices
- Use existing and new statutory requirements to ensure the completion of an up-to-date toxicological database for all pesticide active ingredients

DPR's regulatory control begins with the evaluation and registration of pesticide products and continues through statewide licensing of commercial pesticide applicators, dealers and consultants; environmental monitoring; residue testing of fresh produce; and local enforcement by County Agricultural Commissioners (CACs).

About 340 DPR employees, including scientists from many disciplines, carry out California's pesticide regulatory program. In addition, approximately 280 full-time biologists dedicated to pesticide use enforcement work for CACs who are responsible for local pesticide enforcement.

DPR's annual budget is approximately \$73 million of which about \$19 million funds local pesticide enforcement activities in the counties.

Note: Current-year statistics in this report are preliminary in nature due to lag times in reporting and compiling data. The prior year statistics have been updated and therefore may not match the statistics as reported in previous editions of this report.

Program Structure

DPR uses a "function-based" approach to better manage the performance and costs of its programs. Enforcement of statutory and regulatory requirements within this framework allows DPR to determine compliance with these requirements and to assess their effectiveness relative to costs, workload outputs, and impacts on human health and the environment. Elements of DPR's planning and management system include:

- Cal/EPA Strategic Vision that sets forth the Agency's vision and mission, core values, and goals and objectives.
- DPR's Strategic Plan that provides department-specific strategies, goals and objectives.
- DPR's Operational Plan that defines goals and activities that it plans to carry out during the fiscal year.
- Performance measures that include DPR's outputs and environmental indicators. They are used to assess the effectiveness of DPR's program.
- Function-based accounting that summarizes spending by function category.

Key DPR workload outputs are compiled annually by fiscal year to track the number of products and services that DPR produces, i.e., the number of licenses issued or groundwater samples collected. These outputs are categorized by DPR’s program functions. The above-referenced materials are available on DPR’s website at www.cdpr.ca.gov/dept/planning/performance/index.htm.

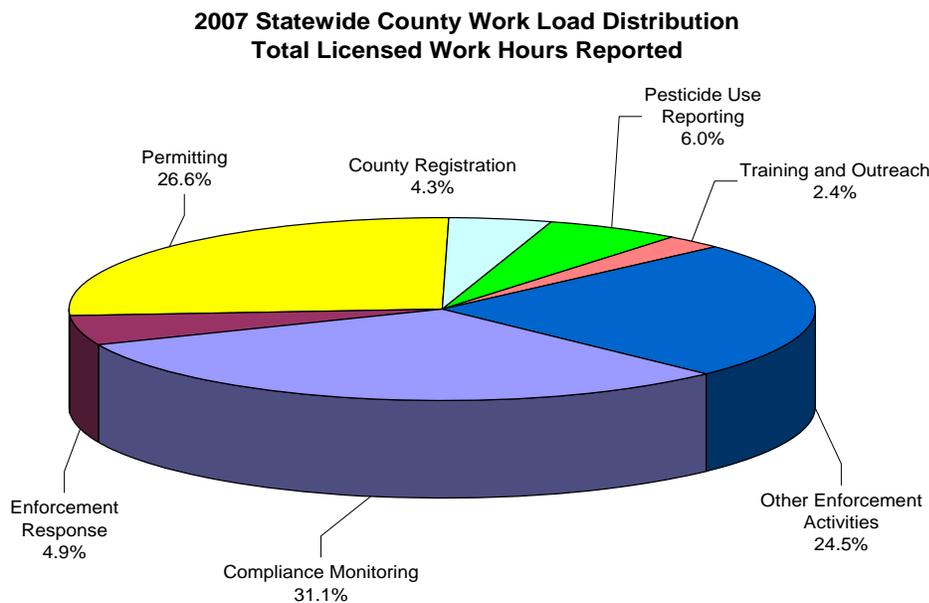
Since 2002, DPR has implemented several new programs to strengthen its enforcement programs to better protect California’s workers and the public, ensure a safe food supply, and a healthy environment. At the same time, these programs strive to create an environment in which agriculture can be sustained for future generations. Our constituents (growers, pesticide applicators, worker and environmental advocacy groups, etc.) ask for and expect fair, consistent, and timely enforcement of pesticide use laws and regulations by DPR and the CACs.

When taken together, the following new programs and approach to program planning and evaluation will lead to improved compliance with pesticide and environmental laws and regulations.

DPR and the CACs spent considerable time evaluating their programs and identifying areas for improvement. In late 2004, DPR developed program guidance identifying three core program priorities to better target county enforcement efforts:

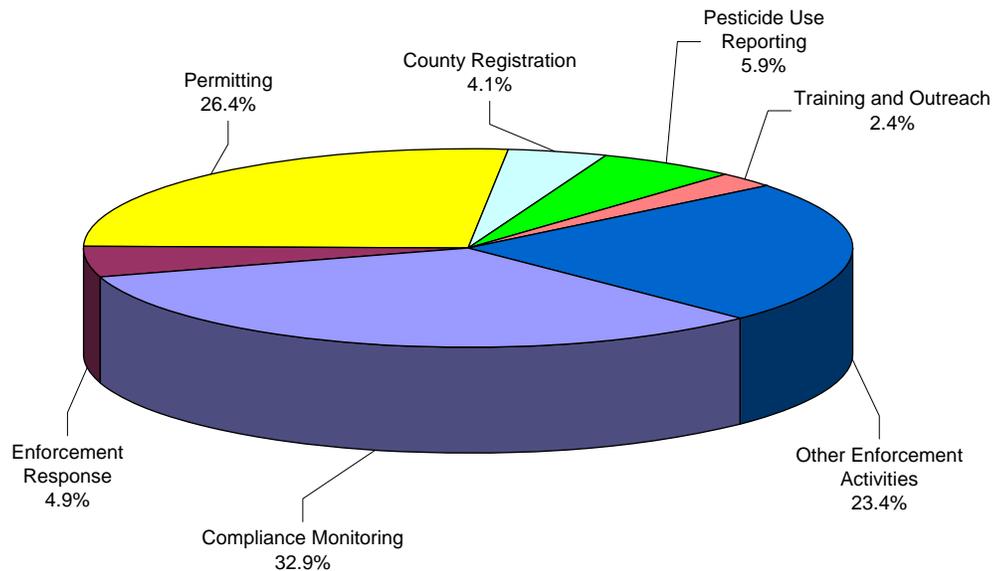
- Restricted material permitting
- Compliance monitoring through inspections and investigations
- Enforcement response to violations

The following charts summarize distribution of CAC work hours by licensed/professional staff in 2007 and 2008. “Other enforcement activities” includes general management and supervisory time across all of the workload categories. Conservatively, inclusive of management and supervision, the CACs consistently expend 75 percent of their work hours in the three core enforcement program areas.



Source: 2007 Calendar Year Query of the Pesticide Regulatory Activities Monthly Report Database (5/09)

**2008 Statewide County Work Load Distribution
Total Licensed Work Hours Reported**



Source: 2008 Calendar Year Query of the Pesticide Regulatory Activities Monthly Report Database (5/09)

In 2002, Assembly Bill (AB) 947 became law augmenting civil penalty authority granted to DPR and the CACs by significantly increasing the fine levels from \$1,000 to \$5,000 per violation. In 2005, Senate Bill (SB) 391 became law allowing DPR and the CACs to levy a penalty for each person exposed as a result of a violation.

Also in 2005, DPR and the CACs jointly developed the Enforcement Response Policy that laid out a standardized approach to classifying violations and taking appropriate enforcement actions. This policy was formally adopted into regulations in late 2006 and is more fully described below. DPR maintains two databases that are used to track (1) county and DPR inspections and compliance rates, and (2) final enforcement actions taken by the counties.

California's pesticide regulatory program is considered by many to be a model program. DPR's comprehensive system used to track pesticide use has been at the forefront both nationally and internationally. Since 1990, growers and applicators must report all agricultural, structural, landscape maintenance, and other nonagricultural pest control applications to the CACs. DPR compiles and makes available statewide pesticide use data on an annual basis. More information about this unique program is available on DPR's website at <http://www.cdpr.ca.gov/docs/pur/purmain.htm>.

DPR's Worker Health and Safety Branch has been collecting and analyzing pesticide illness data for decades. In the pesticide use enforcement arena, DPR uses inspection reports to document compliance rates and the CACs submit annual reports to DPR that document their workload activities and hours, and enforcement. DPR's Environmental Monitoring Branch collects and analyzes the results of air and ground water monitoring projects.

As noted in the 2007 report, DPR has not integrated and analyzed data from these various sources to fully assess the impacts of its programs to improve environmental and human health. During 2008, DPR's Enforcement Branch continued its efforts to create a multi-disciplinary team with highly specialized analytical, statistical, and research skills in the areas of environmental and human health related to the impacts of pesticide use. The Enforcement Branch focused on developing and training staff in sound scientific principals, investigative procedures and techniques, and regulatory compliance. DPR, working with the CACs and the United States Environmental Protection Agency (USEPA), met to continue discussions and identify program improvements critical to the development of an integrated approach to analyzing compliance.

A) 2008 Major Program Highlights

Food Safety: In September 2008, a new law began requiring country-of-origin labels on all fresh produce commercially sold in the United States. California growers strongly supported the national law since they believe our state's strict pesticide laws encourage more consumer confidence.

DPR has long been a major player in food safety issues. Our fresh produce residue monitoring program made national headlines in 2007 when we detected illegal residues of aldicarb sulfoxide in ginger imported from China. DPR findings led the U.S. Food and Drug Administration to issue a national recall and spotlighted pesticide residue issues on produce imports.

DPR monitoring is designed to assure that all fresh produce – foreign or domestic – do not contain illegal pesticide residues. In 2007, almost 99 percent of all samples had no illegal residues. When certain commodities from particular countries have shown a higher proportion of residue problems, we subject them to a higher level of scrutiny. For example, such scrutiny resulted in findings of illegal pesticides on Guatemalan snow peas in 2006 and 2007, and DPR acted to take contaminated lots of snow peas off the market.

The Guatemalan problem provided an opportunity for a pro-active, long-term solution that could apply to other recurring residue detections. Late in 2008, DPR's Enforcement Branch contacted a federally supported research team, an agency within the United Nations, and a Guatemalan export association to explain our concerns about snow pea residues. This group helped identify the originating farms and encouraged Guatemalan officials to work with their growers on alternatives that could benefit both their environment and economy. DPR believes such a cooperative approach could serve everyone's best interests – from faraway fieldworkers to California consumers.

Enforcement Response Regulations (ERR): Consistent statewide enforcement of California's environmental laws is paramount for the protection of California's people, property, and the environment. However, local program administration naturally can result in variable enforcement decisions and responses. After finding inconsistent enforcement of environmental protection laws and regulations by CACs, DPR and the California Agricultural Commissioners and Sealers Association (CACASA) worked together to develop and adopt as guidelines a 2005 Enforcement Response Policy.

In 2006, Governor Schwarzenegger directed the Department to promulgate the policy into regulation. The ERR strengthens environmental enforcement and improves statewide consistency of enforcement responses used by CACs when taking action for pesticide violations. The ERR creates a violation classification system and enforcement response procedure that substantially contribute to uniform enforcement responses by CACs across the state.. The regulations became effective in November 2006 with full implementation during 2007.

In 2008, DPR began internal discussions with a subcommittee of the CACs and the Office of Environmental Health Hazard Assessment to improve the regulations related to CAC enforcement response and civil penalty actions by commissioners (Title 3, California Code of Regulations, sections 6128 and 6130). DPR does not anticipate placing regulatory amendments in this area on its rulemaking calendar before 2011 because of other higher priority, court-ordered, regulation packages in the queue. However, DPR plans public workshops for 2009 to solicit informal input from other stakeholders including growers, applicators, and worker and environmental advocacy organizations. The purpose of the workshops is to bring all perspectives to the table so that all parties gain a better understanding of the issues and concerns.

Volatile Organic Compounds (VOC) and Field Fumigants: New regulations to limit VOC emissions from pesticides took effect on January 25, 2008. The regulations reduce VOC emissions in five non-attainment areas (NAAs) that do not meet federal air quality standards for ozone by limiting fumigant application methods, require a cap and allowance system in the Ventura NAA to force emission reductions, and set up a back-up allowance system in the other areas triggered if application restrictions do not result in targeted reductions. Growers in the Ventura (NAA) submitted requests to apply VOC pesticides to the Ventura CAC in 2008 and 2009 that were forwarded to DPR staff scientists who reviewed and analyzed those requests and issued proportionately reduced allowances to meet DPR's obligations in the State Implementation Plan adopted pursuant to the Federal Clean Air Act. The Ventura CAC, working with their growers, tracked, and monitored the use of lower-emitting application methods and practices required by the regulations. In 2008, this VOC allowance process was adjusted mid-way through the year when DPR prevailed in an appeal of a court decision and was allowed to proceed with a five-year phase-in to reach the 20% reduction in VOC use in the Ventura NAA. This approach avoids economic disruption by allowing the reduction goal in Ventura to be reached gradually over four years.

During 2008, growers in all five NAAs (Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura) were required by the regulations to report the specific field fumigation method, along with the pounds of fumigant used, the specific field location, and date of application directly to DPR. This information, along with other pesticide use data for non-fumigant VOC pesticide applications, allows DPR to compute the total 2008 emissions for each area. The results determine if a cap and allowance system is necessary for the specific NAA.

More detailed information about DPR's program and ongoing efforts to improve air quality in the state by controlling the use of smog-producing pesticides is available on the DPR website at <http://www.cdpr.ca.gov/docs/emon/airinit/airmenu.htm>.

Pesticide Use Enforcement Program Standards Compendium: In the past, DPR exercised its mandate over pesticide use enforcement through policy directives, interpretations, recommendations, and expectations generally communicated in "CAC Enforcement Letters." As part of DPR's continuous evaluation of its program, DPR has determined that this is not a user-friendly or efficient system for providing guidance to the CACs. The Department is compiling and updating relevant pesticide use enforcement directives, policies, interpretations, recommendations, and expectations into a set of eight subject matter volumes called the Pesticide Use Enforcement Program Standards Compendium. The Compendium has become the pesticide use enforcement program standard operating procedure. The Compendium, when fully completed, will be the program standards against which county programs are evaluated. The contents of each volume supersede any position or direction on that subject contained in previous CAC Letters or earlier manuals and can be supplemented and updated in the future. This is a complex on-going project drawing on all the Department's program areas.

During 2008, DPR completed and released Volume 4 (Inspection Procedures). The Enforcement Branch developed and rolled out training to CACs and their field staff in late 2008 at 11 locations statewide. As noted elsewhere in this report, the CACs conduct approximately 18,000-20,000 inspections annually. These inspections are the major tool for measuring compliance with pesticide laws and regulations. The primary function of the Inspection Procedures manual and training is to educate both DPR and county staff on how to evaluate agricultural practices in the field for compliance in a thorough, consistent, and fair manner on a statewide basis.

Additionally, progress has been made on Volume 6 (Enforcement Guidelines), Volume 7 (Hearings Sourcebook), and Volume 8 (Guidelines for Interpreting Pesticide Laws, Regulations, and Labeling). DPR anticipates completion of these volumes during 2009.

B) What the Reported Data Tells Us

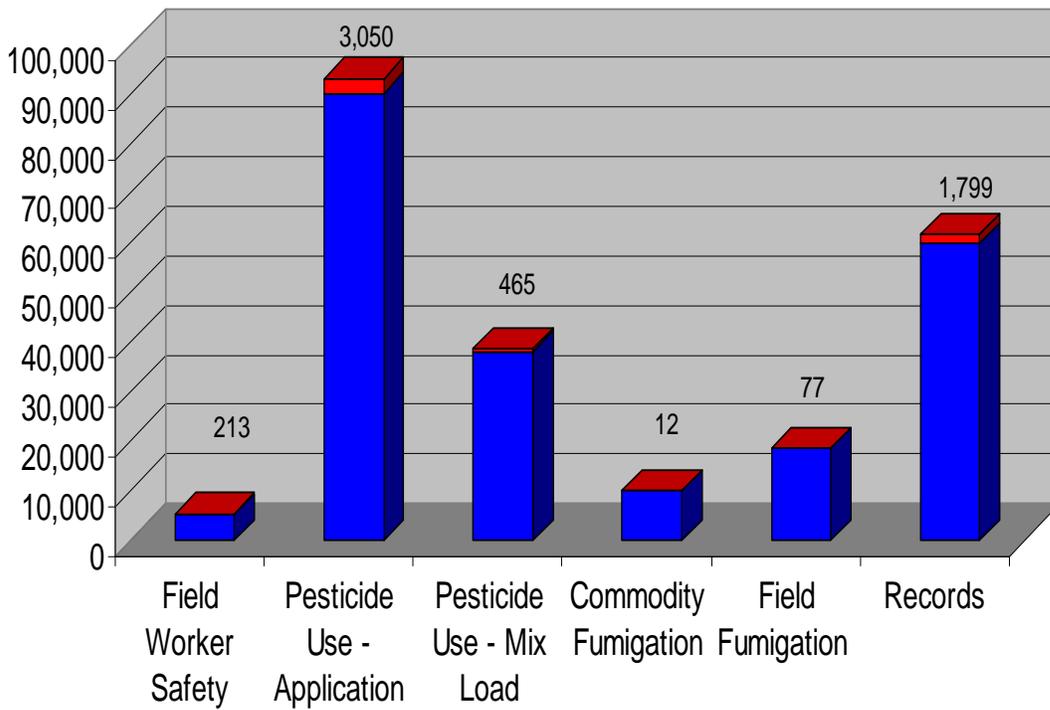
DPR collects significant amounts of data on both its activities, as well as those of the CACs and their staffs. The two enforcement related data sources include:

The Inspection Tracking database collects information on approximately 18,000 inspections conducted by the counties in both agricultural and non-agricultural (including structural) pesticide use settings and compliance rates with their respective laws and regulations. Information in this database includes the number and type of inspections, the sections of laws and regulations that were the subject of the inspections, and the compliance rates for each item.

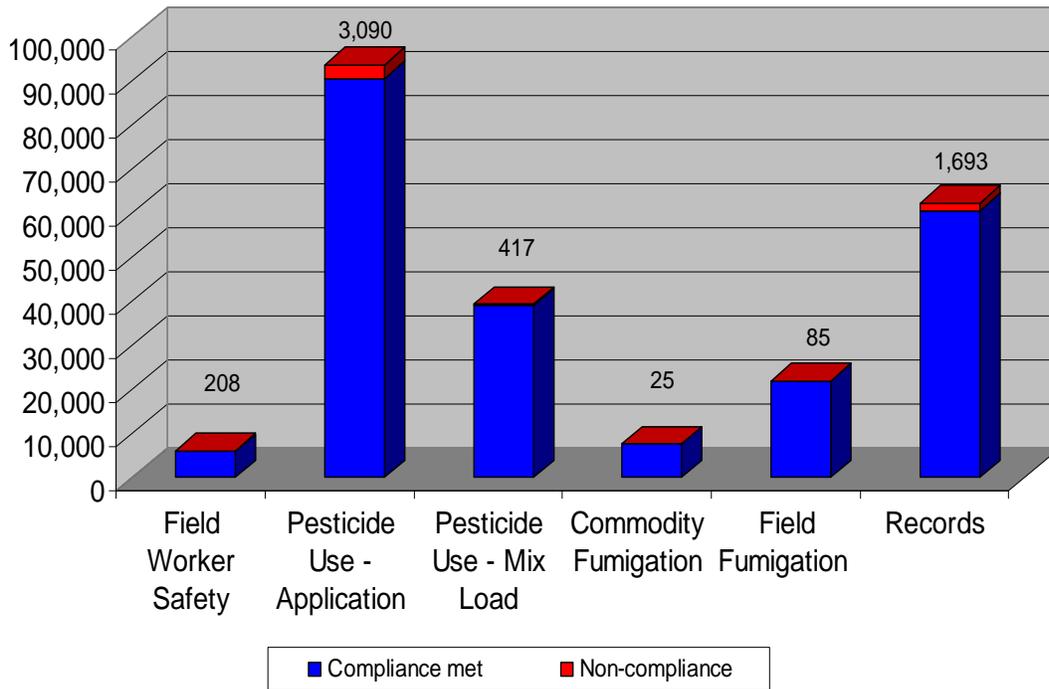
The following charts display a graphic representation of compliance rates found during agricultural and structural pesticide use inspections conducted by the CACs in 2007 and 2008. "Elements evaluated" represents the number of times a particular category of mandated human health and environmental statute or regulation is inspected and evaluated for compliance with California laws and regulations. The numbers above the blue bars represent violations found.

The most common violations across all agricultural inspections and all structural inspections are also summarized for 2007 and 2008.

2007 Agricultural Inspections - Total Elements Evaluated For Compliance



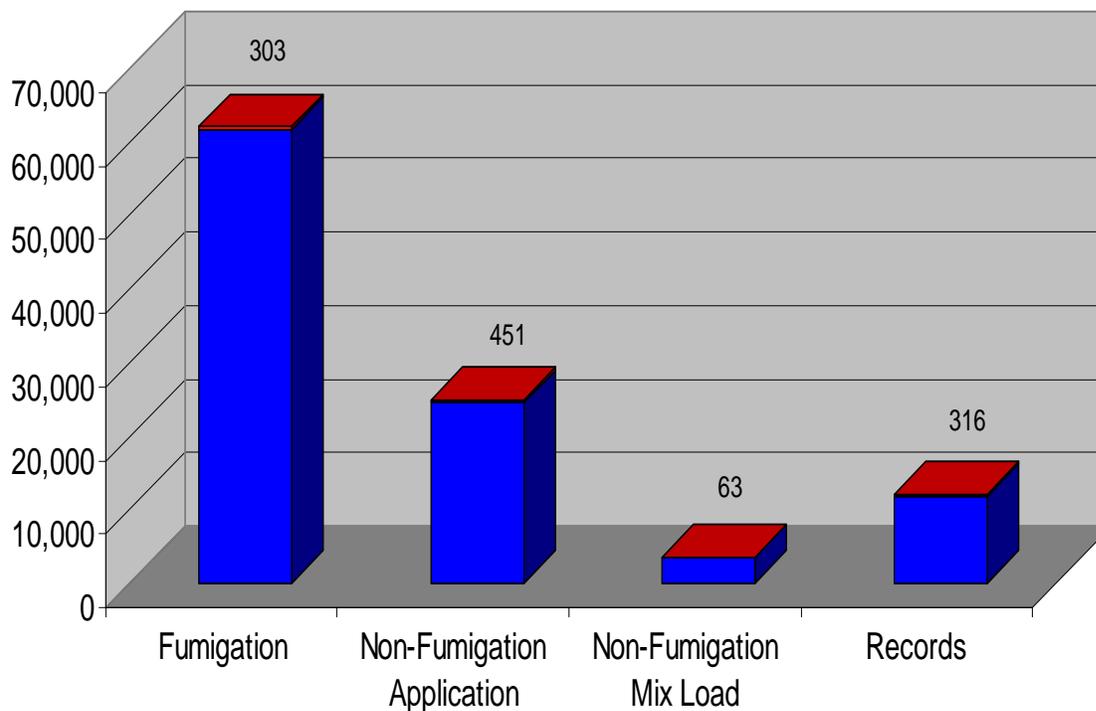
2008 Agricultural Inspections – Total Elements Evaluated For Compliance



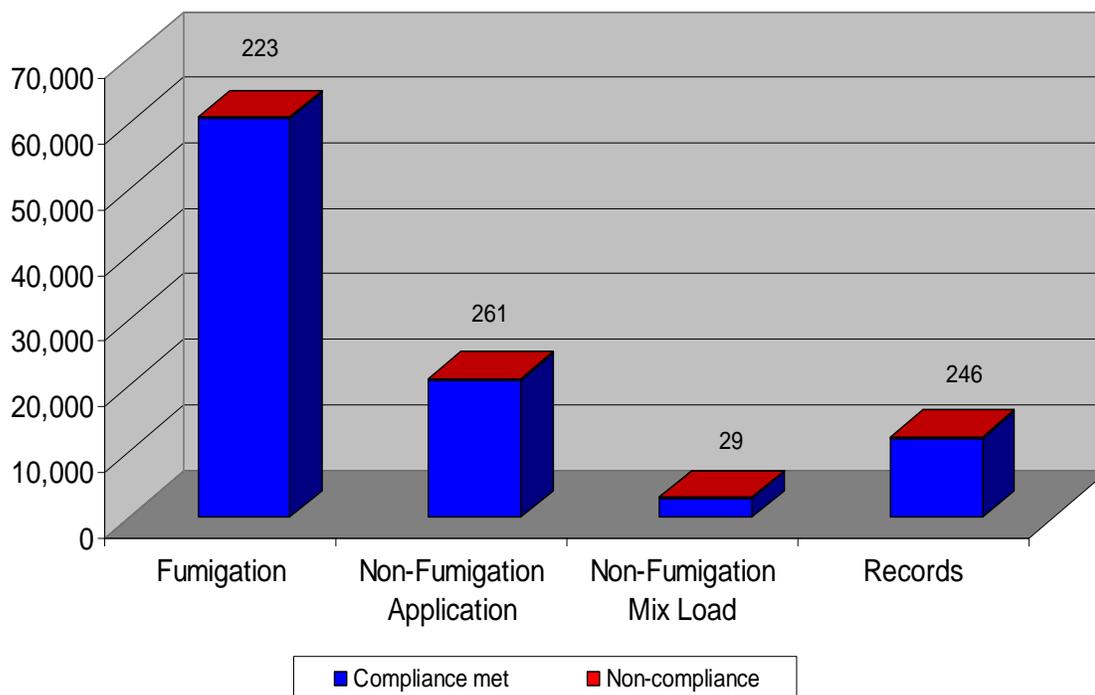
Most Common Violations – All Agricultural Inspections

| Elements Evaluated | Number of Violations | |
|-------------------------------------|----------------------|------|
| | 2007 | 2008 |
| Personal Protective Equipment | 688 | 662 |
| Handler Training | 605 | 617 |
| Labeling - Permit Conditions | 587 | 631 |
| Emergency Medical Care/Handler | 458 | 430 |
| Handler Decontamination Facilities | 357 | 318 |
| PCB/Equip Registered | 326 | 349 |
| Service Container Labeling | 292 | 300 |
| Availability of Labeling | 254 | 280 |
| Hazard Communication - Fieldworkers | 153 | 155 |
| Equipment Identification | 144 | 132 |
| Hazard Communication for Handlers | 134 | 124 |
| Pesticide Use Reports | 115 | 110 |
| Pesticide Use Records | 108 | 125 |
| Container Requirements | 103 | 113 |

2007 Structural Inspections – Total Elements Evaluated For Compliance



2008 Structural Inspections – Total Elements Evaluated For Compliance



Most Common Violations – All Structural Inspections

| Elements Evaluated | Number of Violations | |
|-----------------------------------|----------------------|------|
| | 2007 | 2008 |
| Personal Protective Equipment | 198 | 123 |
| Labeling - Permit Conditions | 174 | 95 |
| Emergency Medical Care/Handler | 108 | 63 |
| Service Container Labeling | 83 | 61 |
| Handler Training | 80 | 63 |
| Written Notice to Occupant | 47 | 60 |
| General Fumigation Safe-Use | 44 | 29 |
| Availability of Labeling | 35 | 19 |
| General Standards of Care | 34 | 29 |
| Container Control | 32 | 10 |
| Annual Notification Submitted | 27 | 32 |
| Hazard Communication for Handlers | 22 | 13 |
| Standards & Records | 19 | 28 |
| Pesticide Use Reports | 19 | 13 |
| Fumigation of Enclosed Spaces | 15 | 10 |

The Enforcement tracking system collects information on the enforcement actions taken by the counties and includes the sections of laws and regulations violated and the fine amounts assessed. Information in this database includes the person or firm cited, date of violation(s), section(s) violated, type of enforcement action taken, pesticide(s) involved, date of action, date case closed, proposed fine(s), and final fine(s). This database is useful in determining repeat violators within a county and to determine if there are regional patterns for specific individuals or businesses.

C) How DPR Uses This Information

Currently, the data provide basic information used in the development and assessment of (a) DPR's annual work plan and reports to USEPA and (b) county pesticide enforcement work plans and evaluations. The Enforcement Branch determines and sets performance goals in its operational planning process based on an analysis of the previous year's data. Evaluation of data may be used to modify or change performance goals for both DPR and the counties.

The county pesticide regulatory activity workload data are used as one basis for funding a portion of county pesticide activities. (Other funding sources for county pesticide enforcement programs include county general funds and unclaimed gas tax.) The data are also used to measure a county's annual performance (i.e., did it meet the workload goals stated in its annual work plan).

Managers and staff at DPR review inspection and enforcement data to assess the strengths and weaknesses of our program. The data measure the effectiveness of new policies and/or procedures. A recent example is the new enforcement response regulations. DPR and the CACs are actively reviewing enforcement metrics, inspection data, and actions taken to gauge the effectiveness of the regulations to establish a higher uniform level of enforcement and impact on compliance and recidivism. This review will also assess the impact of the regulations on county workload. It is anticipated that changes to one or more of the above data systems will be necessary to capture changing workload and performance measures.

During the second quarter of 2008, DPR provided USEPA with four years of inspection data including a summary of the numbers and types of non-compliances found and the enforcement actions taken during the same period. USEPA is undertaking an analysis of this data to begin an initial assessment of the impacts and effectiveness of the enforcement response regulations relating to worker protection.

The Enforcement Branch collects and analyzes data available through DPR and other sources for its suitability and restrictions for developing enforcement metrics on a statewide, regional, and local basis. Information and analyses are shared throughout DPR to address worker protection, integrated pest management, water quality, air quality (contributions to smog and ozone depletion), and endangered species protection. In conjunction with DPR management, the Enforcement Branch:

- identifies activities with high levels of non-compliance that pose a high risk of causing environmental harm
- identifies activities or entities with the highest incidences of non-compliances
- identifies chronic or recalcitrant violators (local, regional or statewide)
- identifies local, regional and statewide violation patterns
- identifies correlations between areas of greatest non-compliance
- sets realistic goals for incorporation into DPR activities and county work plans, and develops the methodologies to measure progress
- develops additional environmental indicators

II. DPR'S ENFORCEMENT PROGRAM

A) Overview

Mission Statement

DPR's mission is to protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management.

Organizational Structure

The size and diversity of California agriculture dictate a much more complex partnership between Federal, State and local pesticide regulatory authorities than anywhere else in the nation in part because the county-based regulatory structure predated both the State or Federal regulatory structure.

The Department of Pesticide Regulation oversees a multi-tiered enforcement program. The USEPA promulgates federal regulations covering minimum pesticide requirements that are enforced at the State and local (county) levels through cooperative agreements. Over the years, the California Legislature has passed more stringent laws covering registration; licensing of entities applying, using, or recommending pesticides; and the use of pesticides to protect the environment, the public and worker health.

DPR has primary responsibility to enforce pesticide laws and regulations in California. Enforcing pesticide use laws and regulations is a joint responsibility of the DPR and the CACs who administer pesticide use enforcement on the local level. California Food and Agricultural Code (FAC) section 2281 outlines respective responsibility for enforcement of the pesticide laws and regulations.

The Structural Pest Control Board (SPCB), within the State Department of Consumer Affairs, administers licensing of structural pest control businesses and structural applicators. Food and Agricultural Code section 15201.1 outlines general responsibilities and roles for DPR, SPCB, and the CACs in licensing and pesticide use for structural pest control activities. It specifies that the CACs regulate pesticide use in structural activities under the direction and supervision of DPR.

The Department of Public Health (DPH) oversees the activities of local vector control (public health/mosquito abatement) agencies. DPR, DPH, and the CACs are parties to a three-way memorandum of understanding that outlines responsibilities and coordination relating to vector control activities. It addresses pesticide availability, applicator certification, pesticide use report, and episode reporting.

DPR, USEPA Region 9, and the CACs are parties to a three-way cooperative agreement that ensures a unified and coordinated program of pesticide episode reporting, investigation, and enforcement action in the State of California.

Additionally, DPR has an agreement with the United States Department of Agriculture (USDA) to sample food commodities for the USDA Food Safety Program for both pesticide residues and microbial pests (e-coli, salmonella, etc.).

DPR's Enforcement Branch

The Enforcement Branch:

- has overall responsibility for all pesticide use enforcement activities of the CACs, providing training coordination, oversight and technical support to roughly 280 county agricultural biologists involved in the local enforcement programs
- has oversight responsibility for pesticide incident investigations
- administers the nation's largest state monitoring program for pesticide residues on domestic and imported produce
- inspects for compliance with pesticide product registration and labeling requirements

The Enforcement Branch is comprised of headquarters and three regional offices located in Anaheim, Fresno, and West Sacramento. Headquarters' staff develop policies and procedures; direct and manage the department's food safety program; review and make recommendations for product use practices prior to registration, including alternatives and mitigation measures; interpret pesticide labels for compliance with state and federal statutes; analyze, propose and/or develop legislation and regulation; compile and analyze statewide data for use in developing and modifying existing pesticide environmental regulations (air, ground, endangered species), worker protection and food safety programs; and coordinate the structural pest control program with the CACs and the Department of Consumer Affairs, Structural Pest Control Board (SPCB).

The Enforcement Branch's three regional offices work with CAC staff to plan and prioritize pesticide compliance and use enforcement activities. DPR assigns each regional office to work with specific counties. A senior-level staff member from the regional office, known as an enforcement branch liaison, is assigned to each CAC.

Product Compliance and Enforcement

The Product Compliance Branch receives the Enforcement Branch staff's inspections that find violations of registration and labeling requirements. In combination with information generated through its audits, complaints, and review of internet Web sites, the Product Compliance Branch forwards cases involving the unregistered and misbranded product sales to DPR's Office of Legal Affairs for enforcement. It also audits pesticide sellers to assure the appropriate statutory fee on their sales has been paid. The focus of the product compliance program is two-fold:

- protection of the environment and public health by enforcing registration requirements that assure that pesticide products are evaluated for efficacy and safety, and labeled with the appropriate instructions and precautions, and
- assuring fiscal support of our regulatory programs by enforcing the payment of the required fee based upon the volume of sales into California

All pesticide products must be registered before they can be sold in California. The registration process requires an evaluation to ensure the product can be used safely under California conditions. Before registration, DPR scientific and technical staffs review data on the product to ensure that it is properly labeled and will not cause health or environmental problems. Unregistered products, often sold over the internet or my mail, have not undergone this kind of scrutiny and may pose unrecognized hazards to health or the environment.

DPR's Product Compliance Branch conducts audits of pesticide sellers throughout the U.S. to determine proper registration, verify sales, and document payment of mill assessment fees. To ensure that products in the channels of trade are in compliance with state and federal pesticide laws, the Enforcement Branch inspects products offered for sale at retail and wholesale nurseries, hardware, home and garden centers, landscape material suppliers; agricultural chemical dealers; feed, farm, and pet suppliers; industrial and institutional vendors; restaurant and hospital suppliers; grocery and drug stores; pool and spa centers; and other sites where pesticides are sold. In 2008, about 33 percent of the inspections reveal violations.

The Product Compliance Branch takes the lead when violations of sales, labeling, or registration are found by directing investigations, collecting evidence, and documenting findings to substantiate the violations. The Product Compliance Branch coordinates with DPR's Legal Office to develop and propose appropriate enforcement actions, including settle agreements. Most violations are resolved by the collection of civil penalties resulting from a settle agreement between DPR and the pesticide seller.

County Agricultural Commissioners Pesticide Use Enforcement

California's pesticide enforcement program stands apart from those of the other states in that it has CACs in nearly all of the 58 counties while other states have inspectors who are employed by the state lead pesticide agency and conduct all pesticide use inspections statewide (Three of California's smaller counties are combined with the CAC offices of others: Sierra with Plumas, Mono with Inyo, and Alpine with El Dorado.). The CACs serve as the primary enforcement agents for State pesticide laws and regulations.

CACs enforce federal and state pesticide laws and regulations at the local level. CACs issue site-specific local permits for the use of restricted materials, conduct on-site application inspections, administer full pesticide use reporting, conduct worker safety inspections, and investigate pesticide incidents.

CAC staff inspects the operations and records of growers, pest control applicators, pest control dealers, and agricultural pest control advisers. They also certify private applicators and issue restricted material permits. In addition, CAC staff train pesticide users, conduct pesticide episode/priority investigations, and conduct fieldwork and pesticide handler inspections to assure compliance with worker protection standards and other pesticide use requirements. Fiscal year summaries of county workload can be found in the California Pesticide Regulatory Activities Monthly Report (PRAMR) online at: www.cdpr.ca.gov/docs/enforce/report5.htm.

B) DPR Enforcement Program Components

1) Oversight of Counties and County Activities

California law designates DPR as the agency responsible for delivering an effective statewide pesticide regulatory program. However, the Legislature delegated local administration of the pesticide use enforcement program to the CACs, governed by the instructions and recommendations of the DPR. The success of the *statewide* use enforcement program therefore depends on DPR oversight and guidance and the CACs efforts to implement an effective program. DPR uses its statewide authority to oversee, evaluate, and improve the CACs' use enforcement programs. DPR assists the CACs in the planning and development of adequate county programs; evaluates the effectiveness of the local programs; and assures corrective actions are taken in areas needing improvement.

The goal of DPR's enforcement program and the CACs is to protect public health, property, pesticide handlers and fieldworkers, and the environment of California. We strive for consistent enforcement across all 58 counties of the pesticide laws and regulations. DPR and CACs strive to meet these goals by following the enforcement response regulations, as well as creating work plans with directed priorities.

Enforcement branch liaisons are located in DPR's three regional offices (Sacramento, Fresno and Anaheim) and serve as the primary contact point between CACs and DPR. Each liaison is assigned to specific counties and works with CACs and staff to develop and revise annual county work plans, provide direction and/or assist in county investigations, consult on appropriateness of proposed enforcement actions (strength of evidence, proper classification of the violation and fines), provide training and outreach, as well as interpret label and regulatory requirements. Liaisons assess the effectiveness of CAC's overall pesticide enforcement program by conducting side-by-side inspections with county staff; reviewing restricted material permits and notices of intent; reviewing CAC inspections and investigative reports, and making recommendations for additional investigation or data; and reviewing compliance and enforcement actions. Liaisons track incident investigations and complaints, and assist in the development of cases involving licensees, which may lead to a possible license suspension or revocation by the state.

Annual County Work Plans and Evaluations: As part of an organization-wide effort to incorporate continuous quality improvement into California's pesticide enforcement program, DPR and the CACs developed a cycle that includes state and local program review, planning, implementation, and evaluation. DPR's guidance represents a simplified approach in targeting core enforcement program priorities and evaluating the effectiveness of county programs. In turn, county work plans identify state, regional, and local compliance problems, emerging issues, and measurable solutions based on available resources. DPR uses jointly developed performance standards to evaluate the effectiveness of the county's enforcement program.

DPR's three regional offices help CACs develop annual work plans that detail each county's priorities in improving enforcement, compliance and permitting. The work plans have clearly stated goals and performance measures, balancing DPR's statewide enforcement priorities with local conditions unique to each county. DPR regional staff also evaluate CAC performance, using objective-based performance measures that examine how well counties are targeting local problems and patterns of continuing violations. Work plans and evaluations, by county, can be downloaded as noted below.

As noted earlier, DPR does not track its workload (resources, outputs and outcomes) on a calendar year basis. DPR fiscal year program metrics are available on its website at <http://www.cdpr.ca.gov/docs/dept/planning/performance/index.htm>.

In September 2008, DPR posted county enforcement statistics, work plans and evaluations at: www.cdpr.ca.gov/docs/county/enf_stat_profile.htm.

The CACs reported the following statewide workload statistics in 2007 and 2008:

| Preliminary CAC Reported Workload Statistics - Inputs | 2007 | 2008 |
|--|-------------|-------------|
| CAC Licensed Staff Hours | 511,000 | 510,300 |
| CAC Support Staff Hours | 158,400 | 153,100 |
| Preliminary CAC Reported Workload Statistics – Outputs | | |
| <i>Restricted Materials Permitting</i> | | |
| Restricted Material Permits Issued | 38,800 | 39,700 |
| Permits Denied | 440 | 410 |
| Notices of Intent to Apply a Restricted Material Reviewed | 155,400 | 145,000 |
| Notices of Intents Denied | 1,600 | 1,700 |
| Pre-Site Application Evaluations/Inspections | 11,000 | 9,600 |
| <i>Compliance Monitoring</i> | | |
| Inspections* | | |
| Agricultural Use | 7,240 | 7,380 |
| Field Worker Safety | 1,130 | 1,300 |
| Commodity Fumigation | 430 | 340 |
| Field Fumigation | 670 | 780 |
| Records Inspections | 5,370 | 5,500 |
| Structural Fumigation | 1,970 | 1,950 |
| Structural Non-Fumigation | 1,420 | 1,220 |
| Investigations | 1,600 | 1,600 |
| <i>Enforcement Response</i> | | |
| CAC Compliance Actions | 4,200 | 3,900 |
| CAC Enforcement Actions | | |
| Number of Enforcement Cases Closed | 1,300 | 1,000 |
| Amount of Civil Penalties Assessed | \$570,200 | \$363,700 |
| Number of Cases Referred to District Attorney | 2 | 2 |
| <i>Compliance Assistance</i> | | |
| Training & Outreach Sessions | 1,260 | 1,400 |
| Number of Persons Attending | 40,600 | 40,000 |
| <i>County Registrations & Certification</i> | | |
| Operator Ids for Non-Restricted Use Issued | 13,000 | 13,400 |
| Private Applicator Certificates Issued | 6,500 | 5,700 |
| Pest Control Business /Advisors / Pilots Registered | 12,100 | 11,800 |
| Farm Labor Contractor Registered | 2,200 | 2,500 |
| Structural Pest Control Business Registered | 5,700 | 6,200 |
| Preliminary CAC Reported Workload Statistics - Outcomes | | |
| Total Inspections Conducted | 18,240 | 18,480 |
| Inspections with 1 or More Violations | 2,570 | 2,470 |
| Inspections with 100% Compliance Rate | 86% | 87% |
| Total Number of Criteria Evaluated | 330,130 | 329,340 |
| Total Number of Criteria in Compliance | 323,382 | 323,970 |
| Compliance Rate for Criteria Inspected | 98% | 98% |

* County inspection data and compliance rates are from DPR's Inspection Tracking Database. Counties conduct additional inspections (follow-ups, partials, tarp/aeration, etc.) that are not currently captured in DPR's database; compliance rates and specific inspection elements cannot be evaluated.

2) Food Safety

DPR's Food Safety Program monitors compliance with pesticide laws to ensure that all food meets pesticide safety standards. Sampling and laboratory analysis serve to detect each of the two categories of illegal residues: (1) pesticide residues that exceed established tolerance levels, and (2) residues of pesticides for which no tolerance has been established for a specific crop. When illegal residues are found, DPR reacts immediately by removing the illegal produce from sale, and then verifies that the produce is either destroyed or returned to its source. In addition, if the owner has similar produce from the same source, DPR quarantines that produce until the laboratory verifies that it is free from illegal residues. Further, DPR traces the distribution of the illegal produce by contacting distributors throughout California, imposing additional quarantines and conducting additional sampling as needed.

DPR administers the state-mandated *Pesticide Residue Surveillance Program* that involves produce sampling and data collection activities. DPR's Program is the most extensive state residue-monitoring program in the nation. It is the final check in an integrated network of programs designed to ensure the safe use of pesticides in California.

DPR Enforcement staff samples individual lots of domestically produced and imported foods and delivers them to a California Department of Food and Agriculture (CDFA) laboratory where they are tested to determine compliance with USEPA approved tolerances. Routine samples are analyzed for more than 200 pesticides and breakdown products. In addition, selected samples receive specific analysis for non-screenable pesticides of dietary and enforcement concern. Samples are collected throughout the channels of trade -- packing sites and wholesale and retail markets. The Department and CACs investigate every incident of illegal residue detected in the residue-monitoring program for California grown produce. After the detections of over-tolerance and no-tolerance-established residues, DPR takes actions such as issuing stop sales and crop destruct orders.

Another component of our Food Safety Program is our participation in USDA's Pesticide Data Program (PDP) and Microbiological Data Programs (MDP). It should be noted that USDA does not report back to the states the analytical results on residue findings for each sample collected, but publishes annual reports which are available on the USDA website.

PDP: USDA started PDP in 1991 to test commodities in the U.S. food supply for pesticide residues. PDP tests for over 290 pesticides in over 50 different food commodities. This program maintains an electronic database that serves as a central data repository. USDA prepares annual summaries of the PDP data that are publicly available on the Internet. The summaries provide data on pesticide dietary exposure, food consumption, and pesticide use. PDP data are used by the USEPA to make realistic assessments of dietary pesticide risk and for the ongoing review of pesticide tolerances. Besides USEPA, the U.S. Food and Drug Administration (US FDA), academic institutions, food producers, chemical manufacturers and environmental groups use PDP data. PDP data are statistically representative of the overall residue situation for a particular pesticide, commodity, or place of origin.

MDP: The goal of the MDP Program is to provide data on the presence of foodborne pathogens and indicator bacteria on fresh fruit, vegetables, and more recently, fish. MDP currently tests for six microorganisms: generic E. coli, shiga toxin producing E.coli (STEC), enterotoxigenic E.coli (ETEC), E.coli 0157:H7, Salmonella, and Shigella.

| Food Safety - Samples Collected - Outputs | 2007 | 2008 |
|---|-------------|-------------|
| Number of State Residue Program Samples Collected | 3,562 | 3,483 |
| Number of USDA – PDP Samples Collected | 2,632 | 2,708 |
| Number of USDA – MDP Samples Collected | 420 | 724 |
| Food Safety – State Residue Sample Analyses Results - Outcomes | | |
| Number of Samples with No Residues Detected | 2,230 | 2,444 |
| Number of Samples with Residues within Legal Tolerances | 1,290 | 999 |
| Number of Samples with Illegal Residues | 45 | 40 |

3) Registration, Licensing, and Product Compliance

As stated earlier, DPR’s mission is to protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. Three major components of DPR’s multi-pronged approach include product registration, licensing of individuals and businesses that perform or supervise pest control activities, and surveillance of products sold in the marketplace to ensure they are registered and meet California’s health, environmental, and safety standards.

Product Registration: Before pesticides can be sold or used in California, they must be registered both by USEPA and by DPR. Scientists in both organizations evaluate the safety and potential environmental effects of products before they are registered. The California evaluation is focused on use under California conditions – whether in an agricultural field or an urban setting. Before registration, DPR scientific staff (toxicologists, biologists, entomologists, plant physiologists, and chemists) reviews data on the product to ensure that it is properly labeled and will not cause health or environmental problems. DPR scientists review data to determine a product’s potential to cause human health problems; how it behaves in the environment; its effectiveness against targeted pests (efficacy); how it breaks down in the environment and its potential to contaminate soil, water, and air; its effects on fish and wildlife; and the degree of worker exposure resulting from its labeled use.

Unregistered products – sometimes sold over the Internet or by mail order – have not undergone this kind of scrutiny and may pose unrecognized hazards to health or the environment.

Licensing and Certification: To ensure that pesticides are handled and used according to state and federal laws and label directions, any individual who recommends, uses or supervises the use of a pesticide must meet strict education requirements and take and pass examinations covering the type of pest control work they perform prior to being issued a license or certificate by DPR. In addition, these individuals must take continuing education in order to maintain and renew their licenses or certificates. These include applicators, aircraft pilots, pest control advisers, and pest control dealer agents.

DPR administers examinations, issues new and renews licenses or certifications in the following categories:

| DPR Licensing and Registration - Outputs | 2007 | 2008 |
|---|-------------|-------------|
| Number of Registered Products | 11,940 | 11,700 |
| Number of Pesticide Registrants | 1,310 | 1,340 |
| New Licenses and Certificates Issued | 1,720 | 2,530 |
| Renewed Licenses and Certificates Issued | 12,500 | 10,640 |
| Exams Administered By DPR | 9,100 | 9,050 |

Product Compliance: Pesticide product compliance activities are jointly carried out between DPR's Product Compliance Branch staff and the Enforcement Branch staff. To ensure that products used in California are registered and approved by USEPA and DPR, Enforcement field staff performs inspection and compliance activities under both a State mandated program and as part of DPR's consolidated cooperative agreement with USEPA. Under the current pesticide product compliance program, DPR field inspectors conduct approximately 350 inspections at manufacturing facilities and business throughout the state. When staff uncovers sales of unregistered pesticide products, the Product Compliance Branch initiates investigations and cases are sent to the Office of Legal Affairs which obtains administrative penalties through settlements or enforcement actions.

Mill fees must be paid on all pesticide sales, including agricultural and non-agricultural products. This includes not only insecticides and herbicides, but also many products not generally thought of as pesticides, including sanitizers, disinfectants, mildew removers, pool chemicals, and insect repellants. Ensuring that all pesticide sellers pay the required mill fee makes the marketplace a level playing field for all pesticide sellers -- assuring that those who comply are not operating at a disadvantage to those who do not. The Product Compliance Branch conducts investigations and audits to identify pesticide sellers who are not paying or are underpaying mill fees. Sellers must pay any money due and a penalty, and may be subject to administrative or civil penalties.

During 2008, DPR conducted inspections and investigations to ensure compliance with product registration and mill assessment reporting (funds collected based on sales of product into California). The following is a summary of these preliminary statistics:

| DPR State Product Compliance Activities – Outputs | 2007 | 2008 |
|---|-------------|-------------|
| Number of Product Compliance Inspections Conducted | 290 | 294 |
| Number of Product Compliance Audits Completed | 49 | 67 |
| Number of Cases Pursued by the Office of Legal Affairs | 130 | 182 |
| DPR State Product Compliance Activities – Outcomes | | |
| Cases Forwarded to EPA for Action | 54 | 74 |
| Number of Findings of Unregistered Products | 535 | 583 |
| Number of Cases Settled by DPR | 117 | 94 |
| Penalties Collected by DPR | \$1,776,293 | \$1,416,191 |

4) Agricultural Pest Control and Pesticide Use Reporting (PUR)

California's pesticide use reporting program is recognized as the most comprehensive in the world. Limited use reporting requirements have been in force since at least 1950. However, these requirements were substantially changed in response to demands for more realistic and comprehensive pesticide use data for estimating dietary risk, exposure and potential risk to workers. In 1990, California became the first state to require full reporting of agricultural pesticide use in response to demands for more realistic and comprehensive pesticide use data. Under the program, all agricultural pesticide use must be reported monthly to the county agricultural commissioner, who in turn, reports the data to DPR.

California has a broad legal definition of "agricultural" use so the reporting requirements include pesticide applications to parks, golf courses, cemeteries, rangeland, pastures, and along roadside and railroad rights of way. In addition, all post-harvest pesticide treatment of agricultural commodities must be reported, along with all pesticide treatment in poultry and fish production, as well as some livestock applications.

Structural pest control operators, professional gardeners, and other nonagricultural pest control operators continue to report all pesticide use as they did under the earlier regulations. The primary exceptions to the full use reporting program requirements are home and garden use and most industrial and institutional uses.

The pesticide use data are used by DPR staff scientists in developing dietary risk assessments; assessing potential groundwater contamination from the use of specific pesticides; determining VOC emissions; and assessing impacts on endangered species. DPR also uses the data to analyze how, when and where pesticides are used on different crops. Reduced-risk pest management alternatives can then be developed considering the different regions of the state and commodities grown in these regions.

The pesticide use data can also be correlated with inspection data to assess if inspections are adequate during periods of high use, or if an adequate number of inspections are being conducted during the peak use period of products of particular concern.

Site-specific use report data, combined with geographic data on sensitive sites including schools, farm labor camps, urban areas, water bodies (streams, lakes, rivers), and endangered species habitats, help CACs resolve potential pesticide use conflicts. Other government agencies, researchers, environmental advocates, and public interest groups use the PUR data extensively in carrying out their programs.

Annual statewide and county specific pesticide use data summaries by commodity and by pesticide dating back to 1989 can be obtained from DPR's website at www.cdpr.ca.gov/docs/pur/purmain.htm.

Queries against the PUR databases dating back to 1990 can be run from the California Pesticide Information Portal website at www.cdpr.ca.gov/docs/pur/purmain.htm.

| Agricultural Pesticide Use – Inputs | 2007 | 2008 |
|---|-------------|-------------|
| Agricultural Pest Control Businesses | 6,800 | 6,500 |
| Agricultural Pest Control Operators, Advisers, & Pilots | 5,400 | 5,300 |
| Private Applicators | 19,000 | 18,900 |
| Property Operators (Restricted & Non-Restricted) | 101,800 | 94,300 |
| Number of Agricultural Fields/Sites | 238,000 | 276,800 |
| Agricultural Pesticide Use – Outputs | | |
| Number of Production Agricultural Applications ¹ | 2,196,900 | 1,879,800 |
| Pesticide Use – Outcomes | | |
| Pounds of Pesticide Active Ingredients Used in Production Agriculture | 157,668,000 | 133,860,000 |
| All Other² Pesticide Use – Outputs | 2007 | 2008 |
| Number of Other Applications | 3,390,800 | 3,247,500 |
| All Other Pesticide Use – Outcomes | | |
| Pounds of Pesticide Active Ingredients Used – Other | 11,233,500 | 10,552,400 |

¹Pesticide applications may contain one or more pesticide products (referred to as a tank mix) and each product may contain one or more active ingredients (chemicals). Also of note, California requires that spray adjuvants (including emulsifiers, spreaders and stickers) that enhance the efficacy of a pesticide be registered as a pesticide and reported. The number of pesticide use records reflects the number of each pesticide product reported. For example, if one application is composed of two products, the number of records would equal two, i.e., one for each product. Therefore, the number of pesticide applications made in California is approximately 25-50 percent less than the number of records indicated below.

²“All Other” applications include post-harvest commodity fumigations; landscape maintenance in parks, cemeteries, and golf courses; rights of way; and public health (vector control) pesticide applications. Under current regulatory requirements not all applications are reported (home use, indoor industrial and institutional), creating a data gap in the “total” figure.

The following chart displays detailed compliance and non-compliance (including number of violations) data from DPR's inspection tracking database on the number of inspections conducted by the CACs in 2007 and 2008 in the *agricultural* use setting. Each inspection type not only evaluates a particular category of mandated human health and environmental requirements, but also unique sections of laws and regulations pertaining to that specific inspection type.

| Agricultural Inspection Type | CAC Inspections Conducted | | | Compliance Elements Inspected | | | |
|------------------------------|---------------------------|-----------------|-----------------|-------------------------------|---------------|----------------|--------|
| | Total Number | With Violations | 100% Compliance | Compliant | Non-Compliant | Total Elements | Rate |
| Field Worker Safety | | | | | | | |
| 2007 | 1,133 | 139 | 87.7% | 5,088 | 213 | 5,301 | 96.0% |
| 2008 | 1,302 | 144 | 88.9% | 90,768 | 3,090 | 93,858 | 96.7% |
| Pesticide Mix-Load | | | | | | | |
| 2007 | 1,973 | 182 | 90.8% | 38,150 | 465 | 38,615 | 98.8% |
| 2008 | 2,019 | 177 | 91.2% | 39,024 | 417 | 39,441 | 98.9% |
| Pesticide Application | | | | | | | |
| 2007 | 5,269 | 971 | 81.6% | 90,161 | 3,050 | 93,211 | 96.73% |
| 2008 | 5,357 | 994 | 81.4% | 90,768 | 3,090 | 93,858 | 96.7% |
| Commodity Fumigation | | | | | | | |
| 2007 | 434 | 4 | 99.1% | 9,945 | 12 | 9,957 | 99.9% |
| 2008 | 340 | 8 | 97.6% | 7,732 | 25 | 7,757 | 99.7% |
| Field Fumigation | | | | | | | |
| 2007 | 666 | 29 | 95.6% | 18,575 | 77 | 18,652 | 99.6% |
| 2008 | 782 | 38 | 95.1% | 21,994 | 85 | 22,079 | 99.6% |
| Records | | | | | | | |
| 2007 | 4,130 | 687 | 83.4% | 59,888 | 1,799 | 61,687 | 97.1% |
| 2008 | 4,255 | 667 | 84.3% | 60,756 | 1,693 | 62,449 | 97.3% |
| Total Agricultural | | | | | | | |
| 2007 | 13,605 | 2,012 | 85.2% | 221,807 | 5,616 | 227,423 | 97.5% |
| 2008 | 14,055 | 2,028 | 85.6% | 226,247 | 5,518 | 231,765 | 97.6% |

5) Structural Pest Control and Pesticide Use Reporting

DPR has primary authority for enforcing pesticide use by structural pest control licensees, overseeing the CACs who administer the local enforcement program. The Structural Pest Control Board (SPCB) is responsible for licensing persons engaged in structural pest control work. DPR is signatory of a three-way Memorandum of Understanding (MOU) with the SPCB and CACASA to ensure a uniform and coordinated Structural Pest Control Enforcement Program. Commissioners' and SPCB's staff periodically perform similar enforcement activities such as business office and records inspections. When the SPCB encounters possible pesticide use violations, they refer those findings to the commissioner for "follow-up" investigation.

SPCB administers licensing of structural pest control applicators, field representatives, structural pest control operators, and registered companies; enforces licensing provisions; and ensures consumer protection.

Beginning January 1, 2008, San Diego County became the fourth county (Orange, Los Angeles, Santa Clara) to participate in an expanded Structural Pest Control Enforcement Program. In 1993, representatives of the local structural pest control industry in Los Angeles and Orange counties requested their respective CACs to increase monitoring of the structural fumigation industry based on their awareness of substandard structural fumigations that were damaging the reputation of the local structural pest control industry. Los Angeles and

Orange counties have been participating in the program since its inception; legislation passed in 2007 added Santa Clara County to the Program.

To pay for the program, structural pest control companies (in participating counties) pay \$5 per structural fumigation to the CAC. This increased level of funding allows for increased inspections and associated structural fumigation enforcement activities. These expanded activities are critical to gaining a higher level of compliance with pesticide laws and regulations that result from an increased presence of county inspectors in the field. This program helps to ensure the health and safety of workers, the public, and the environment.

Effective January 1, 2008, Assembly Bill (AB) 1717 replaced the annual county notification requirements for structural pest control businesses and licensees with a county registration program. Importantly, this new law requires that 24-hour advance notice be given to the CAC of all structural fumigations. Twenty-four hour notice of structural applications will assist the CACs in locating fumigations to monitor and inspect.

| Structural Pesticide Use – Inputs | 2007 | 2008 |
|--|-------------|-------------|
| Structural Pest Control Businesses | NA | 6,200 |
| Structural Pest Control Individual Licensees ¹ | NA | 21,000 |
| Structural Pesticide – Outputs | | |
| Number of Structural Applications | 9,283,500 | 8,780,700 |
| Structural Pesticide Use – Outcomes | | |
| Pounds of Pesticide Active Ingredients Used In/Around Structures | 3,965,700 | 3,103,900 |

¹Licensees include individuals who identify infestations or infections and make inspections; applicators who apply fumigants; and applicators who apply materials used in non-fumigant settings.

The following chart displays detailed compliance and non-compliance (including number of violations) data from DPR's inspection tracking database on the number of inspections conducted by the CACs in 2007 and 2008 in the *structural* use setting. Each inspection type not only evaluates a particular category of mandated human health and environmental requirements, but also unique sections of laws and regulations pertaining to that specific inspection type.

| Structural Inspection Type | CAC Inspections Conducted | | | Compliance Elements Inspected | | | |
|-----------------------------------|----------------------------------|------------------------|------------------------|--------------------------------------|----------------------|-----------------------|-------------|
| | Total Number | With Violations | 100% Compliance | Compliant | Non-Compliant | Total Elements | Rate |
| Fumigation | | | | | | | |
| 2007 | 1,970 | 140 | 92.9% | 61,718 | 303 | 62,021 | 99.5% |
| 2008 | 1,954 | 119 | 93.9% | 60,903 | 223 | 61,126 | 99.6% |
| Non-Fumigation | | | | | | | |
| 2007 | 1,424 | 258 | 81.9% | 28,016 | 514 | 28,530 | 98.2% |
| 2008 | 1,218 | 174 | 85.7% | 23,917 | 290 | 24,209 | 98.8% |
| Records | | | | | | | |
| 2007 | 1,243 | 160 | 87.1% | 11,841 | 316 | 12,157 | 97.4% |
| 2008 | 1,248 | 145 | 88.4% | 11,998 | 246 | 12,224 | 98.0% |
| Total Structural | | | | | | | |
| 2007 | 4,637 | 558 | 88.0% | 101,575 | 1,133 | 102,708 | 98.9% |
| 2008 | 4,420 | 438 | 90.0% | 96,818 | 759 | 97,559 | 99.2% |

6) US EPA Cooperative Agreement

California received delegated authority from USEPA to carry out and enforce the state's pesticide regulatory program in 1975. An annual cooperative agreement between the two agencies delegates enforcement authority to California; pursuant to the agreement, DPR identifies state priorities and reviews its program to assure its activities incorporate USEPA's national priorities.

A second cooperative agreement between USEPA, DPR and the CACs was developed in order to ensure a unified and coordinated program of pesticide episode reporting, investigations, and enforcement action in the state. It sets criteria that define a priority incident, and for episodes that meet that definition, it establishes specific reporting requirements to DPR and USEPA and sets time frames for the submission of the episode investigation reports. The defining criteria are based on the effect to human health and environment, the significance of any economic loss, and other specific circumstances. The agreement establishes that an enforcement action on a priority incident by USEPA or DPR/CACs does not preclude action by the other party. It provides that the required reports will be used to evaluate the investigations and actions to assure compliance by the state obligations under its federally delegated authority.

DPR-USEPA Work Plan

DPR develops its annual work plan and mid-year report in consultation with the USEPA based on the current fiscal year joint EPA Office of Pesticide Programs /Office of Enforcement and Compliance Assistance (OPP/OECA), State/Tribal Cooperative Agreement Guidance and Region 9 guidance letter.

The work plan provides an overview of each key area of the state program and related branch activities, outlines the conduct of the activities, and lists specific deliverables DPR will provide to Region 9 on a quarterly, mid-year, and/or end-of-year timeframe. Included is an itemization of the types of training DPR will conduct or participate in or conduct, recently passed or pending regulations, DPR policy interpretations issued to CACs, the number of anticipated and agreed upon inspections in all categories, and all priority investigations and our enforcement response.

DPR and USEPA Region 9 staff meet at least semi-annually to review progress and to develop/refine program goals. The figures below represent work outputs generated strictly under the annual USEPA cooperative agreement.

| DPR Federal Activities per USEPA Cooperative Agreement - Outputs | 2007 | 2008 |
|---|-------------|-------------|
| Total Inspections Conducted under the USEPA Cooperative Agreement | 400 | 393 |
| Producing Establishment Inspections | 40 | 44 |
| Product Compliance Inspections | 130 | 130 |
| County Oversight Inspections | 230 | 219 |
| Samples Collected to Determine Compliance - Label Ingredient Statement | 35 | 34 |
| Cases Forwarded to USEPA for Action | 76 | 74 |

7) Compliance Assistance and Training

DPR conducts a variety of outreach activities with counties, industry, and the public to educate and inform stakeholders to gain compliance with our laws and regulations.

Promoting Safer, Less Toxic Pest Management Strategies

DPR's Pest Management Alliance Program has been one of its most successful initiatives, developing partnerships with the private sector that promote safer, less toxic strategies with economic benefits as a bonus. Many Alliances have become self-sustaining statewide efforts that permanently change an industry's pest management strategy for the better. Budget cutbacks forced DPR to suspend the grants in 2002, but with Administration support, the program was revived in 2008. These projects are closely tied to DPR's regulatory priorities for the protection of air, water, agricultural, and urban environments.

During 2008, DPR funded a total of six Alliance projects for a total of more than \$1.1 million:

- *Almond* – Aims to reduce the use of highly toxic pesticides by 25 percent at three demonstration sites
- *Grape* – Extends reduced-risk wine grape pest management strategies to wine, table and raisin grape growers in the San Joaquin Valley
- *Urban Pest* – Seeks ant control alternatives to pyrethroid insecticides identified as a runoff hazard in urban streams
- *Peach* – Focuses on a 20 percent cutback in the use of organophosphate insecticides used by the canning peach industry in the San Joaquin Valley
- *Urban Child Care* – Takes the IPM principles successfully applied by DPR to California schools and extends them to child care centers beginning with a survey of child care providers in the San Francisco Bay Area and development of English and Spanish-language educational materials on common pests
- *Waterways Runoff* – Focuses on reducing pesticide runoff up to 10 percent by 2011 by tomato, alfalfa, walnut and wine grape growers in the Sacramento-San Joaquin Delta

Information about the grants and the Pest Management Alliance Program is available on DPR's website at <http://www.cdpr.ca.gov/dprgrants.htm>.

Protecting Children's Health

The Healthy Schools Act of 2000 placed into law California's existing voluntary school integrated pest management (IPM) program and added requirements for public schools and child day care facilities that include parental notification of pesticide applications, posting of warning signs, pesticide recordkeeping, and pesticide use reporting by licensed pest control businesses that apply pesticides at public schools and child day care facilities. The law was amended and effective January 2007, these requirements were extended to private child day care facilities (except for family child care homes).

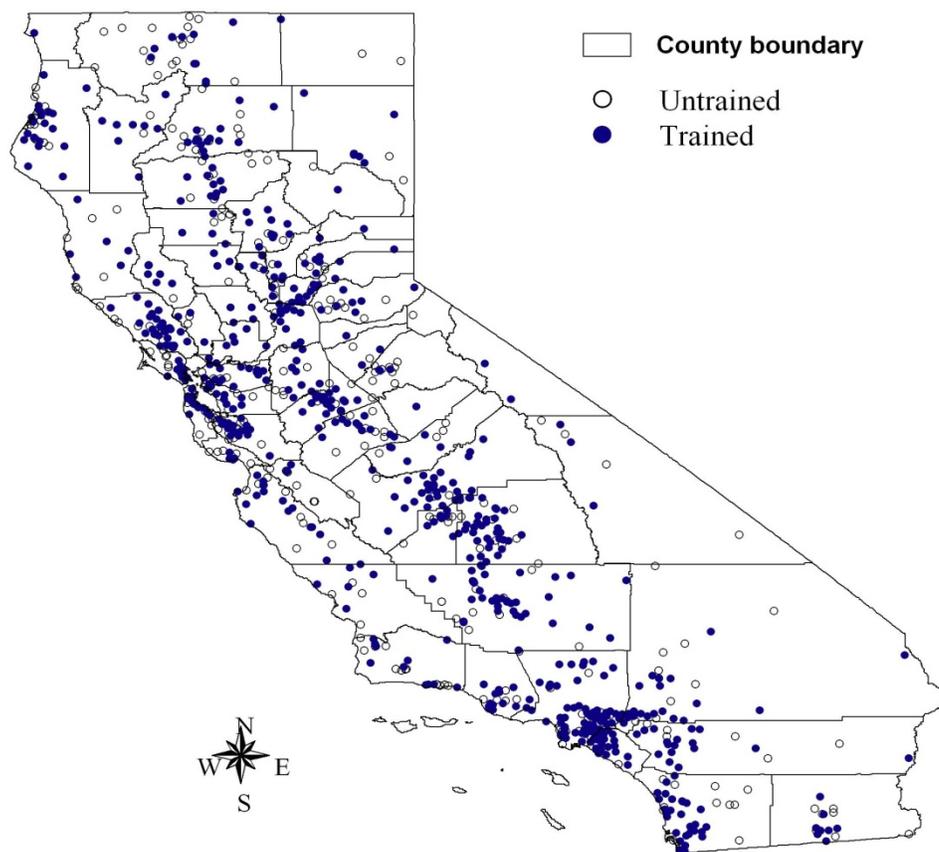
DPR is committed to facilitating voluntary adoption of IPM policies and programs in schools and child day care facilities throughout California and during 2008, DPR staff:

- Conducted four regional school IPM training workshops for school district IPM coordinators
- Conducted six training sessions on IPM in child day care facilities and requirements of the Healthy Schools Act to licensing program analysts in the Department of Social Services Community Care Offices
- Developed a School IPM exhibit booth
- Participated in conferences such as the Coalition of Adequate School Housing, Green California Summit, National School IPM Working Group, Western School IPM Implementation and Assessment Working Group, and the Professional Association for Childhood Education

- Established partnerships with UC Berkeley’s Center for Children’s Environmental Health, UC San Francisco’s Childcare Health Program, and the Collaborative for High Performance Schools

The map graphically displays the total number of school districts that have received training on IPM practices and requirements of the Healthy Schools Act through 2008.

California Public School Districts in 2008



December 3, 2008

Protecting Workers’ Health

DPR’s long-held belief is that by protecting workers many problems can be avoided and benefits accrue to everyone and the environment. In 2004 at the request of the Legislature and interested groups, the California Food and Agricultural Code (FAC) was amended to require that DPR “create a program to conduct outreach and education activities for worker safety... to include . . . rights and procedures of workers and those potentially exposed to pesticides and how to file confidential complaints.” Although this over-arching mandate was not funded, DPR pursued funding and hired one individual in November 2007 to initiate outreach activities aimed at reaching Hispanic workers and communities.

Staff from the Worker Health and Safety Branch began participating in workgroups; providing literature to migrant clinics and other care facilities; making contacts and participating in presentations; attending meetings and staffing informational booths at health fairs and other festivals to respond to questions on pesticides safety and provide informational literature; and participating in various radio and television interviews. Many of the events are held on weekends and after hours and generally require long distance travel.

During 2008, working cooperatively with representatives from various community health and farm worker advocacy groups, Worker Health and Safety, Enforcement and CAC staff participated in various parents meetings, fiestas, and health fairs:

- Participated in more than 30 community meetings, health conferences, and other events to promote pesticide safety for workers and their families with attendance estimated at 25,000 across the various events
- Visited a health services center on six occasions in Stanislaus County to help farm worker families learn more about pesticide use in the home
- Was interviewed as a guest on two Radio Bilingue programs with a listening audience of 2,000
- Appeared on two KCSO Telemundo 33 television programs (one of the two largest Spanish language stations in the Central Valley with a viewer-ship estimated at 20,000).

General Outreach

During 2008, DPR staff made approximately 50 presentations to various industry groups to present updates on pesticide laws and regulations covering a variety of subject areas including endangered species, licensing requirements, VOCs, respiratory protection, worker protection, pesticide use reporting, registration and labeling, rice herbicides, pest management practices, drift prevention, structural pest control, and enforcement response regulations. Attendance at each presentation ranges from 50-500 individuals.

DPR maintains a “compliance assistance” website aimed at providing up-to-date information for employers and others who are required to comply with pesticide laws and regulations. The sites provide a wide range of information on worker safety; licensing; pesticides subject to special conditions (i.e., minimal exposure, dormant spray, field fumigant, and ground water restrictions; engineering controls; restricted entry intervals; and personal protective equipment); state and national pesticide databases; and state and national pesticide-related resource centers. During 2008, the main compliance assistance website received approximately 10,000 hits; this does not include the number of times specific documents were viewed or downloaded. The website is available at <http://www.cdpr.ca.gov/docs/dept/quicklinks/compliance.htm>

Training

Throughout 2008, Enforcement Branch staff arranged and conducted training for CAC staff in the following areas.

- Structural pest control enforcement training
- Inspection procedures – included were new statutory and regulatory requirements for VOCs, structural pest control, and groundwater protection
- Pesticide Wildlife Incident Response Plan - conducted in cooperation with the Department of Fish and Game
- Investigative Techniques – small group training on regional basis

A total of 30 sessions were conducted statewide with approximately 640 attendees.

Enforcement Program Metrics

Data Characteristics

The DPR developed a summary of annual statewide CAC pesticide enforcement program statistics. This first annual California Enforcement Statistical Profile consolidates CAC data from several DPR database sources. In addition to the statewide ESP, individual county profiles are available at

http://www.cdpr.ca.gov/docs/county/enf_stat_profile.htm.

The profiles were developed to look at available data in a different, more comprehensive format. The CACs and DPR may use this information to develop county enforcement work plans, conduct effectiveness evaluations, and to:

- Identify trends and program changes
- Identify CAC staff training needs
- Identify industry outreach needs
- Improve inspection compliance
- Develop inspection targeting programs
- Compare county data to statewide, regional, and/or other counties with similar characteristics

Trends in Key Enforcement Indicators Over Time

DPR has been collecting inspection compliance data from the counties since 2003/04. As with any new system, the data quality in the first few years was poor. Although it has improved in the last two years, the system lacks sophisticated validations and must rely on data entry instructions and ongoing manual reviews to ensure data quality. DPR will continue to compile basic statistics on the number of violations, violation types and categories, and overall compliance rates.

As noted earlier, DPR adopted the enforcement response regulations in late 2006. These regulations were intended to strengthen environmental enforcement and affect statewide consistency of enforcement responses used by the CACs when acting upon pesticide violations.

DPR and the CACs use the regulations to determine the appropriate type of enforcement response in a given case, which involves a two-step process:

1. Classify the type of violation.
2. Using that classification, determine the appropriate action by following the progressive enforcement required by the regulations.

Unfortunately, we will not see the true impact nor be able to accurately gauge the change in enforcement and compliance rates for several years as it takes a minimum of five years to accurately and effectively measure the results and see long term change.

DPR captures data on enforcement actions once the action is closed and all appeals have been exhausted. It is important to note the county must take an enforcement action for agricultural violations within the two-year statute of limitations. For structural violations, the statute of limitations is one year. In addition, the respondent is entitled to several levels of appeal that may prolong the period of time before the closure of any single case. For these reasons, DPR does not anticipate that it will be able to fully assess the impacts of the enforcement response regulations until 2010 or beyond.

Once fully integrated systems are available in the future, DPR will be able to evaluate violations in relation to pesticide use patterns, correlate enforcement actions with specific illnesses or other investigations, and assess the impacts of regulatory programs. This will allow DPR to refine and focus strategic and operational goals and priorities.

Program Inputs

DPR's inspection tracking database was implemented in 2003 and is the vehicle used to evaluate compliance by industry with state, federal, and local pesticide laws, regulations, and permit conditions. Since 2003, new regulations governing volatile organic compounds (VOCs), respiratory protection, structural pest control operations, and protections of ground water have gone into effect. In 2008, the Enforcement Branch, working with DPR's Information Technology Branch, concentrated its efforts on documentation and system design modifications to the inspection tracking database. DPR will begin capturing compliance data on the new requirements in January 2010.

As a result, the process of thoroughly analyzing the data DPR collects in all of its programs in order to assess the impacts of its regulatory programs on compliance and protection of workers, human health, and the environment has been delayed. At this time, DPR has been able to only minimally accomplish the above-stated goals for use of the data.

| 2008 Enforcement Branch by Location – Staff Resources | |
|--|----------------------|
| Headquarters | |
| Branch Chief | 1 |
| Supervisors / Program Managers | 5 Managers, 20 Staff |
| Regional Offices | |
| Northern Regional Office | 1 Manager, 10 Staff |
| Central Regional Office | 1 Manager, 12 Staff |
| Southern Regional Office | 1 Manager, 9 Staff |
| Program Support Resources by Classification | |
| Environmental Program Manager I/II | 3 |
| Agricultural Program Supervisor | 1 |
| Senior Environmental Scientist | 5 |
| Staff Environmental Scientist | 2 |
| Environmental Scientist | 27 |
| Program Specialists | 12 |
| Senior Special Investigator | 1 |
| Pesticide Use Specialist | 3 |
| Staff Services Analyst | 2 |
| Management Services Technician | 1 |
| Office Technician | 4 |

Program Outputs

| Summary of DPR & CAC Enforcement Program - Outputs | 2007 | 2008 |
|---|-------------|-------------|
| Inspections | | |
| DPR Oversight Inspections (USEPA & State) | 290 | 440 |
| CAC Inspections | 18,240 | 18,480 |
| Total Inspections | 18,530 | 18,920 |

Program Outcomes

| Summary of DPR & CAC Enforcement Program - Outcomes | 2007 | 2008 |
|--|-------------|-------------|
| Administrative Enforcement Actions | | |
| CAC Civil Penalties | \$570,200 | \$363,700 |
| DPR Penalties for Unregistered & Misbranded Products | | |
| Number of Cases | 117 | 94 |
| Number of Unregistered Products in Case Settlements | 535 | 583 |
| Penalties Collected | \$1,776,293 | \$1,414,191 |

California Enforcement Statistical Profiles

DPR developed a summary of annual statewide CAC pesticide enforcement program statistics. The annual California Enforcement Statistical Profile consolidates CAC data from several DPR database sources. DPR also produced and distributed individual county enforcement statistical profiles.

Included is information showing DPR and California Department of Food and Agriculture (CDFA) funding of the CACs. The profiles do not include county general funds allocated in each county to support the local program. The data used are from fiscal years 2004-2005 through 2006-2007 and are available on DPR's website at: www.cdpr.ca.gov/docs/county/enf_stat_profile.htm. The profiles consist of the following:

- Annual Statewide Pesticide Enforcement Program Statistics: General statistics about the CAC program drawn from the PRAMR and PUR databases, and funding disbursed by CDFA via the unclaimed gas tax distribution and by DPR via the mill assessment.

This is a three-year side-by-side comparison of several statistics regarding restricted materials permits (such as number of: permits issued, permits denied, multi-year permits, sites, and notices of intent reviewed, assessed and denied), pounds of pesticides used, number of applications, number of inspections and CDFA and DPR funding. This information can be used to identify significant year-to-year reductions or increases that may impact the county's overall pesticide enforcement program.

- Statewide Work Load Distribution by Percent Time: Pie charts showing workload distribution by percentages of time dedicated to various categories of the CAC pesticide enforcement program (PRAMR)

The pie charts show a two-year side-by-side comparison of CAC time spent in eleven different categories of pesticide use enforcement work. This information is used to identify areas where excessive or minimal time is dedicated to specific work categories that may not be appropriate for an individual program. It can also be used to identify significant year-to-year reductions or increases that may impact their overall pesticide enforcement program.

- Statewide Inspection Compliance: Compliance information from the various types of inspections conducted by the CACs and a summary of the number of compliance and enforcement actions taken (Inspection Tracking Database).

These tables list the numbers of inspections and compliance rates for each inspection type the CACs conduct for each year. It also shows the number of criteria out of compliance per inspection, the percentage of inspections with 100 percent compliance, and the number of inspections where one or more violations were found.

The last number on the table can be compared with the number of compliance and enforcement actions taken during the same period, however, the numbers do not correlate directly. Not all compliance and enforcement actions are closed during the fiscal year in which it is initiated. Additionally, some actions may result from the discovery of violations by means other than inspections, such as investigations.

This information can be used to identify areas of particularly low compliance where industry outreach or changes in targeting strategies may be used to improve compliance. Areas of particularly high compliance where DPR's field experience indicates that the compliance rate is not as high, may identify a need to review the CAC's inspections to determine if additional training is appropriate for CAC staff.

As noted elsewhere in this report, DPR is working toward the development of a fully integrated database system. One of the goals is to link and track violations with the immediate corrective action that is taken in the field at the time of the inspection.

- Most Common Violations-Statewide: A listing of the most frequently cited code section violations on CAC inspections (Inspection Tracking)

They can be used to indicate areas where industry outreach and training is most needed.

Environmental / Health Outcomes

Environmental Indicators (EPIC) to Report on Key Environmental Trends

The following environmental protection indicators are highlighted in this report since DPR collects, analyzes, and publishes detailed annual reports on these program areas. The annual reports, along with trends analyses, are quite comprehensive. DPR publishes these reports and makes them available on its website.

Monitoring Residues in Food

If pesticides are properly used according to label instructions, there should be no illegal residues on harvested produce. Tolerance levels for pesticide residues on produce are intended to protect against adverse impacts on human health. The presence of illegal residues may indicate improper or illegal pesticide use. Illegal pesticide use can also adversely impact the health of wildlife and sensitive ecosystems.

DPR's state-mandated Pesticide Residue Surveillance Program is the most extensive state monitoring program in the United States. DPR takes and analyzes approximately 3,500 samples of fresh produce annually. DPR samples individual lots of domestic and imported produce and analyzes them for pesticide residues to enforce the tolerances set by the USEPA. Samples are collected throughout the channels of trade, including packing sites, wholesale and retail markets, and farmers markets. Samples are taken to a CDFA laboratory where all are tested with multi-residue screens capable of detecting more than 200 pesticides and breakdown products. In addition, selected samples receive specific analyses for non-screenable pesticides of enforcement concern.

| DPR State Residue Program | 2006 | 2007 | 2008 |
|--|-------|-------|-------|
| Total number of samples taken | 3,590 | 3,562 | 3,483 |
| Number of commodities sampled | 90 | 100 | 140 |
| Sample origins | | | |
| Domestic samples | 69.4% | 60.8% | 55.4% |
| Imported samples | 30.6% | 38.7% | 43.3% |
| Undetermined origin samples | | 0.5% | 1.3% |
| Sample analyses results | | | |
| No pesticide residues detected | 63.5% | 62.6% | 70.2% |
| Residues within legal tolerance levels | 35.2% | 36.2% | 28.7% |
| Samples with illegal residues | 1.3% | 1.2% | 1.1% |

Pesticide Residue Surveillance Program annual reports summarizing the results from samples collected during the calendar year, along with the detailed data, are available from DPR's website at www.cdpr.ca.gov/docs/enforce/residue/rsmonmnu.htm.

In addition, annual reports of the the data analyzed from samples DPR collects, as well as data collected by other states, under the USDA's PDP and MDP are available from USDA's Agricultural Marketing Services website at www.ams.usda.gov/AMSV1.0.

Pesticide Use Trends

Pesticides can increase the quality and production of agriculture and enhances public sanitation (water, food preparation, etc.). However, these benefits are not without risks to human health and the environment. Because pesticides are designed to be toxic to unwanted organisms, there are many public concerns about the widespread use of pesticides and the potential risks they pose to human and environmental health.

DPR analyzes PUR data to provide both an overview of pesticide use in California and, along with information from other sources, some explanations for the trends of pesticide use.

The summary reports of pesticide use by crop and active ingredients for each year provide hundreds of pages of data. Without extensive time consuming analysis, it is difficult to get an overview of the most used pesticides or most heavily treated crops and how the uses of these pesticides have changed over the years.

These data are studied in detail and analyzed in a number of different ways to help us understand some of the reasons for the patterns and trends in pesticide use. These kinds of analyses can help granting agencies understand where efforts to promote reduced-risk pest management strategies are succeeding or failing, help researchers better identify emerging challenges and direct research attention to finding solutions, help regulators arrive at realistic policy decisions that are both environmentally and economically sound, and help the public understand why certain practices are used. The most recent trends analysis summarizes pesticide use from 1996 through 2007 for eight different pesticide categories according to certain characteristics including:

- Reproductive toxins
- Carcinogens
- Insecticide organophosphate and carbamate chemicals
- All chemicals categorized as ground water contaminants

- Chemicals categorized as toxic air contaminants
- Fumigant chemicals
- Oil pesticides which include many different chemicals, but the category used here includes only ones derived from petroleum distillation. Some of these oils may be on the State's Proposition 65 list of chemicals "known to cause cancer" but most serve as alternatives to high-toxicity pesticides. Oils are also used by organic growers.
- Biopesticides that include microorganisms and naturally occurring compounds, or compounds essentially identical to naturally occurring compounds that are not toxic to the target pest (such as pheromones).

For more detailed information on pesticide use and trends, annual analyses are available on DPR's website at www.cdpr.ca.gov/docs/pur/pur97rep/pur_anal.htm. See pages 133 and 135 for 2007 and 2008 summary pesticide use data in agricultural and structural use settings.

Tracking Pesticide Illness

Pesticides have been associated with adverse effects on human health. Given the nature of their contact with pesticides, agricultural and pest control workers are most likely to face exposure to pesticides. The public may be exposed to pesticides in water, soil and air due to misuse or drift from sprayed areas. Consumers may face exposure from home-use pesticides, or to pesticide residues in food. Unacceptable risks may be avoided when pesticides are used properly, and when pesticide laws and regulations are enforced vigorously and consistently.

The Pesticide Illness Surveillance Program (PISP) maintains a database of pesticide-related illnesses and injuries. Reports come in from local health officers who receive reports from physicians via workers' compensation records, and from the California Poison Control System. The local CAC investigates circumstances of exposure. Medical records and investigative findings are then evaluated by DPR technical experts and entered into an illness registry. This data helps validate the effectiveness of exposure control measures and identifies areas where improvements are needed. Analyses of trends in illness and injury produced by a particular pesticide or activity also provides direction for the Exposure Monitoring Program, Industrial Hygiene Program, and Exposure Assessment and Mitigation Program.

The following is a summary of California pesticide illnesses reported by setting (agricultural and non-agricultural) and by type of pesticide (antimicrobials and all other pesticides).

| Year | Agricultural Pesticide Use Exposure | | Non-Agricultural Pesticide Use Exposure | | Total Incidents |
|-------------------|--------------------------------------|--------------------------|---|--------------------------|-----------------|
| | Pesticides Other Than Antimicrobials | Antimicrobial Pesticides | Pesticides Other Than Antimicrobials | Antimicrobial Pesticides | |
| 2008 ¹ | | | | | |
| 2007 | 207 | 11 | 292 | 372 | 982 |
| 2006 | 218 | 4 | 68 | 148 | 438 |

¹Data is unavailable.

Annual reports are prepared from the PISP database and summarize illness data by:

- State and county
- Type of illness and type of pesticide
- Type of activity and type of exposure

- Specific pesticide and type of illness
- Occupational status and location of incident
- Gender, age distribution, type of pesticide and type of use
- Pesticide handler activity (applicator, mixer/loader, flagger, etc.)

Annual reports dating from 1996 to 2007 that provide detailed information can be obtained from DPR's website at www.cdpr.ca.gov/docs/whs/pisp.htm

Ecological Health

Pesticides are designed to be toxic to target pests. While their use instructions are intended to prevent adverse impacts on non-target species, including wildlife, there have been instances when pesticide use has been linked to adverse impacts on birds, bees, and other non-target species. The following is a three-year summary by priority incidents involving potential pesticide use affecting California wildlife:

| Year | Fish | Bird | Wild Animals | Domesticated Animals/Bees |
|------|--|--|---|---|
| 2008 | 36-CAK0-08 2,000 Fish Civil penalty action taken and fined paid. 69-SCR-08 49 Fish Notice of warning issued to lodge/restaurant owner | 55-MON-08 70 Geese No violations found. No action taken. | | |
| 2007 | 57-CC-07 500 Fish (unconfirmed #) Civil penalty action pending | 35-SBD-07 11 Geese Civil penalty action pending | 3-STA-07 1 Coyote, 1 Raccoon Veterinarian determined malnutrition as cause of death. No action taken. | 3-STA-07 10 Cows Veterinarian determined malnutrition as cause of death. No action taken. |
| 2006 | | 3-TUO-06 50 Birds; 5 Birds-Threatened Responsible individual and label violation could not be determined. No action taken. | | 18-KER-06 Bees (Unknown Total) |

C) Program Limitations

Each of the data systems discussed in this report is an independent data system. It is difficult to link data from one system to another. These systems are outdated and lack sophisticated validation to assure data quality and integrity. In addition, other DPR programs collect data on priority investigations, illnesses, ground and air monitoring studies, and endangered species. Further, DPR does not have the ability to receive CAC workload, inspections, and enforcement action data electronically from the counties.

DPR and CAC workload and standard enforcement and compliance reports are based on the fiscal year. (Exceptions to this are the annual pesticide use, residue, and pesticide illness surveillance reports.) This annual Enforcement Report is based on the calendar year. Comparisons of data in this report with standard DPR workload and enforcement and compliance reports and data posted to the DPR website will be difficult if not impossible to reconcile.

As noted earlier, much of the data presented in this report for the 2008 calendar year is preliminary due to lag times in reporting and compiling data. In addition, many of DPR's reports are compiled on a fiscal year basis, leading to discrepancies between data in this Cal/EPA Enforcement Report and other DPR reports. DPR will address more timely reporting, collection and processing of data in the coming years.

In the case of the pesticide use reporting system, specific geographic location data are limited by the type of agriculture that is being reported. For example, the geographic location of right-of-way sites is reported at the county level while crops or other production agricultural sites are reported at the section level. A section is generally one square mile in area. In many cases, a section is too large for truly accurate assessments of environmental impacts. For example, it is not possible to determine the amount of pesticide used within a certain number of feet of a specific site due to the size of the reporting unit. Further, soil types may vary significantly within the square mile and thus the potential of pesticides to runoff or leach to groundwater varies accordingly. However, because the exact locations of applications are reported, pesticide regulations must be designed so that every circumstance presented in the entire section is protected.

In the next two to five years, the Enforcement and Worker Health and Safety branches will develop an application to bridge existing databases (inspection, pesticide illness surveillance database, enforcement action database, and residue databases) that currently exist independently. These databases are used to evaluate county performance and compliance trends, residue and exposure to pesticides, implementation of the state worker safety regulations and provide input on changes to the federal worker protection standard.

To address these data management issues, DPR is undertaking an internal review and analysis of these systems, interrelationships, and functionality to develop a conceptual design. This will set the foundation to build a fully integrated pesticide regulatory data management system in the future that can improve the overall assessment of DPR programs and their effectiveness in protecting human health, food safety, and the environment. This effort is anticipated to take three to five years before we begin the actual system development.

DPR has not integrated and analyzed data from these various sources to fully assess the impacts of its programs to improve environmental and human health. In 2007, the Enforcement Branch redirected resources and upgraded positions to begin the process of bringing these systems together to develop an integrated approach to analyzing compliance. DPR is concentrating its efforts in 2008 on developing sound scientific and statistical procedures and methods to begin the process of fully assessing its programs and their overall impact on improving human health, food safety, and the environment.

III. WHAT ARE WE GOING TO DO: FUTURE DIRECTIONS

DPR and the CACs have undertaken a joint project to assess a number of issues that have been identified over the last two years related to processes and data collection. The work group held its first meeting in April 2008 and is focusing its efforts on three areas:

- All planning, reporting, and evaluation activities and deliverables are currently conducted between the County and DPR on a fiscal year basis during a four-month period (June-September). This does not allow for thorough and timely input and dialog between the County and DPR and the deliverables are delayed. The work group addressed this issue in 2008 by revising the schedules for DPR's evaluation of county performance and the CACs' development of county work plans. Evaluations are now due September 30 and county work plans are developed for the following calendar year. This should allow sufficient time for collection, analyses and incorporation of key data and findings.

- Discrepancies in reporting various data became evident during a project requested by some CACs to summarize received and approved/denied decision reports [required by the Enforcement Response Regulations (ERR) when a prescribed enforcement action is not taken]. DPR and the CACs are evaluating potential sources of these discrepancies. Work on this issue will continue into 2009.
- The current method of categorizing workload (PRAMR) does not accurately reflect changes in workload resulting from the implementation of the ERR. For example, counties currently report the number of enforcement actions closed during a given month. However, the workload and hours associated with follow up inspections, case file preparation, decision report and Notice of Proposed Action (NOPA) report writing cannot be directly associated with these specific activities. In addition, the number of hearings requested are not tracked or reported, nor are the hours associated with these activities.

As noted earlier, new senior level Enforcement Branch staff is in the process of gaining more in-depth knowledge and expertise about state-county regulatory mandates, workload, and data systems. We expect that in the future, we will be able to more fully analyze and evaluate the impacts our regulatory programs have on industry compliance and their impact on improving environmental and human health protections. DPR will be able to answer questions such as:

- Relative to pesticide laws and regulations, i.e., are overall compliance rates improving?
- Relative to specific programs, i.e., have the new respiratory protection regulations reduced the number of pesticide-related illnesses for agricultural workers?
- Have fines increased as a result of the enforcement response regulations and the increased fine level authority?
- Have the number of repeat violators increased/decreased as a result of the enforcement response regulations?
- Have we reduced VOC emissions to reduce smog as a result of restrictions required to use low emission fumigation methods and/or change agricultural practices?
- Are there geographic differences in compliance in general and in specific categories of violations?

In conclusion, DPR has matured in its data gathering capability. In the coming years, we strive to better interpret our data and use it to convey DPR's effectiveness in protecting public health and the environment.

###

LIST OF ACRONYMS

| Acronym | Full Name |
|----------------|---|
| AB | Assembly Bill |
| CAC | County Agricultural Commissioner |
| CACASA | County Agricultural Commissioners and Sealers Association |
| CDFA | California Department of Food and Agriculture |
| DFG | California Department of Fish and Game |
| DPH | California Department of Public Health |
| DPR | California Department of Pesticide Regulation |
| EPA | Environmental Protection Agency |
| EBL | Enforcement Branch Liaison |
| EPIC | Environmental Indicators for California |
| ERR | Enforcement Response Regulations |
| ETEC | enterotoxigenic E. coli |
| FAC | Food and Agricultural Code |
| HCP | Health Care Professionals |
| ISESALUD | Instituto de Salud Publica del Estado de Baja California |
| MDP | Microbiological Data Program (USDA) |
| MOU | Memorandum of Understanding |
| PDP | Pesticide Data Program |
| PISP | Pesticide Illness Surveillance Program |
| PRAMR | Pesticide Regulatory Activities Monthly Report |
| PUR | Pesticide Use Report |
| SB | Senate Bill |
| SPCB | Structural Pest Control Board |
| STEC | shiga toxin producing E. coli |
| USEPA | United States Environmental Protection Agency |
| USDA | United States Department of Agriculture |
| VOC | Volatile Organic Compound |

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INTEGRATED WASTE MANAGEMENT BOARD

I. EXECUTIVE SUMMARY

The Integrated Waste Management Board (IWMB) has a dual mission: protecting public health and safety and the environment through regulation of solid waste and solid waste facilities, and reducing solid waste disposal through diversion (recycling, composting and waste prevention). A wide variety of programs is needed to achieve these missions from: assistance and training for local partners and businesses; to analysis, policy and regulation development; to evaluating compliance with requirements and taking enforcement action, if needed. Enforcement activities include:

- oversight of permitted solid waste handling and disposal facilities;
- evaluation of Local Enforcement Agency (LEA) performance in assuring permitted solid waste facilities meet standards;
- enforcement of standards at tire facilities, and tire hauler and tire flow manifest requirements;
- enforcement when cities and counties have not implemented diversion programs to achieve 50 percent waste diversion; and
- enforcement when product minimum recycled content requirements are not met by businesses.

A) Major Program Highlights

Implementation of Strategic Directives

The IWMB Strategic Directives provide methodologies for measuring success of the implementation of the Integrated Waste Management Act. The Strategic Directives cover all aspects of waste management and aim to protect and preserve the public health and safety, the State's resources, and the environment.

Several Strategic Directives (specifically numbers 4 and 8) place a significant emphasis on compliance and enforcement. In 2008, the Strategic Directives and the Local Enforcement Agency (LEA) Compliance Targeting strategy led to increased enforcement, a decrease in the number of repeat violations, and an increase in solid waste facility inspections. More information is included in each enforcement program section below.

Tire Enforcement

The IWMB implemented a Zero Tolerance Compliance Strategy for tire hauler and tire manifest requirements that results in prompt enforcement action and an increase in the use of penalties to ensure a level playing field and timely, continuous compliance through a streamlined penalty process. The streamlined penalty process reduces time spent in resolving issues for waste tire haulers and the IWMB staff. Almost 95 percent of haulers accepted the streamlined penalties. This resulted in an 8-fold increase in tire hauler and manifest enforcement actions in 2008. Overall, there was a 73 percent increase in total tire related enforcement actions (tire hauler and manifest, and tire facility).

Solid Waste Facility and Local Enforcement Agency (LEA) Enforcement

One measure of the level of compliance with the state minimum standards for waste management facilities is the number of facilities on the [Inventory of Solid Waste Facilities Which Violate State Minimum Standards](#) (Inventory). This list is composed of facilities that have a repeated number of violations and require close oversight by LEAs to bring them into compliance. During 2008 the number of facilities on the Inventory dropped from eight to six, a 25 percent increase in compliance.

LEAs placed on work plans to improve their performance as a result of the third LEA evaluation cycle (2003-2006), all made progress in implementing their work plans. The statewide results of the fourth LEA evaluation cycle (2006-2009) will be available in 2010.

In 2008 State-sponsored legislation (AB 2679, Ruskin, Chapter 500, Statutes of 2008) added additional solid waste facilities enforcement provisions including: establishment of a minor violation program; streamlined assessment of administrative civil penalties; direct IWMB enforcement upon request of an LEA; no automatic stay of an enforcement action when an operator requests a hearing; and establishment of criminal penalties.

Local Government Diversion Enforcement

The 2007 statewide diversion rate increased to 58 percent. This exceeds the 50 percent diversion requirement. Information needed to calculate the diversion rate is only available after the calendar year is over, so the 2007 rate is the latest available rate. Local governments, businesses and citizens continue to increase the amount of waste diverted from disposal through waste prevention, recycling and composting activities.

In 2008 the IWMB completed biennial reviews of individual local government progress in implementing diversion programs to achieve or maintain 50 percent diversion: 340 local governments were approved for meeting the requirements; 57 local governments were approved as making a good-faith effort; three local governments were placed on compliance orders. Two local governments are still under review for potential compliance orders and their Biennial Reviews will be completed in 2009. One local government was penalized for failure to implement its existing compliance order. Nine local governments already under compliance orders were monitored; two met the terms of their compliance orders and were taken off compliance during 2008.

State-sponsored legislation (SB 1016, Wiggins, Chapter 343, Statutes of 2008) increases the focus on diversion program implementation and changes the diversion measurement system to be more timely and accurate. The legislative changes made it more explicit that compliance is based primarily on diversion program implementation. The legislative changes will go into effect in 2009.

Rigid Plastic Packaging Container (RPPC) Minimum Recycled Content Enforcement

Staff analyzed additional information submitted by several businesses whose rigid plastic packaging containers were originally found out of compliance with container recycled content requirements in calendar year 2005. Penalties of about \$225,000 were collected from three companies that failed to meet the container recycled content requirements.

Illegal Dumping Enforcement

Illegal dumping poses risks to the general public and the environment, degrades the quality of life in affected communities, and is costly to cleanup. Illegal dumping is an intentional act that is typically done for economic gain. Clean up of illegal dump sites costs local governments and CalTrans a minimum of \$89 million per year. Currently, no state agency is tasked with coordinating illegal dumping.

IWMB continues to move aggressively under its Solid Waste Disposal and Codisposal Site Cleanup Program to quickly cleanup large illegal disposal sites that pose a significant threat to the surrounding communities where responsible parties are unable or unwilling to perform the necessary remediation. Riverside County Code Enforcement Department requested the IWMB-managed cleanup of the Mission Fiber illegal disposal site near Blythe. Within four weeks over 8,550 tons of waste was removed and properly disposed.

IWMB is implementing innovative cleanup initiatives near the U.S.-Mexico border. The Imperial County New River Collaborative, consisting of various local agencies and IWMB staff, is cleaning up and preventing reoccurrence of 64 chronic mixed tire and solid waste illegal dumping sites in Imperial County through a pilot program Master Agreement. IWMB is working on a bi-national, multi-media effort in partnership with the California Department of Parks and Recreation to fund and install a trash boom system to improve the removal of trash, tires, and sediment during storm events and prevent impacts to the Tijuana River Estuary.

Reorganization for More Effective Compliance and Enforcement

During 2008 there were many changes in compliance and enforcement practices resulting from the mid-2007 major reorganization that consolidated a variety of compliance and enforcement activities within the new Waste Compliance and Mitigation Program's Compliance Evaluation and Enforcement Division (CEED). The reorganization consolidated compliance elements required by laws governing solid waste and tire facility operations, waste tire haulers, local government and state agency diversion from waste disposal, and minimum recycled content requirements for plastic and paper products. Challenges related to the reorganization include high vacancy rates, staff and management turnover. Hiring and training staff have been very high priorities.

B) What the Reported Data Tells Us

Tire Enforcement

The Strategic Directives set a goal of 100 percent compliance for waste tire facilities. Over 93 percent of the waste tire haulers are in compliance and 93 percent of waste tire facilities are in compliance. One thousand one hundred and forty-one (1141) tire enforcement actions were taken by local tire enforcement grantees and IWMB in 2008. This is a 73 percent increase over the 550 enforcement actions taken in 2007.

In 2008 the IWMB approved a six-month pilot streamlined penalty process to allow more timely tire hauler and manifest enforcement within existing staffing levels. The number of tire hauler and manifest penalty cases increased dramatically with the zero tolerance compliance strategy and the streamlined penalty process. The 92 tire hauler and manifest streamlined penalties plus the 18 tire hauler and manifest administrative complaints resulted in a total of 110 enforcement cases: an 8 fold increase from the 14 tire hauler and manifest administrative complaints in 2007.

Solid Waste Facility and LEA Enforcement

Solid waste facility integrated waste management enforcement programs are primarily carried out through 59 LEAs. LEAs inspect solid waste facilities to determine compliance with state minimum standards and permit conditions. There is a 4 percent significant violation noncompliance rate at solid waste facilities, solid waste operations and closed disposal sites. The Strategic Directives require 100 percent compliance at active solid waste facilities and IWMB is looking at methods outlined in the Compliance Targeting Strategy to achieve this goal. The IWMB is developing early triggers for areas of noncompliance, and providing assistance and training in those areas to achieve compliance. The Compliance Targeting Strategy lays out processes for moving promptly to enforcement if compliance is not achieved. The number of solid waste facilities with significant violations that were listed in the Inventory of Solid Waste Facilities Which Violate State Minimum Standards dropped from eight to six, a 25 percent increase in compliance.

An important component of achieving 100 percent compliance is working through LEAs and verifying that LEAs are performing their duties in accordance with the law. In 2007 IWMB completed the third evaluation cycle for the years 2003-2006. Twenty-six (26) of 54 evaluated LEAs were found to be fulfilling their responsibilities during the third LEA evaluation cycle. The remaining 28 LEAs were found to not to be fulfilling some of their responsibilities during this time frame. LEA responsibilities include requiring prompt action to remedy violations of state minimum standards at facilities, as well as longer term issues such as requiring each facility to have a closure plan and post-closure financial assurance. All 28 LEAs are on corrective action plans to correct issues. IWMB is monitoring LEA progress in implementing the corrective action plans and this will be part of the fourth evaluation cycle (2007-2009). At the end of 2008, all 28 LEAs on corrective action plans were making progress in implementing those plans

Local Government Diversion Enforcement

Every two years the IWMB reviews each local government's progress in implementing its planned waste diversion programs to achieve 50 percent diversion; this is called a biennial review. The IWMB considered the 2005-2006 biennial reviews starting in fall 2008. Nine local governments were on compliance orders throughout 2008 and three more local governments were put on compliance at the end of 2008 (2.9 percent on compliance). An additional two local governments (0.5 percent) met the terms of their compliance orders and were removed from compliance status during 2008. The IWMB imposed penalties on one local government (0.2 percent) for failure to meet the requirements of their compliance order. The remaining 96 percent of local governments were found to be in compliance with the diversion requirements.

The 58 percent 2007 statewide diversion rate exceeds the 50 percent diversion requirement. There was a four percent increase in diversion between 2006 and 2007. The total waste generated by Californian's increased by 900,000 tons between 2006 and 2007. The increase in waste generation reflected a 2.6 million ton decrease in disposal and a 3.5 million ton increase in diversion.

State-sponsored legislation passed during the 2007-2008 legislative session will make the measurement system more accurate, more timely, and streamline local government requirements. The improvements in accuracy and timeliness will make it easier to determine compliance in the future.

Rigid Plastic Packaging Container Minimum Recycled Content Enforcement

During 2008 the IWMB imposed penalties on three companies for failure to comply with the requirements for recycled content in rigid plastic packaging containers in the 2005 certification cycle. The three companies paid penalties of about \$225,000. One additional company has appealed the IWMB's finding, and the case is expected to be resolved in 2009. One hundred companies were analyzed in the 2005 certification cycle, so three percent have been found out of compliance, to date.

C) How The Program Will Use The Information

The data will be used, as described under each program component above, to analyze progress in achieving compliance and effectiveness of enforcement actions, and determine the need for future changes to the program components.

II. IWMB ENFORCEMENT PROGRAM

A) IWMB Enforcement Program Overview

Mission Statement

The IWMB's Waste Compliance and Mitigation (WCM) Program ensures that:

- All solid waste and tire facilities, and all tire haulers are permitted or registered as required.
- All waste management activities within the IWMB's purview as defined by law are assessed, enforced and penalized as appropriate.
- The State's diversion goals are met, and State agency and local programs achieve State mandated goals.
- Mandated producer responsibility programs including rigid plastic packaging containers (RPPCs), plastic trash bags and newsprint are in compliance.
- All hazards created by the illegal or inappropriate disposal of solid waste are mitigated.
- Staff and local partners have the training, technical support, and financial assistance necessary.
- All local enforcement agencies are properly certified, designated and evaluated as appropriate.

The Compliance Evaluation and Enforcement Division (CEED) within the WCM Program is responsible for all compliance and enforcement activities related to solid waste and tire facilities, and illegal tire disposal; compliance activities related to the IWMB's minimum content programs (newsprint, trash bags and rigid plastic containers); and compliance activities related to local government and state agency waste management planning and diversion requirements.

Organizational Structure

See Figure 1 on the next page for an IWMB organization chart.

Compliance Assistance Program Highlights

The law requires IWMB's programs to have a strong assistance and training component to help the regulated community comply with the law. The regulated community includes millions of businesses, thousands of schools and hundreds of state agencies and local governments. When compliance is not achieved, the IWMB emphasis switches to enforcement. There is a wide variety of compliance assistance activities that are carried out by approximately 230 staff, including development and presentation of training materials, development of web assistance materials and work with many individual businesses, state agencies and local governments. Customer assistance program highlights are below.

The IWMB web site has expanded greatly over the years and provides assistance to users ranging from media, schools and local governments to technical experts, 24/7, on all topics under the IWMB's purview. Figure 2 shows the number of IWMB web pages accessed by outside parties. There has been a dramatic increase in web page use since 1997 and a seven percent increase in web page use between 2007 and 2008. The IWMB also funded over \$47,000,000 in grants and loans in fiscal year 2007/2008 for a wide variety of assistance and enforcement activities. The information is currently available on a fiscal year basis rather than a calendar year basis as shown in Figure 3. Grants provide funds to local governments, landowners,

businesses and non-profits for activities such as LEA activities, farm and ranch clean up, solid waste disposal and codisposal site cleanup, household hazardous waste and used oil programs, tire site cleanup, tire amnesty days, local tire enforcement activities, tire product commercialization, and rubberized asphalt concrete projects. The Recycling Market Development Zone Loan Program provides direct loans to businesses and nonprofits that are located in a Recycling Market Development Zone. The purpose of these loans is to promote market development for waste materials.

Training and workshops are also an important component of IWMB compliance assistance. During 2008 over 80 trainings, workshops, symposia, conferences, roundtables and information exchanges were held with local governments, state and federal agencies, businesses and nonprofits to inform them of requirements and opportunities, solve problems, improve program effectiveness and develop sound policy recommendations. Over 1000 stakeholders received enforcement related training.

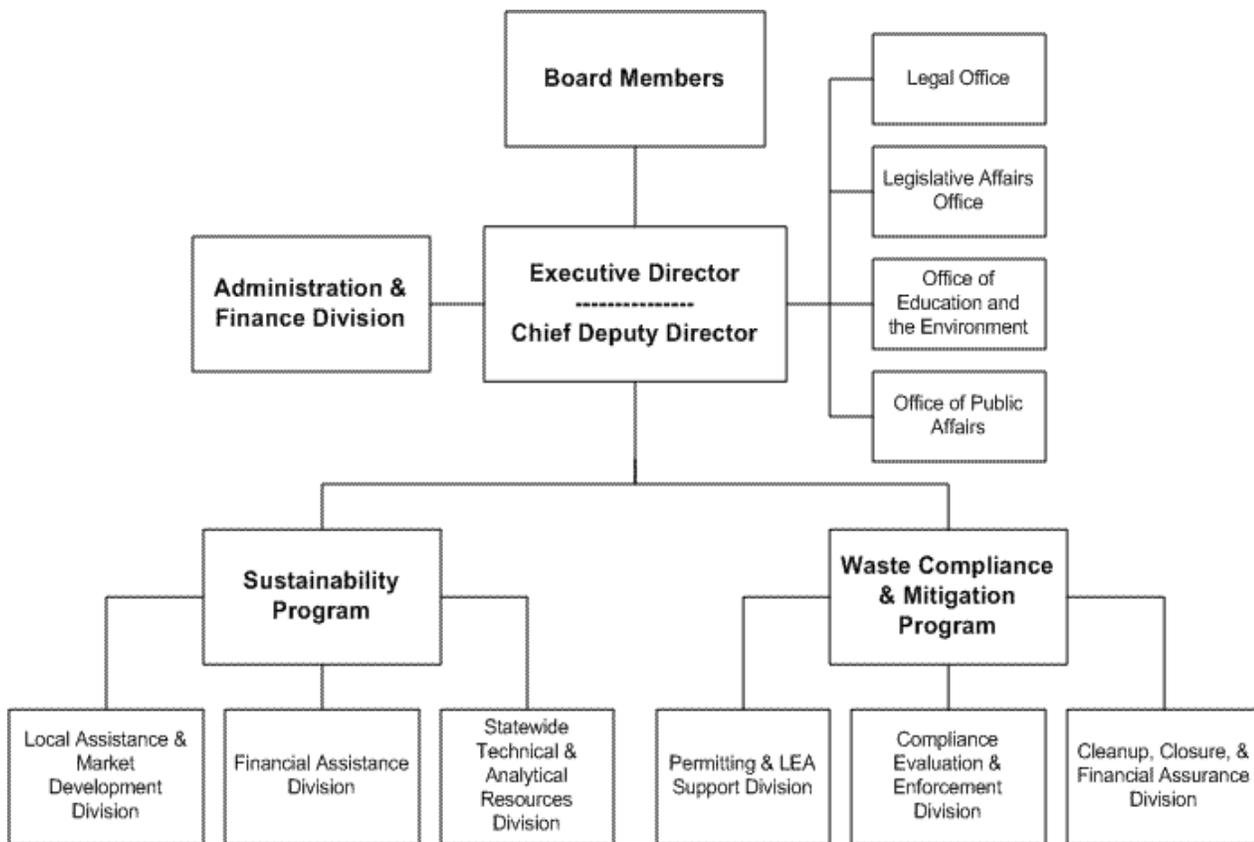


Figure 1. IWMB Organization Chart

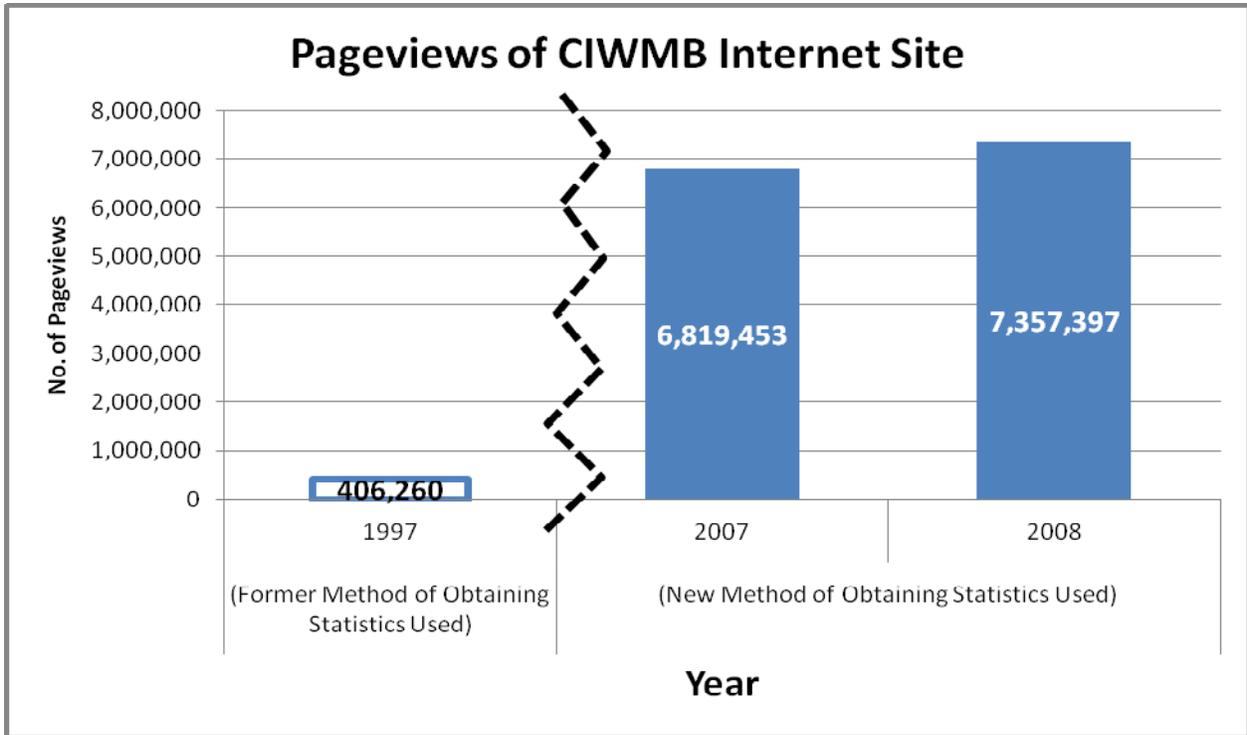


Figure 2. IWMB Internet Site External Pageviews Over Time

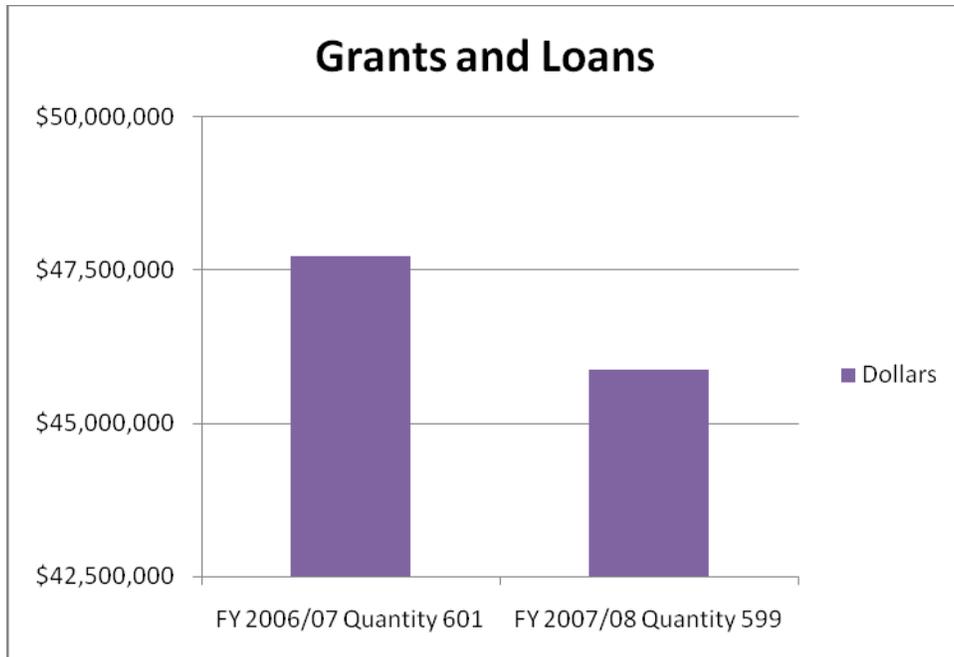


Figure 3. IWMB Grants and Loans for Fiscal Years 2006/07 and 2007/08

Scope of IWMB Enforcement Program

The IWMB has a variety of enforcement program components established under many laws. One of the key differences among the laws is the differing levels of enforcement authority, which requires different enforcement activities.

The IWMB has direct authority for enforcing requirements for:

- Tire haulers and handlers, processors and disposal facilities; recycled content in rigid plastic packaging containers (RPPC), plastic trash bags and newsprint.

The IWMB has oversight authority over:

- Solid waste facility Local Enforcement Agencies. The IWMB has the ability to take direct enforcement authority if solid waste facility LEAs do not choose to, or are not adequately performing, enforcement duties at solid waste handling, processing and disposal facilities.
- Local jurisdictions (cities, counties and IWMB - approved regional agencies) to ensure that they are implementing waste diversion activities to achieve 50 percent diversion from disposal. The IWMB places noncompliant jurisdictions on compliance orders and may impose penalties for failure to meet compliance order requirements.

Federal laws only govern solid waste facility enforcement; a more detailed description is included in the solid waste facility enforcement section.

The 2008 report focuses on describing the tire, municipal solid waste, local government diversion and RPPC compliance and enforcement programs in this report. Information on newsprint, plastic trash bag, plastic carryout bag and state agency programs may be added in future annual reports.

There are 50 staff, plus a number of students in the Compliance Evaluation and Enforcement Division that implement the IWMB enforcement programs. At any given time, there is recruitment for several vacant positions. Most staff assigned to this work are scientists. They perform inspections, field work, and prepare analyses. The IWMB legal office has four attorneys and a legal support staff working on IWMB enforcement programs. Filling staff vacancies was a priority throughout 2008 as staff left for higher paying positions elsewhere in CalEPA, or staff retired due to the 10 percent pay cut.

The IWMB relies heavily on working with local governments to enforce tire and solid waste facilities requirements. There are 59 solid waste LEAs that implement municipal solid waste requirements at permitted solid waste facilities. Forty-one local tire grantees perform tire related inspections and assist with tire enforcement throughout the state.

1) Tire Enforcement Program Component

Tire Enforcement Component Description

In 1990, the California Legislature enacted comprehensive requirements for the storage and disposal of waste tires. The IWMB was charged with responsibility for permitting of tire facilities, and tire pile stabilization and remediation where public health and safety and the environment may be at risk. The tire law gives the IWMB direct authority to enforce tire requirements.

The law required the IWMB to develop a "California Uniform Waste and Used Tire Manifest" (Public Resources Code Section (PRC) 42961.5). IWMB uses the information generated by the waste tire manifest system to ensure that all waste tires generated and transported within California have been accounted for and delivered to permitted end use facilities. IWMB identifies discrepancies and gaps in the manifest system data and actively enforces the requirements. The maximum civil penalties for violations of the waste tire hauling and manifesting requirements are \$25,000 per violation per day, and the maximum administrative penalties are \$5,000 per violation per day (PRC Section 42962).

Operating a waste tire storage facility without a waste tire facility permit is a misdemeanor punishable with a fine up to \$10,000 per day of the violation and/or up to one-year imprisonment in county jail (PRC Section 42824 and 42834).

In 2008, the regulated community included approximately:

- 26,000 tire related businesses
- 1,300 waste tire haulers
- 25 minor waste tire facilities, and
- 4 major waste tire facilities.

Expanding Tire Enforcement through Local Governments

Great strides have been made in expanding the statewide tire enforcement infrastructure through IWMB grants to local government tire enforcement entities. The IWMB may "consider designating a city or county, or city and county as the enforcement authority of regulations relating to the storage of waste and used tires" PRC section 42889(b)(4). This section also states that if the IWMB designates a local entity for this purpose, it must provide sufficient, stable, and noncompetitive funding to that entity, based on available resources. The IWMB and local tire enforcement grantees are working cooperatively with local district attorneys to hold those individuals who break California's waste tire laws accountable for their action either through fines or with criminal penalties.

Using Technology and Studies to Enhance Tire Enforcement

Enforcement is keeping up with technology in California as the IWMB is beginning to use sophisticated techniques such as satellite technology and motion-activated cameras to identify waste tire piles and to catch people illegally disposing of waste tires. The California Highway Patrol (CHP) is working in partnership with the IWMB to stop illegal hauling and stockpiling of waste and used tires. A portion of these combined efforts will focus on the border region between California and Mexico.

The IWMB has contracted with the ARB to authorize the ARB to purchase, construct, maintain and deploy surveillance equipment to be used for surveillance at various sites throughout the state. Through the contract, the Air Resources Board (ARB) has purchased and will set up high-tech, motion-activated video surveillance equipment to monitor activities that violate waste tire laws at locations specified by the IWMB. IWMB has contracted with San Francisco State University to evaluate use of satellite technology in identifying waste tire piles. The use of this technology could provide low cost information to target enforcement and clean-up efforts. The work continued in 2008 and results of this satellite study are expected in 2009.

As part of the efforts to reduce impacts of waste tires in the California/Mexico border region, the IWMB has contracted with San Diego State University to determine the flow of tires exported from California to Mexico, and possible actions to regulate the flow and reduce environmental impacts of the remaining waste tire piles. The results of this study are expected in 2009.

Tire Enforcement Goals

The Strategic Directives set a goal of 100 percent compliance for waste tire facilities. The purpose of the waste tire enforcement grant program is to enhance the statewide waste tire enforcement infrastructure in California by increasing local waste tire enforcement activities. The IWMB is pursuing more vigorous enforcement to achieve compliance with waste tire manifest requirements, based upon a zero tolerance compliance strategy for manifesting and hauler violations adopted in early 2007 as described in the Major Program Highlights. Additionally the IWMB approved a pilot streamlined penalty process for tire hauler and manifest violations to quickly resolve relatively small and noncontroversial cases.

Tire Enforcement Component Metrics

Tire Enforcement Component Data Characteristics

Tire enforcement data is collected from tire haulers submitting manifests that document tire flow in California and monthly inspections of each permitted tire facility.

Tire Enforcement Component Inputs

See description of enforcement program resources in the IWMB Enforcement Program Overview.

Tire Enforcement Component Outputs

Forty-one local tire enforcement grantees covered 79 percent of the state’s tire sites and related businesses in 2008. The IWMB covered the remainder of the tire sites and related businesses.

The number of inspections at tire facilities has increased dramatically over the last 5 years. As the number of tire grantees has increased, more tire facilities are inspected more frequently. Figure 4 shows tire facility inspections.

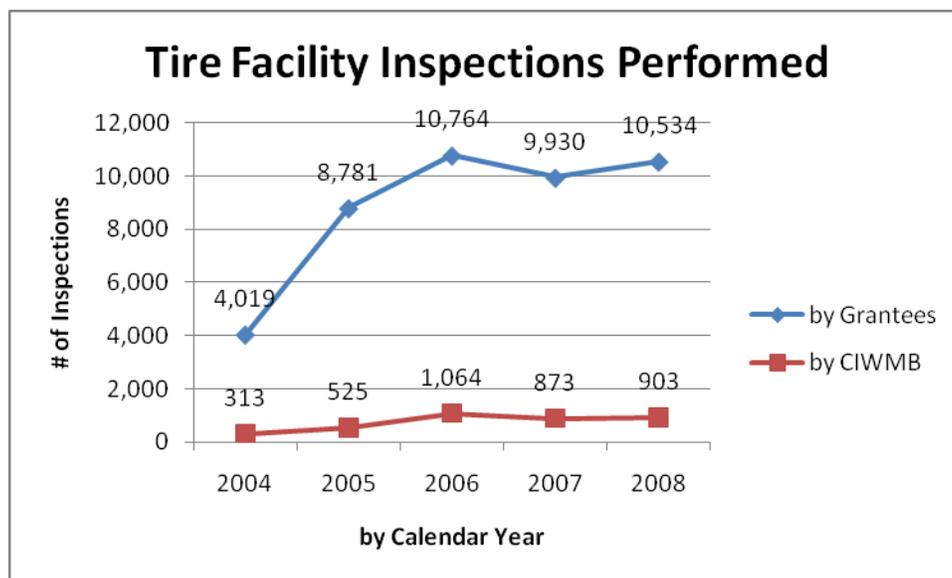


Figure 4. Tire Facility Inspections, 2004 to 2008

If an inspector observes that a tire business is out of compliance with a law or regulation, the inspector documents a Notice of Violation and identifies a date by which the business must become compliant. If the business does not become compliant after 2 re-inspections, enforcement action is initiated against the tire business. The IWMB defines these enforcement actions as significant violations.

One thousand one hundred forty one (1,141) tire enforcement actions were taken by local tire enforcement grantees and IWMB in 2008. This is a 73 percent increase over the 660 tire enforcement actions taken in 2007. The types of tire enforcement actions for tire businesses (which include tire sales and waste tire facilities) and tire haulers and the tire hauler manifest system include:

- Cleanup and Abatement Orders
- Notices of Violation
- Rejected Applications
- Administrative Actions
- Administrative Complaints
- Cease and Desist Orders
- Letters of Violation

Figure 5 shows notices of violations and significant enforcement actions for only permitted waste tire facilities. A permitted facility is a tire business that has a permit for 500 or more tires on site. The CIWMB takes enforcement action when significant violations occur. Tire facility enforcement actions initiated in 2006 and 2007 often resulted from violations of limits on on-site tire storage and not meeting fire safety standards. As a result many tire facilities operated under stipulated agreements as they obtained the appropriate, new tire facility permits. Stipulated agreement conditions incorporated the same conditions that will be required as part of the new permits. This resulted in fewer notices of violation and significant enforcement actions in 2008.

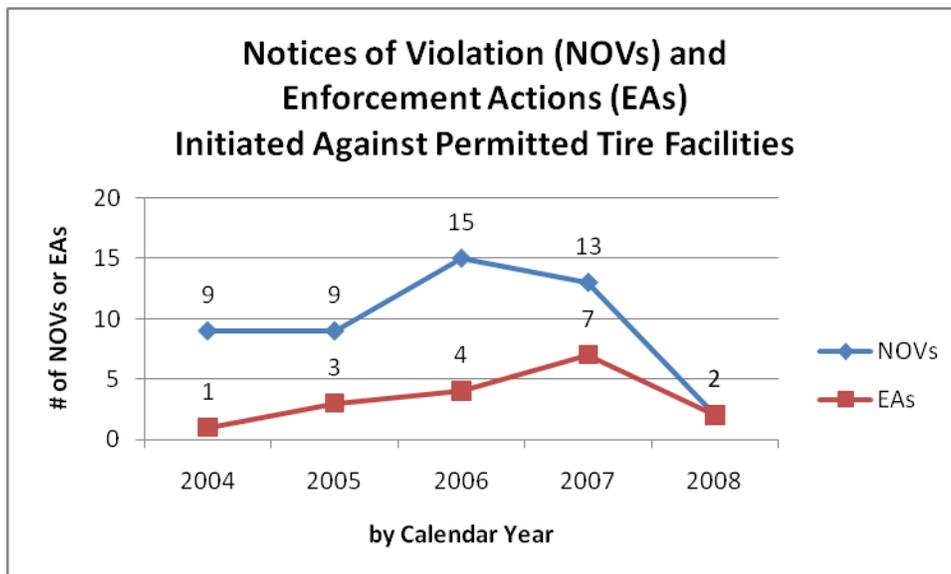


Figure 5. Tire facility Notices of Violation and Enforcement Actions, 2004-2008

When tire haulers fail to correct violations, IWMB will issue administrative complaints, as well as, the recently implemented “Streamlined Penalties” to tire haulers for violations of requirements related to hauler registration and manifesting of tire movement throughout California. Administrative Complaints for these types of violations from 2004 to 2008 are shown in Figure 4. In 2008, the IWMB approved a “streamlined penalty process” for dealing with violations which are determined to be less egregious and non-controversial.

The “Streamlined Enforcement Process” may be used, if the following conditions are met:

- The enforcement action is less than \$5,000 in potential Administrative Complaint fines;
- The site does not involve more than 2,000 waste tires;
- There is no controversy or special circumstances concerning the site.

The streamlined penalty process allows for cost effective prosecution of these violations without having to utilize the Administrative Hearing process. Under this process, and using IWMB pre-approved criteria, staff can propose a settlement to a violator in lieu of prosecution through the administrative complaint process. The numbers of prosecutions using this streamlined process are shown in Figures 6 and 7. The 92 tire hauler and manifest streamlined penalties plus the 18 tire hauler and manifest administrative complaints resulted in a total of 110 enforcement cases: an 8 fold increase from the 14 tire hauler and manifest administrative complaints in 2007.

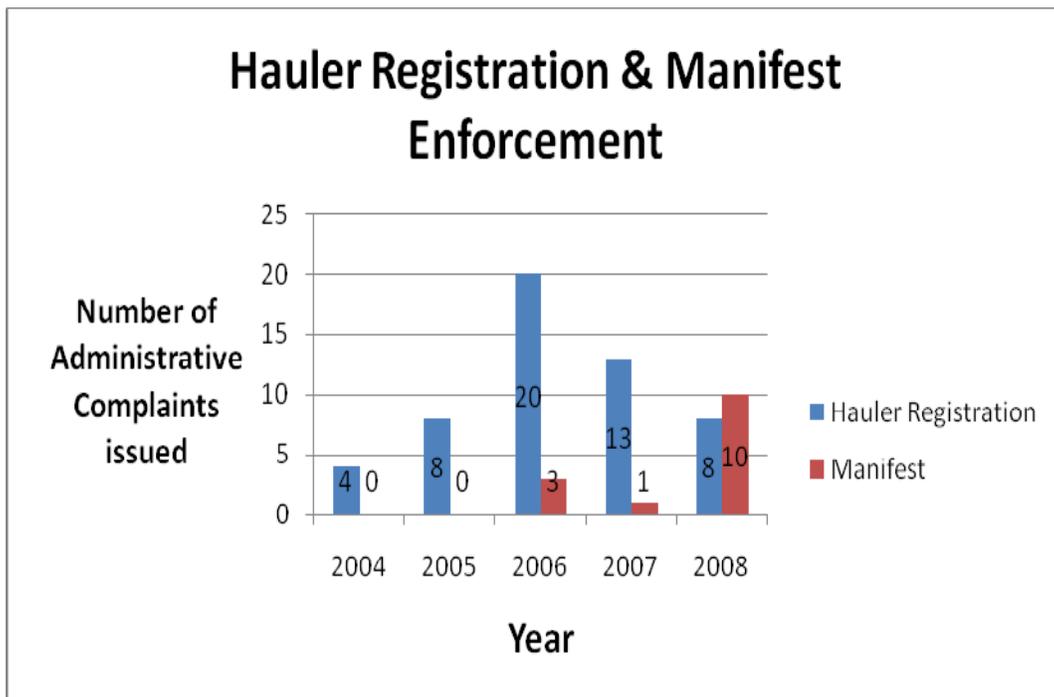


Figure 6. Tire Hauler Registration and Manifest Enforcement, Administrative Complaint Actions, 2004-2008

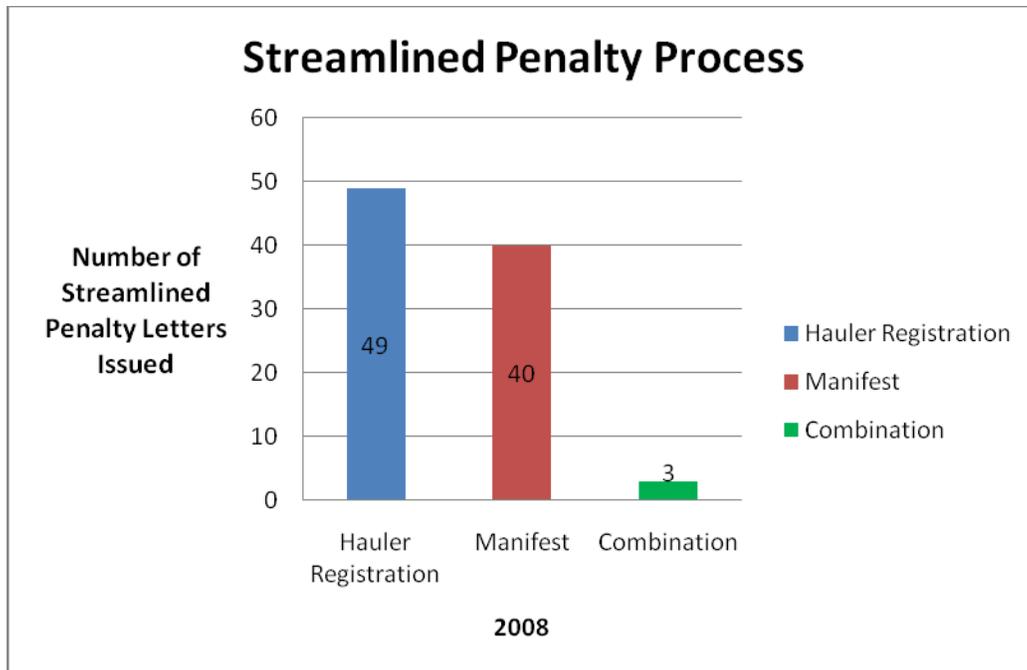


Figure 7. Tire Hauler Registration and Manifest Enforcement, Streamlined Enforcement Actions, 2008

Tire Enforcement Component Outcomes

The Strategic Directives set a goal of 100 percent compliance related to compliance with applicable State standards and permit conditions at active waste tire facilities. The CIWMB takes enforcement action when significant violations occur. For tire facility enforcement, there is a significant violation when the IWMB files an administrative complaint. The 2008 significant violation non-compliance rate for active waste tire facilities is 7 percent.

Tire Enforcement Limitations

The IWMB has reviewed the tire enforcement program to identify opportunities for additional progress in increasing compliance and enforcement. The zero tolerance strategy for the tire hauler program increased the enforcement workload significantly in 2008. However, the implementation of the streamlined penalty process allowed staff to efficiently respond to this increased workload. By instituting the streamlined penalty process staff have been able to achieve compliance at program level instead of referring these cases to the Legal Office, thus allowing legal staff time for more substantial tire enforcement cases.

2) Solid Waste Facility and Local Enforcement Agency (LEA) Enforcement Component

Solid Waste Facility and LEA Enforcement Component Description

Jurisdiction over the disposal of solid waste in California extends over several state and local agencies. Four state agencies play a regulatory role with respect to solid waste: 1) the California Integrated Waste Management Board (IWMB); 2) the State Water Resources Control Board (State Water Board); 3) the Air Resources Board (ARB); and 4) the Department of Toxic Substances Control (DTSC).

All of these agencies fall under the umbrella of the California Environmental Protection Agency (Cal/EPA). These agencies share concurrent authority over some aspects of solid waste disposal. The statutes and

regulations for solid waste management and disposal set forth a clear division of authority between these state agencies. The California Legislature has designated the IWMB as the lead agency for the federal Resource Conservation and Recovery Act (RCRA) Subtitle D, MSWLF (municipal solid waste landfill) permit program (PRC Section 40508).

The State Water Board's authority is established for protection of water quality, the ARB's for protection of air quality, and the DTSC's for protection from hazardous waste. The IWMB's authority is established for protection of public health and safety and the environment, which encompasses the responsibility for all other aspects of solid waste disposal not within the purview of the other entities. Under its broad authority for protection of public health and safety, the IWMB may take appropriate enforcement action, and implement the solid waste regulations of other state agencies if those agencies fail to act.

In 1993, the US Environmental Protection Agency (US EPA) approved the State of California's municipal solid waste landfill permit program pursuant to Subtitle D of the federal RCRA. As the lead state solid waste agency, the IWMB is responsible for coordination and communication on all aspects of solid waste with US EPA, including the RCRA Subtitle D Program. The primary point of contact for IWMB and California implementing agencies is the Waste Compliance and Mitigation Program Director. IWMB regularly meets with state implementing agencies to discuss and resolve issues on all aspects of solid waste management, including the RCRA Subtitle D Program.

IWMB also coordinates notification to US EPA of any potential significant statutory or regulatory changes to the State's Subtitle D RCRA Program. Summary of non-significant changes to the State's Subtitle D Program are provided to US EPA on an annual basis. IWMB notifies US EPA of significant changes as soon as practicable, or within a timeframe agreed to by the IWMB and EPA. IWMB also collaborates with US EPA on appropriate initiatives and partnerships involving the RCRA Subtitle D Program.

Solid waste facility integrated waste management enforcement programs are primarily carried out through LEAs and the IWMB acting as the enforcement agency (EA). LEAs are designated by the governing body of a county or city and upon certification by the IWMB are empowered to implement delegated IWMB programs and locally designated activities. LEA's are responsible for assuring facilities operate in accordance with the IWMB's State Minimum Standards and approved permit conditions.

Fifty nine LEAs cover all of the state except for the six local governments where the IWMB acts as the enforcement agency. The IWMB is the EA for the: City of Berkeley; City of Stockton; City of Paso Robles; County of Santa Cruz; County of San Luis Obispo; and County of Stanislaus.

The IWMB's regulation of solid waste facilities includes:

- Certifying and evaluating LEA programs.
- Reviewing permitting and closure/postclosure documents.
- Providing inspection and oversight of local programs to ensure that State programs are effectively implemented.
- Enforcing State standards and permit conditions in addition to or in lieu of the LEA.
- Administering a remediation program for orphaned, illegal, and abandoned sites.
- Taking appropriate enforcement action if the LEA fails to take appropriate enforcement.

There were 552 permitted, active solid waste management facilities in 2008. These include:

- 292 waste transfer and processing facilities
- 110 composting facilities
- 147 disposal facilities
- 3 waste-to-energy (transformation) facilities.

The following are additional details in specific program areas:

Active and Closed Solid Waste Facilities: Each jurisdiction's LEA or EA routinely inspects active and closed landfills, transfer stations, compost operations and facilities, construction and demolition operations and facilities, and other operations and facilities to ensure compliance with applicable State minimum standards and permit conditions. For operations or facilities that are not in compliance with State minimum standards or the conditions contained within their permit, the LEA or EA have the authority to issue Corrective Action Orders, Cease and Desist Orders, and civil penalties. The LEA and EA also have the authority to issue stipulated agreements and emergency waivers to facilities or operations located in an area with a declared emergency. Additionally, facilities found in chronic violation of State minimum standards are published on the IWMB's Inventory of Solid Waste Facilities That Violate State Minimum Standards. Facilities on the Inventory receive enhanced compliance assistance.

Closed, Illegal, and Abandoned Disposal Sites: The IWMB's Closed, Illegal, and Abandoned (CIA) Disposal Sites program assists local enforcement agencies in investigating and enforcing State minimum standards at CIA sites in California. Enforcement is an essential tool in the investigation and analysis of CIA disposal sites. Enforcement can include acquiring site access, abatement, notifications, stipulated agreements, and compliance with Title 14, California Code of Regulations (14 CCR).

The IWMB May Act as Enforcement Agency: When an LEA is not designated and certified, the local government requests the IWMB be the EA, or if the IWMB finds that a LEA is not fulfilling its duties and responsibilities, then the IWMB becomes the EA. The IWMB, as EA, inspects facilities for compliance with State minimum standards and/or solid waste facility permit (SWFP) terms and conditions. In the event that a facility owner/operator does not comply with the State minimum standards and/or terms and conditions of its SWFP, the IWMB will pursue appropriate enforcement action. For a variety of reasons, the IWMB acts as the enforcement agency in six jurisdictions: the City of Berkeley, the City of Stockton, the City of Paso Robles, the County of Santa Cruz, the County of San Luis Obispo, and the County of Stanislaus.

LEA Performance Evaluation: The IWMB LEA program includes the formation (designation), support and evaluation (audit) of the LEAs to improve their success in consistent enforcement of statutes, regulations, and solid waste facilities' permit terms and conditions statewide. LEA responsibilities include such duties as, making sure facilities are properly permitted, carrying out routine facility inspections, requiring prompt action to remedy violations of state minimum standards at facilities, as well as longer term issues such as requiring each facility to have a closure plan and post-closure financial assurance. To assess the LEAs' performance, the program includes a step-by-step approach and results range from finding that LEAs are fulfilling responsibilities to, corrective action, to withdrawal of the LEA's designation approval and de-certification. Each LEA must be evaluated once every three years. The fourth evaluation cycle runs from 2007-2009 and results will be available in 2010.

Solid Waste Facility and LEA Enforcement Goals

The Strategic Directives set a goal of 100 percent compliance for waste management facilities related to compliance with applicable State standards and permit conditions at active solid waste facilities.

The IWMB adopted a Targeted Compliance Strategy (Strategy) in December 2007 to ensure compliance. The IWMB developed the Strategy to ensure compliance with applicable State standards and permit conditions at active solid waste facilities and tire facilities. This Strategy provides direction on how to best focus resources where there is a need to provide assistance and oversight to Local Enforcement Agencies (LEA) carrying out their duties and to effectively monitor the compliance of solid waste and tire facilities and operations to ensure they are operating effectively. It lays out a blueprint for changes in the IWMB's approach to compliance and enforcement under the reorganization.

The Strategy is built upon the following principles:

1. Compliance first approach
2. Cooperation first approach
3. Consistent enforcement
4. Measuring compliance
5. Need for continuing education and training
6. Need for increased multi-media coordination when appropriate
7. Each LEA has an Enforcement Program Plan (EPP) that defines appropriate enforcement step for no-complying facilities.

This Compliance Targeting Strategy focuses on situations where:

- The facility is chronically violating state minimum standards and the LEA has not put the facility under a Notice and Order or a Compliance Plan.
- State minimum standards are not being adequately assessed to protect the public health and safety, and the environment.
- Multiple enforcement orders or extensions of orders have been issued to a facility and little or no progress is being made.
- Inspections are not being conducted pursuant to the statutes and regulations.

Strategies include:

1. Reducing the number of facilities listed on the IWMB's [Inventory of Solid Waste Facilities Which Violate State Minimum Standards](http://www.ciwmb.ca.gov/Swis/Inventory/Default.aspx) (<http://www.ciwmb.ca.gov/Swis/Inventory/Default.aspx>).
2. Providing inspection and enforcement training, assistance and oversight to LEAs to ensure that State programs are effectively implemented.
3. Increasing the number of random and independent inspections.
4. Using the LEA performance evaluation process to enhance solid waste enforcement.

In 2008 State-sponsored legislation ((AB 2679, Ruskin, Chapter 500, Statutes of 2008) added additional solid waste facilities enforcement provisions including: establishment of a minor violation program; streamlined assessment of administrative civil penalties; direct IWMB enforcement upon request of an LEA; no automatic stay of an enforcement action when an operator requests a hearing; and establishment of criminal penalties. The law became effective in 2009.

3) Solid Waste Facility and LEA Enforcement Component Metrics

Solid Waste Facility and LEA Enforcement Component Data Characteristics

Solid waste facility enforcement related data is collected from LEA and EA monthly/quarterly inspections at each permitted solid waste facility as required by law, LEA progress updates on implementing Enforcement Program Plans (EPP) and LEA evaluation workplans, and LEA and EA progress updates on enforcement actions.

Solid Waste Facility and LEA Enforcement Component Inputs

See description of enforcement program resources in the IWMB Enforcement Program Overview.

Solid Waste Facility and LEA Enforcement Component Outputs

Between 2000 and 2008 the number of enforcement orders issued to active facilities has decreased by nearly half. LEA inspections have decreased two (2) percent, EA inspections have increased 55 percent and IWMB pre-permit and 18-month oversight inspections have increased 33 percent.

In 2000:

- 10,765 inspections were conducted by LEAs
- 308 inspections by the IWMB's EA program
- 130 IWMB inspections (pre-permit and 18 month)
- 81 enforcement orders were issued
- 54 Notice and Orders were issued by LEAs
- 21 *Notices of Intent to List on the Inventory* were issued to facilities by the IWMB, and six (6) facilities did not comply and were listed on the *Inventory*.

In 2008:

- 10,495 inspections were conducted by LEAs
- 477 inspections by the IWMB's EA program
- 173 IWMB inspections (pre-permit, 18 month,)
- 45 enforcement orders were issued
- 17 Notice and Orders were issued by LEAs/EAs
- 22 *Notices of Intent to List on the Inventory* were issued to facilities by the IWMB, and six (6) facilities did not comply and were listed on the *Inventory*

Solid Waste Facility and LEA Enforcement Component Outcomes

Significant violation non-compliance rates at solid waste management facilities have decreased since implementation of the IWMB/LEA Partnership, which began in 2000. For solid waste facilities, significant violations are being listed on the Inventory of Facilities that Violate State Minimum Standards and being on an enforcement order. Four percent (23) of the 552 permitted active solid waste facilities and disposal sites had significant violations and were under enforcement action in 2008. In some cases a facility had multiple enforcement actions in 2008 (Notice of Intent to List on the Inventory, Inventory and one or more

enforcement orders). However, about ¾'s of the facilities that received a Notice of Intent to List on the Inventory, came into compliance and did not move to a significant violation. In addition, the number of solid waste facilities with significant violations that were listed on the Inventory dropped from eight to six, a 25% increase in compliance. The total number of enforcement actions from 2000-2008 are shown in Figure 8.

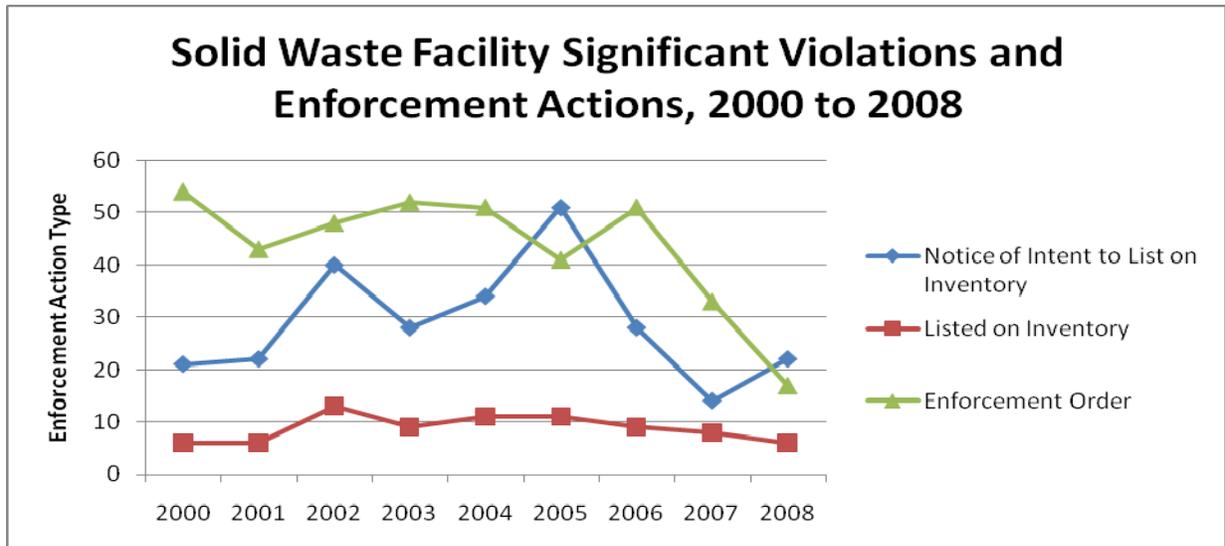


Figure 8. Solid Waste Facility Enforcement Actions, 2000 to 2008

| Year | Solid Waste Facility Enforcement Action Type | | |
|------|--|----------------------|---------------------|
| | Notice of Intent to List on Inventory | Listed on Inventory* | Enforcement Orders* |
| 2000 | 21 | 6 | 54 |
| 2001 | 22 | 6 | 43 |
| 2002 | 40 | 13 | 48 |
| 2003 | 28 | 9 | 52 |
| 2004 | 34 | 11 | 51 |
| 2005 | 51 | 11 | 41 |
| 2006 | 28 | 9 | 51 |
| 2007 | 14 | 8 | 33 |
| 2008 | 22 | 6 | 17 |

* Significant Violation

Table 1. Solid Waste Facility Enforcement Actions, 2000 to 2008

Every three years the IWMB evaluates solid waste management LEA performance. The evaluation focuses on whether LEAs met their EPP and performed as required by statute and regulation. In 2007 IWMB completed the third evaluation cycle for the years 2003-2006. Twenty-six (26) of 54 evaluated LEAs were found to be fulfilling their responsibilities in regards to implementation of their enforcement authority during the third LEA evaluation cycle. The remaining 28 LEAs were found to not to be fulfilling all their responsibilities during this time frame. The 28 LEAs are all on corrective action plans to correct issues.

IWMB is monitoring LEA progress in implementing the corrective action plans and this will be part of the fourth evaluation cycle (2007-2009). All 28 LEAs on corrective action plans are making progress in implementing those plans

Solid Waste Facility and LEA Enforcement Limitations

An important component of achieving 100 percent compliance is working through LEAs and verifying that LEAs are performing their duties in accordance with the law. The IWMB is reviewing the municipal solid waste enforcement program to identify opportunities for additional progress in increasing compliance and enforcement. Specifically the IWMB is in the process of developing database triggers to identify issues early, and then providing assistance to help LEAs and operators achieve compliance with the ultimate goal of achieving 100 percent compliance. During 2008, the IWMB focused on updating information in its databases that will support the development of the database reports to track triggers such as: 1) chronic violations not handled at the local level; 2) chronic permit violations other than state minimum standards covered by the Inventory process; 3) lack of LEA inspections; and 4) multiple enforcement orders that do not show progress. This information will also be used by IWMB staff to develop LEA and operator training programs and focus its technical assistance efforts for LEAs.

Local Government Diversion Enforcement Component

Local Government Diversion Enforcement Component Description

The California Integrated Waste Management Act (AB 939, Sher, Chapter 1095, Statutes of 1989 as amended [IWMA]) made all California cities, counties, and IWMB-approved regional solid waste management agencies responsible for enacting plans and implementing programs to divert 50 percent of waste disposed starting in 2000. Waste diversion includes waste reduction, reuse, recycling, and composting of all waste generated (created) by residents, businesses, industries and institutions.

As required by law, the IWMB:

- provides assistance to local governments as they develop and implement plans to meet the mandates of the IWMA;
- approves local government waste management plans;
- determines whether local governments have complied with the diversion requirements;
- issues compliance orders to those not meeting diversion requirements; and
- assesses penalties of up to \$10,000 per day on local governments that fail to comply with the terms of the compliance orders.

Once a local government adopts a waste diversion plan, it must implement the plan to the best of its ability (PRC Section 41850). To help the IWMB determine the status of diversion program implementation, the local government submits an annual report to IWMB. Every two years the IWMB conducts an independent biennial review of the local government's progress toward implementing its diversion plan to achieve the 50 percent diversion requirement.

In 2008, there were 540 cities and counties in California that were required to plan and implement diversion programs to achieve 50 percent diversion. The IWMA allows cities and counties to join regional agencies, to realize reduced costs for programs and reporting, as well as to improve accuracy of measurements by reducing complex boundaries. Because many cities and counties have joined regional agencies, in 2008 there were 414 local governments subject to these requirements.

To ensure consistency in its evaluation and treatment of jurisdictions during the biennial review and any subsequent hearings, the IWMB adopted enforcement policies in February 1995, and updated the policies in August 2001. The policy is incorporated into statute by reference (PRC Section 41850).

If the implementation of a local government's waste diversion plan does not result in 50 percent solid waste diversion, the IWMB may do one of the following:

1. Determine that the local government's program implementation efforts are sufficient to warrant "good-faith effort" status; or
2. Place the local government under a compliance order (PRC Section 41825).

Since there are many diversion rate accuracy issues (see Local Government Diversion Program Limitations section below for a description of accuracy issues), the emphasis of the IWMB evaluation is on whether or not the local government has made a "good faith effort" to implement all reasonable and feasible diversion programs. When a local government fails to make a "good-faith effort" to implement diversion programs to achieve 50 percent waste diversion, the IWMB holds a hearing to determine whether to place the local government on compliance. The compliance order issued by the IWMB after such a hearing is accompanied by a plan for corrective action outlining specific steps and a schedule of deadlines which will bring the local government into compliance with the IWMA. The focus of the corrective action plan is also on implementation of all reasonable and feasible diversion programs, though some corrective action plans have included work on improving diversion rate measurement accuracy.

When a local government fails to implement the conditions of its compliance order, the IWMB conducts a penalty hearing to determine whether to exercise its authority under PRC Section 41850 to fine local governments up to \$10,000 per day.

To address the issues in the limitations section and address interests of the regulated community, the Legislature passed SB 1016 (Wiggins, Chapter 343, Statutes of 2008). This legislation allows a local government and the IWMB to obtain more timely and accurate information on reductions in tons disposed, focuses efforts on implementing diversion programs to reduce waste sent to disposal and makes compliance determinations easier.

Under the "old" system, calculating diversion rates was a time-consuming and lengthy process, and rates could not be finalized for about 2 years after the measurement year. Diversion rates also were based on estimates of generation that often were often outdated and inaccurate. The "new" SB1016 system enables local governments to see their progress in a timely manner. Under the new system, each local government has its per capita disposal indicator within 6-9 months of the end of the reporting period instead of 18-24 months. This enables the local governments and IWMB to address program performance issues earlier.

SB 1016 does not change the 50 percent diversion requirement, it just measures it differently. The measurement system shifts from the solid waste diversion measurement to a per capita disposal measurement system. The per capita disposal is an indicator that allows for local growth. As residents or employees increase, report-year disposal tons can increase and still be consistent with the 50 percent per capita disposal target. Through this system each local government's compliance will continue to be evaluated on a case-by-case basis. Local governments will not be compared to other local governments or the statewide average. Local governments will only be compared to their own 50 percent per capita disposal target.

Under the old and new systems, the most important aspect of compliance and enforcement is diversion program implementation. To evaluate compliance, the IWMB will look at a local government's per capita disposal rate as an indicator of how well its programs are keeping solid waste disposal at or below a local government's unique 50 percent per capita disposal target (the new system's benchmark indicator of the 50 percent diversion mandate). However, this number is just one factor and by itself does not determine compliance or when to take enforcement action. Compliance is based on the IWMB determining that a local government is continuing to implement its selected diversion programs and is making progress in meeting its target.

Local governments will have a new IWMB Board Review cycle to determine compliance. The review cycle will be based on each local government's 2005/06 biennial review status. The cycles include:

- 50 percent diversion or above--four years for local governments determined to be at or above 50 percent diversion, or met their rural reduced goal, in 2006 and who have implemented their diversion programs.
- Good faith effort--two years for local governments determined to have been below 50 percent diversion in 2006, but who have implemented their diversion programs and have been determined to be making a good faith effort.
- On a Compliance Order--as specified in compliance schedule.
- At any time for local governments determined to have performance problems (for example through random audits).

In the future, a Board Review frequency may change if a local government's status changes. The first two-year review will be in 2010 upon receipt of 2009 annual reports and the first four-year review will be in 2012 upon receipt of 2011 annual reports.

Local Government Diversion Enforcement Goals

The Strategic Directives focus on minimizing waste and maximizing diversion of materials from landfills through the waste management hierarchy of waste prevention, recycling and composting, and safe disposal of waste. The Strategic Directives also focus on compliance with the requirements that local governments plan and implement diversion programs to achieve 50 percent diversion. To accomplish these strategic directives the IWMB will:

- Provide vigorous oversight of local governments to ensure that 50 percent diversion is maintained among those that have already attained it.
- Increase the number of local governments that reach the 50 percent level.
- Continually increase the statewide annual diversion rate beyond 50 percent.
- Ensure implementation of diversion programs in 100 percent of jurisdictions in California.
- Ensure all jurisdictions are in compliance with the diversion requirements

Local Government Diversion Enforcement Component Metrics

Local Government Diversion Enforcement Component Data Characteristics

Local government diversion related data is collected from a number of sources. Waste disposed by all residents and businesses is collected at permitted solid waste facilities and reported to the IWMB in the Disposal Reporting System. This data is included in the IWMB's calculation of default diversion rates. Local governments correct diversion rate data, if they have corrections and adjustments and report the diversion rate and diversion program implementation data in their annual progress report to the IWMB.

Local Government Diversion Enforcement Component Inputs

See description of enforcement program resources in the IWMB Enforcement Program Overview.

Local Government Diversion Enforcement Component Outputs

Biennial reviews take place when the diversion rate information is available for the second year of the two year cycle (for example 2005-2006). For 2006 the calculation factors required to estimate the diversion rate were not available until December 2007. Local government annual reports with their 2006 diversion rates were due in March 2008 and the results of the 2005-2006 biennial reviews were considered by the IWMB in December 2008.

As a result of the 2005-2006 biennial reviews, three local governments were placed on compliance in 2008: Compton, Santa Paula and Firebaugh. Two other local governments were scheduled for 2009 biennial reviews for compliance orders.

Twelve local governments were on compliance orders at the end of 2008. These include: Cerritos, Compton, Daly City, Downey, Firebaugh, Hawaiian Gardens, Hermosa Beach, Inglewood, Los Angeles Regional Agency, Paramount, Ridgecrest and Santa Paula.

Two local governments met the terms of their compliance orders in 2008 and were removed from compliance status by the IWMB. These local governments include: Adelanto and Fortuna.

One local government on an existing compliance order did not successfully implement its compliance order. The IWMB conducted a penalty hearing for the City of Cerritos, determined the City had not made a good faith effort to implement its diversion programs and issued a penalty of \$84,000.

Local Government Diversion Enforcement Component Outcomes

The IWMB provides assistance to local governments, as required by law, to help them achieve compliance with diversion requirements. The IWMB also places local governments on compliance orders if they have not met requirements, or made a good faith effort to meet the diversion requirements. This has resulted in increased compliance over time. In the 1999-2000 Biennial Review Cycle 65 percent of local governments were found to be in compliance and approved by the IWMB. In the 2005-2006 Biennial Review Cycle 96 percent of local governments were found to be in compliance and approved by the IWMB (approval includes IWMB approval of good faith effort). See Figures 9 and 10 for results of the 1999-2000 and 2005-2006 Biennial Review Cycles.

Many of the issues with estimating diversion rates at the local government level are reduced when looking at statewide data. Since the IWMA went into effect in 1990, diversion rates have increased due to increased diversion, even as generation has increased. Statewide diversion rates have increased from 10 percent in 1989 to 58 percent in 2007 (the latest year for which data is available). See Figure 11 and Table 2 for the statewide per capita disposal and diversion over time.

The IWMB's Strategic Directives include continually increasing the statewide annual diversion rate beyond 50 percent. The 2007 statewide diversion rate was 58 percent, while the 2006 statewide diversion rate was 54 percent. The total waste generated by Californian's increased by 900,000 tons between 2006 and 2007.

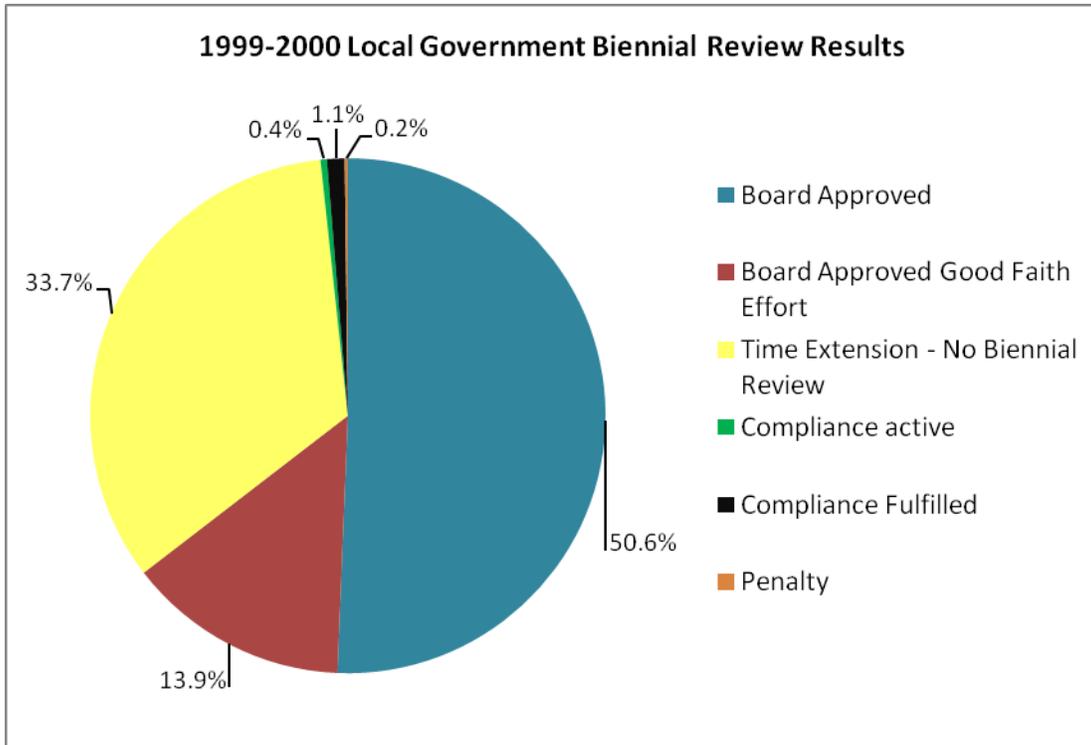


Figure 9. Results of the 1999-2000 Biennial Review Cycle

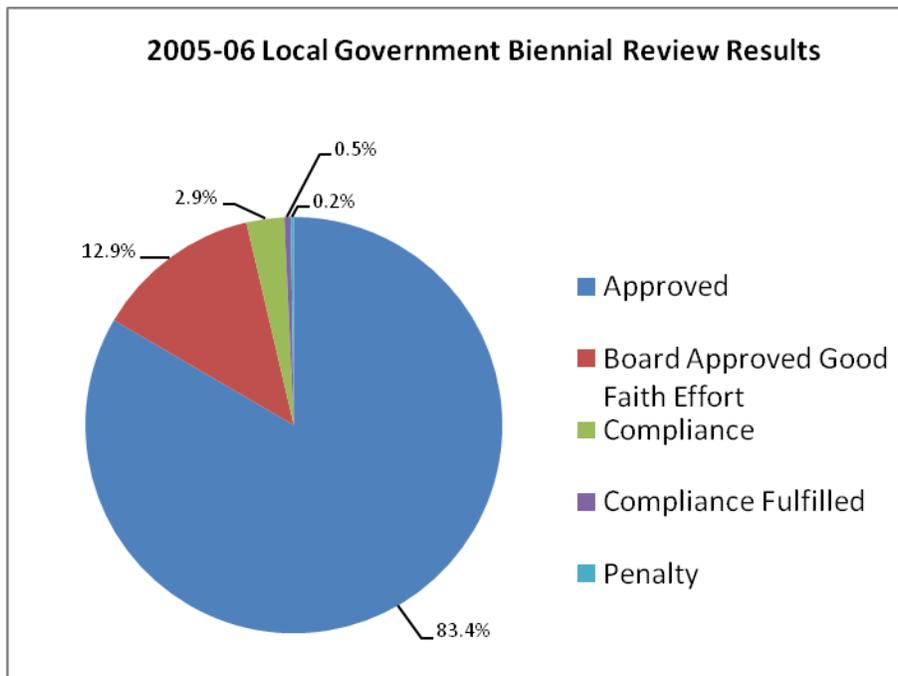


Figure 10. Results of the 2005-06 Biennial Review Cycle

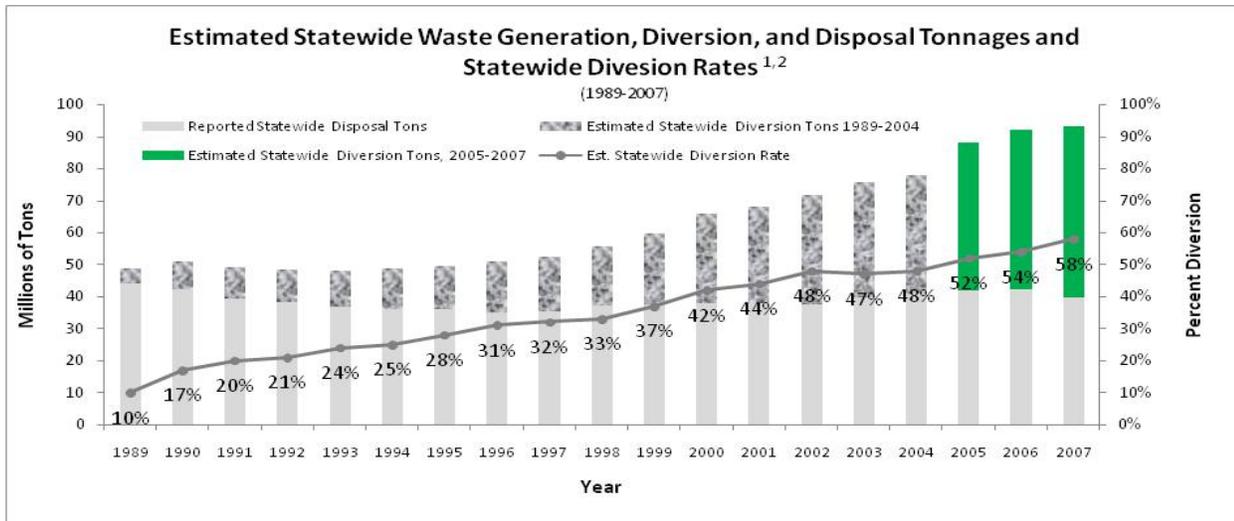


Figure 11. Statewide Disposal, Diversion and Generation Rates

¹ The Board's [Taxable Sales Deflator Index](#) (TSDI) was used to remove inflation from taxable sales amounts used in statewide diversion rate estimates for 2005, 2006 and 2007. A preliminary TSDI is used for the statewide diversion rate. Prior to 2005, Consumer Price Index (CPI) was used. In 2004, the State Board of Equalization stated that its taxable sales deflator is a more accurate measure of inflation in taxable sale amounts. Because of this change in methodology, the statewide generation and diversion rate estimates for 2005, 2006, and 2007 are not directly comparable with prior year estimates.

² Per Chapter 993, Statutes of 2002 (Chavez, AB 2308), 2001-2005 disposal figures do not include waste sent to three Integrated Waste Management Board-permitted inert mine-reclamation facilities in Southern California. Starting in 2006, disposal does not include waste sent to two of these facilities. This represents approximately 2 percentage points of diversion.

| <u>Year</u> | <u>Estimated Statewide Diversion (Millions of Tons)</u> ^{1,2} | <u>Reported Statewide Disposal (Millions of Tons)</u> | <u>Est. Statewide Diversion Rate</u> | <u>Est. Statewide Generation (Millions of Tons)</u> |
|-------------|--|---|--|---|
| 1989 | 5 | 44 | 10% | 49 |
| 1990 | 8.5 | 42.4 | 17% | 50.9 |
| 1991 | 9.7 | 39.5 | 20% | 49.2 |
| 1992 | 10.2 | 38.4 | 21% | 48.6 |
| 1993 | 11.4 | 36.7 | 24% | 48.1 |
| 1994 | 12.4 | 36.3 | 25% | 48.7 |
| 1995 | 13.7 | 36 | 28% | 49.7 |
| 1996 | 15.9 | 35 | 31% | 50.9 |
| 1997 | 17 | 35.5 | 32% | 52.5 |
| 1998 | 18.5 | 37.4 | 33% | 55.9 |
| 1999 | 22.2 | 37.5 | 37% | 59.7 |
| 2000 | 28 | 38.1 | 42% | 66.1 |
| 2001 | 29.9 | 38.1 | 44% | 68 |
| 2002 | 34.2 | 37.6 | 48% | 71.8 |
| 2003 | 35.8 | 39.9 | 47% | 75.7 |
| 2004 | 37 | 40.9 | 48% | 77.9 |
| 2005 | 46.2 | 42 | 52% | 88.2 |
| 2006 | 50.1 | 42.2 | 54% | 92.2 |
| 2007 | 53.5 | 39.6 | 58% | 93.1 |

Table 2. Statewide Disposal, Diversion and Generation Rates

¹ The Board's [Taxable Sales Deflator Index](#) (TSDI) was used to remove inflation from taxable sales amounts used in statewide diversion rate estimates for 2005, 2006 and 2007. A preliminary TSDI is used for the statewide diversion rate. Prior to 2005, Consumer Price Index (CPI) was used. In 2004, the State Board of Equalization stated that its taxable sales deflator is a more accurate measure of inflation in taxable sale amounts. Because of this change in methodology, the statewide generation and diversion rate estimates for 2005, 2006 and 2007 are not directly comparable with prior year estimates.

² Per Chapter 993, Statutes of 2002 (Chavez, AB 2308), 2001-2005 disposal figures do not include waste sent to three Integrated Waste Management Board-permitted inert mine-reclamation facilities in Southern California. Starting in 2006, disposal does not include waste sent to two of these facilities. This represents approximately 2 percentage points of diversion.

Environmental/Health Outcomes

The CalEPA Environmental Protection Indicators for California (EPIC), that were originally published in 2004, look at statewide diversion data on a per capita basis rather than for the state as a whole as described above in the outcomes section. Many of the issues with estimating diversion rates at the local government level are reduced when looking at statewide data. Since the IWMA went into effect in 1990, per capita disposal rates have decreased due to increased diversion, even as generation has increased. See Figure 12 and Table 3 for the statewide per capita disposal and diversion over time.

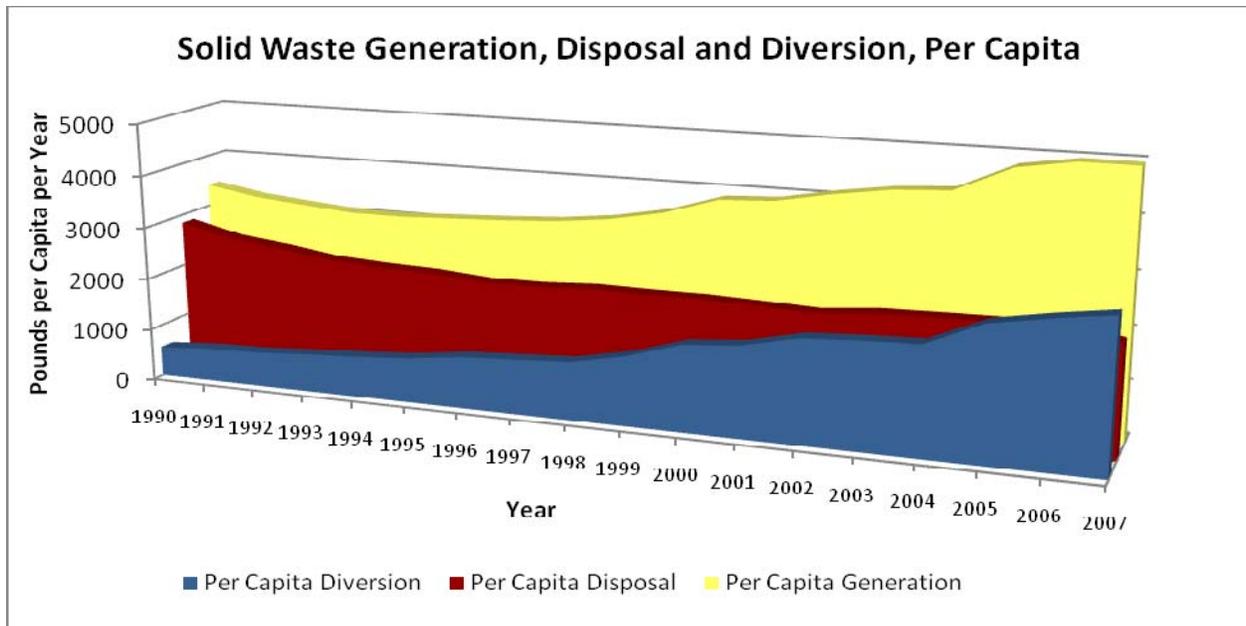


Figure 12. Statewide Per Capita Waste Disposal, Diversion and Generation

Pounds per Capita per Year

| Year | Per Capita Diversion | Per Capita Disposal | Per Capita Generation |
|------|----------------------|---------------------|-----------------------|
| 1990 | 570.5 | 2845.6 | 3416.1 |
| 1991 | 640.3 | 2607.3 | 3247.5 |
| 1992 | 662.3 | 2493.5 | 3155.8 |
| 1993 | 728.4 | 2345.0 | 3073.5 |
| 1994 | 782.3 | 2290.2 | 3072.6 |
| 1995 | 858.9 | 2257.1 | 3116.0 |
| 1996 | 987.6 | 2173.9 | 3161.5 |
| 1997 | 1042.9 | 2177.9 | 3220.9 |
| 1998 | 1104.5 | 2232.8 | 3337.3 |
| 1999 | 1313.6 | 2218.9 | 3532.5 |
| 2000 | 1632.7 | 2221.6 | 3854.2 |
| 2001 | 1718.4 | 2189.7 | 3908.0 |
| 2002 | 1954.3 | 2148.6 | 4102.9 |
| 2003 | 2011.2 | 2241.6 | 4252.8 |
| 2004 | 2049.9 | 2265.9 | 4315.8 |
| 2005 | 2510.9 | 2282.6 | 4793.5 |
| 2006 | 2693.5 | 2268.8 | 4957.0 |
| 2007 | 2845.7 | 2106.4 | 4952.1 |

Table 3. Statewide Per Capita Waste Disposal, Diversion and Generation

Local Government Diversion Enforcement Limitations

In the 1980s, California faced landfill siting problems and a projected shortage of landfill capacity that could impact the health and safety of Californians. In 1989, the IWMA established a framework to limit reliance on landfills and waste-to-energy projects and give greater weight to recycling, waste prevention, reduction, and composting methods. The IWMA placed the burden for achieving these goals on cities and counties and required that they establish base-level waste generation (generation tons = diversion tons + disposal tons) by measuring both diversion and disposal.

In the early 1990s, cities and counties found it was difficult and costly to obtain accurate information on quantities and types of wastes recycled and composted, and to calculate waste prevention. Waste diversion activities are decentralized and dispersed, as compared to disposal that occurs at a limited number of facilities. Recyclers and businesses were reluctant to provide information that could give competitors an advantage and the law does not require they provide such information. Local governments bear the responsibility of meeting IWMA requirements, but do not necessarily control all the waste generators within their borders.

In 1992, state law was changed to redesign the measurement system from a diversion measurement system to a disposal-based measurement system. Diversion rate estimates are made by comparing disposal tonnage to estimated waste generation (estimated diversion tons = adjusted base-level generation – disposal tons). The adjustment is needed so jurisdictions are not penalized for changes in population and economics outside their control that can significantly impact the amount of waste generated.

Base-level waste generation is the starting point of the disposal-based diversion rate measurement system. Many inaccurate assumptions were made about California's waste stream when local governments established their original base levels. Since the adjustment method is applied to base level data, inaccuracies in base-level data can have a significant impact on the estimated diversion rate.

In the mid-1990's, the IWMB was required to develop the disposal-reporting system to track where waste comes from because the measurement system is heavily dependent on accurate disposal data. The disposal reporting system regulations were recently revised to improve accuracy. However, there are still accuracy issues in areas with complex boundaries and high amounts of self-haul waste and for small jurisdictions.

There are many accuracy issues related to diversion rates and these have made compliance determinations more difficult. Key issues for the IWMB and local governments have always been:

- recognition that potential errors in the diversion rate measurement system make the diversion rate an estimate, not an absolute value; and
- The appropriate balance between resources needed to improve accuracy and resources needed to establish and maintain the diversion programs and infrastructure.

State-sponsored legislation passed during the 2008 legislative session to improve the measurement system. The changes in legislation will allow local governments and the IWMB to obtain more timely and accurate information on reductions in tons disposed, focus efforts on implementing diversion programs to reduce waste sent to disposal and make compliance determinations easier.

4) Rigid Plastic Packaging Containers (RPPC) Minimum Recycled Content Enforcement Component

RPPC Minimum Recycled Content Enforcement Component Description

The RPPC law was enacted as part of an effort to increase the use of recycled plastic and reduce the amount of plastic waste disposed in California landfills. The law regulates companies that produce or generate products that are held in RPPCs that are sold or offered for sale in California. The law is enforced by the IWMB through a compliance certification process for regulated companies.

California's RPPC law supports new and expanded infrastructures for collecting and recycling plastic resins in California and around the world. The law diverts plastics from disposal in California landfills by supporting demand for postconsumer material, which in turn encourages recyclers to divert more material that would otherwise go to landfills. Continued implementation and effective enforcement of the law is essential to follow through on the IWMB's commitment to protect the environment and is critical to maintaining demand for postconsumer resins.

The law applies to manufacturers/producers/generators of products sold or offered for sale in regulated RPPCs as defined by law. When a company's name, or any of its brand names or subsidiaries or affiliates, appears on the container label of a product that is sold or offered for sale into the State of California, either directly or indirectly (for example, through distributors, franchises, internet sales, etc.), then that company is subject to the requirements of the California RPPC law.

Several types of containers are exempt from the RPPC requirements these include rigid plastic containers:

- used for shipping drugs, medical devices, cosmetics, food, medical food, or infant formula as defined by the Federal Food, Drug, and Cosmetic Act;
- used for shipping toxic or hazardous products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act; and
- used for shipping hazardous materials that are prohibited by federal law from being manufactured with "used material" (postconsumer resin) by federal packaging material specifications, or are subject to specified federal testing standards, or to which recommendations of the United Nations on the transport of dangerous goods are applicable.

California statute allows the IWMB to assess penalties of up to \$50,000 for any violation up to a maximum of \$100,000 annually. Violations include, but are not limited to, failure to submit all required forms, or submitting incomplete forms, or noncompliance with the RPPC law.

RPPC Minimum Recycled Content Enforcement Component Goals

The RPPC law supports California's recycling infrastructure and supports greater collection and reprocessing of plastic resins into containers produced. Compliance can be achieved in several ways:

- Some compliance options were designed to encourage source reduction (waste prevention), recycling, and reuse/refilling of RPPCs;
- The recycling compliance option promotes the use of more postconsumer resin in RPPCs, and reduces the amount of virgin resin used to manufacture RPPCs.

One hundred companies selected from a pool of companies that produce or generate products in RPPCs are required to certify they complied in a calendar year, and are subject to penalties if they fail to demonstrate compliance.

The RPPC program promotes extended producer responsibility by supporting infrastructure for collecting and recycling plastic resins and requiring recycled content in plastic packaging. The Strategic Directives set goals for additional producers to assume the responsibility for the safe stewardship of their materials in order to promote environmental sustainability.

RPPC Minimum Recycled Content Enforcement Component Metrics

RPPC Minimum Recycled Content Enforcement Component Data Characteristics

Companies selected to certify they complied in a particular calendar year are required to submit forms containing data required by statute and regulations.

RPPC Minimum Recycled Content Enforcement Component Inputs

See description of enforcement program resources in the IWMB Enforcement Program Overview.

RPPC Minimum Recycled Content Enforcement Component Outputs

During 2008, IWMB staff reviewed additional compliance certification information submitted by nine companies regarding compliance during 2005. Five of the companies submitted additional data that supported compliance. Three of the companies were found not to comply and penalties of about \$225,000 were collected. Additional information from one company is still under review and a decision is expected in 2009.

RPPC Minimum Recycled Content Enforcement Component Limitations

The CIWMB has conducted five compliance certification cycles for the following reporting periods: 1996; 1997-99 (combined into one certification); 2000; 2001 and 2005. Based on over 10 years experience in conducting compliance certifications and in taking enforcement actions, it became clear there were inconsistencies, inequities, complexities, and outdated provisions in the current regulations which are an impediment to the effective and efficient implementation of the law. Therefore, the IWMB decided to adopt revised regulations, and educate businesses about the requirements in the revised regulations, before undertaking another compliance certification cycle.

Stakeholders have raised many issues regarding the existing RPPC regulations. The IWMB directed staff to revise the RPPC regulations and implement an outreach and educational campaign before undertaking another compliance cycle and assessing penalties. Regulations revisions are needed to make them more clear and specific; to reorganize the regulations to improve ease of understanding; to eliminate inequities in regard to what types of containers are regulated; to align the regulations with the intent of the law to support markets for PCM; and to align the regulations with the Board's strategic directive for extended producer responsibility.

Modifying the regulations to clarify that the owner of the brand name is the corporate entity responsible for generating products packaged in RPPCs for sale in California will have the effect of requiring manufacturers to take responsibility for the packaging it uses. This should have the effect of "greening" manufacturer's entire supply chain as they require their suppliers to provide them with compliant containers.

Modifying the definition of a rigid plastic packaging container to include containers that are almost identical to regulated containers, but that are not currently regulated by the existing regulations will level the playing field. This regulatory inconsistency creates an inequitable regulatory environment. For example, containers with metal handles are currently not regulated, even though the same container without a handle, or with a plastic handle, is regulated.

IWMB directed staff to start the formal regulations revisions process. Due to high staff turnover and vacancies, the regulations revisions have been delayed. The IWMB will resume RPPC certifications after revised regulation are adopted.

5) Illegal Dumping Component

Illegal Dumping Component Description

Illegal dumping poses risks to the general public and the environment, degrades the quality of life in affected communities, and is costly to cleanup. Illegal dumping is an intentional act that is typically done for economic gain. In contrast, littering is not done for economic gain and may or may not be an intentional act. Currently, no state agency is tasked with the coordination of issues arising from illegal dumping. In general, local entities take the lead in enforcement and cleanup for such sites.

IWMB initiated a coordinated effort to assess: 1) the statewide extent of the illegal dumping problem; 2) the amount of resources that local governments spend annually combating the problem; and 3) local government's needs to combat the problem. An Illegal Dumping Enforcement Task Force (IDETF) was formed in early 2006 and activities continued into 2009. The twenty-two members included local, state, federal and local government employees, legal associations, hazardous material management associations, private solid waste operators and associations, environmental non-profit associations, and private citizens.

In conjunction with the IDETF activities, California State Association of Counties (CSAC) and the League of California Cities provided staffing to conduct a 2008 follow-up to the original 2006 cost survey. While not yet finalized, the 2008 survey had a greater level of local government participation and indicated results consistent with the 2006 survey. The 2006 survey reported an annual cost of over \$34 million to local government for abatement. In addition, the Department of Transportation has an annual budget for litter and illegal dumping abatement and prevention of \$55 million, which means a combined minimum cost of \$89 million.

Illegal Dumping Component Metrics

Illegal Dumping Component Data Characteristics

Since no state agency has authority for illegal dumping, a variety of data is collected by local and state agencies depending on their needs and available resources.

Illegal Dumping Component Inputs

See description of enforcement program resources in the IWMB Enforcement Program Overview.

Illegal Dumping Component Outputs

IWMB staff worked with local government representatives to develop a web-based [Illegal Dumping Resources Toolbox](#). The toolbox emphasizes the four core elements of an effective program to keep pace with illegal dumping; prevention, abatement, cleanup, and enforcement. The enforcement element articulates needed staff resources including illegal dumping enforcement officers; documentation tools and resources to support enforcement; and administrative and judicial approaches for case resolution. The toolbox will be rolled out to code enforcement officials, local enforcement agencies, and local government decision makers in 2009.

IWMB continues to move aggressively under its Solid Waste Disposal and Codisposal Site Cleanup Program to quickly cleanup large illegal disposal sites that pose a significant threat to the surrounding communities where responsible parties are unable or unwilling to perform the necessary remediation. A recent example of effective and timely remediation is the IWMB-managed cleanup of the Mission Fiber Illegal Disposal Site near Blythe, which was requested by the Riverside County Code Enforcement Department. Within four weeks of the Board's approval over 8,550 tons of waste was removed and properly disposed at a cost of over \$657,000.

In addition, IWMB is implementing innovative cleanup initiatives near the U.S.-Mexico border. IWMB is working in partnership with the California Department of Parks and Recreation to fund and install a trash boom system for basins to improve the removal of trash, tires, and sediment during storm events and prevent impacts to the Tijuana River Estuary. The Imperial County New River Collaborative (Collaborative), consisting of various local agencies and IWMB staff is cleaning up and preventing reoccurrence of 64 chronic mixed tire and solid waste illegal dumping sites in Imperial County. The Collaborative focuses on cleanup of sites voluntarily by responsible parties, or if necessary based on issuance of LEA enforcement activities. However, many sites are on public lands or otherwise impact innocent property owners that may qualify for funding through the Farm and Ranch Grant Program. A pilot program Master Agreement was awarded to the Solid Waste LEA under the Farm and Ranch Grant Program. The Master Agreement accelerates the normal process to cleanup 14 of these sites. As of December 2008, the LEA has verified that all but four of the sites are either cleaned up or in the process of cleanup.

To address 50 high-priority chronic illegal dumping locations on the public right-of-way the IWMB provided a \$500,000 grant to the City of Los Angeles in June 2008. The City plans to clean up the sites while discouraging future illegal dumping activities at these locations by utilizing various enforcement strategies, including daily and weekly patrols and surveillance, stakeouts, and issuance of citations and fines under the City's Neighborhood Prosecutor Program.

Illegal Dumping Component Limitations

Until the following are addressed, illegal dumping will continue to be an issue throughout California: (1) there is a critical need for state coordination, leadership, and assistance to local illegal dumping enforcement, abatement and prevention programs; (2) legislation is required to provide local and state government with the needed legislative authority and equipment to administer effective illegal dumping programs as described above and (3) additional funding sources are needed to support the increasing costs of illegal dumping.

Two pieces State-sponsored legislation related to illegal dumping were introduced during 2008, but the primary one, [Assembly Bill 2695 \(Niello\)](#), did not pass.

III. FUTURE DIRECTIONS

As a result of the 2007 reorganization to implement Governor Schwarzenegger's Enforcement Initiative, during 2008 CEED streamlined a number of existing compliance and enforcement practices to improve their effectiveness in meeting the IWMB's Strategic Directives, the Five-Year Tire Plan and the Compliance Targeting Strategy.

During 2008 many existing supervisors, managers and staff continued to leave for higher paying staff-level scientist positions elsewhere at CalEPA. IWMB hired many new staff, supervisors and managers and extensive training will be needed so they can perform their new duties.

The IWMB's key enforcement objectives for 2009 include meeting strategic directives, promoting state sponsored legislation, streamlining processes as described under each component below, clarifying requirements through regulations revisions and evaluating the potential of new technology to improve enforcement in the future. These activities have been identified in this chapter and are summarized below.

Solid Waste Facility and LEA Enforcement Component

In the area of solid waste facility compliance and enforcement the IWMB will focus on implementing Strategic Directives and the Compliance Targeting Strategy.

- Meet the Strategic Directives goals to:
 - Assure that 100 percent of active landfills and other solid waste facilities meet state minimum standards as well as permit terms and conditions and that they comply with federal and state waste management laws;
 - Reduce the number of solid waste facilities on the noncompliance ("Inventory") list;
 - Increase by 2 percent the number of independent and random CEED inspections (audits) and field investigations conducted at solid waste facilities
- Focus on LEAs that have been on corrective work plans for two or more evaluation cycles. Provide targeted assistance, and where the assistance does not improve performance, initiate an early LEA evaluation. Outcomes range from placing the LEA on probation to the IWMB taking over all LEA duties.
- Focus additional inspections on high profile sites with potential or known compliance issues
- Identify opportunities for additional progress in increasing compliance and enforcement.
 - Develop automated electronic inspection reports to obtain data more quickly and reduce potential data entry errors
 - Update information in databases and develop database triggers to identify issues early. Database triggers could include: chronic violations not handled at the local level; chronic permit violations other than state minimum standards covered by the Inventory process; lack of LEA inspections; and multiple enforcement orders that do not show progress.
 - Identify types of assistance and training needed to improve compliance with input from the LEAs
 - Provide assistance to help LEAs and operators achieve compliance with the ultimate goal of achieving 100 percent compliance
- Obtain authority to establish reimbursable positions when the IWMB assumes EA duties.
- Begin to implement AB 2679 by determining needed modifications to existing enforcement processes. Develop LEA guidance for minor violation program.

Tire Enforcement Component

The Tire Enforcement Program will focus on efforts to:

- Meet the Strategic Directive goal:
 - Assure that 100 percent of tire facilities meet state minimum standards as well as permit terms and conditions, and that they comply with federal and state waste management laws;
- Obtain Board approval for a permanent streamlined penalty process for tire hauler and manifest violations permanent and expand the streamlined process to tire facility violations that meet the same criteria. Continue to streamline processes to allow more enforcement within existing staff levels.

- Evaluate final results of the IWMB's contract on use of satellite technology in identifying waste tire piles. Determine whether the approach is currently viable and if so, identify the next steps in using this technology.
- Evaluate results of the IWMB's contract on tire flow in the California/Mexico border region. Determine appropriate IWMB actions to address illegal export of tires to Mexico and increase recycling/reuse of waste tires.

Local Government Diversion Enforcement Component

In this area, the program will focus on efforts to:

- Meet the Strategic Directives goals and:
 - Ensure implementation of diversion programs by 100 percent of local governments; and
 - Ensure all local governments are in compliance with the diversion requirements.
 - Continually increase the statewide diversion rate beyond 50 percent.
- Place local governments the Board found not to be making a "good faith effort" to achieve diversion requirements during the 2005/2006 biennial review on compliance orders. Compliance orders require a compliance implementation plan with additional diversion programs and an implementation schedule.
- Monitor local governments on compliance orders to determine whether they are meeting the schedule and terms of the compliance order. Determine whether each local government has met the terms of the compliance order. If not, conduct a hearing to consider penalties for failure to implement the compliance order.
- Conduct random audits of jurisdictions found to make a good faith effort in the 2005/2006 biennial review.
- Begin to implement SB 1016 by determining needed modifications to existing enforcement processes.

RPPC and Minimum Recycled Content Enforcement Component

In this program area, staff will focus on efforts to:

- Conduct an appeal hearing if a company appeals the IWMB decision that they are out of compliance with minimum recycled content requirements in the 2005 certification cycle.
- Revise RPPC regulations to clarify requirements and level the playing field prior to undertaking the next compliance certification process.

Illegal Dumping Component

Staff will focus on efforts to:

- Complete the pilot program in Imperial County for regional cleanup of illegal dumping sites under the IWMB's Farm and Ranch grant program and a grant application under the Solid Waste Cleanup Program.
- Complete roll-out of illegal dumping resources toolbox through trainings and participation in local and regional illegal dumping task force meetings.
- Promote State sponsored legislation to enhance local and regional efforts to combat illegal dumping.

###

IV. APPENDICES

LIST OF ACRONYMS

| Acronym | Full Name |
|-------------|---|
| 14 CCR | Title 14, California Code of Regulations |
| 27 CCR | Title 27, California Code of Regulations |
| ARB | California Air Resources Board |
| BMP | Best management practice |
| Cal/EPA | California Environmental Protection Agency |
| CalTrans | California Department of Transportation |
| CEED | Compliance Evaluation and Enforcement Division |
| CHP | California Highway Patrol |
| CIA | Closed, Illegal, and Abandoned Disposal Sites |
| CPI | Consumer Price Index |
| CSAC | California State Association of Counties |
| DTSC | California Department of Toxic Substances Control |
| EA | Waste tire enforcement action |
| EA | Solid waste enforcement agency |
| EPA | U.S. Environmental Protection Agency |
| EPIC | California Environmental Protection Agency Environmental Protection Indicators for California |
| EPP | Enforcement Program Plan |
| IDETF | Illegal Dumping Enforcement Task Force |
| Inventory | Inventory of Solid Waste Facilities That Violate State Minimum Standards |
| IWMA | Integrated Waste Management Act |
| IWMB | Integrated Waste Management Board |
| LEA | Solid waste local enforcement agency |
| MSWLF | Municipal Solid Waste Landfill |
| NOV | Notice of Violation |
| PCM | Post-consumer material |
| PRC | Public Resources Code |
| RCRA | U.S. Resource Conservation and Recovery Act |
| RPPC | Rigid Plastic Packaging Container |
| SMS | State Minimum Standards at solid waste handling facilities |
| SWFP | Solid waste facility permit |
| SWRCB | California State Water Resources Control Board |
| TSDI | Taxable Sales Deflator Index |
| WCM Program | Waste Compliance and Mitigation Program |

#

STATE WATER RESOURCES CONTROL BOARD

I. EXECUTIVE SUMMARY

The State Water Resources Control Board (State Water Board) and the California Regional Water Quality Control Boards (Regional Water Boards) are charged with the protection of the waters of the State. To ensure compliance with clean water laws, the State Water Board and Regional Water Boards (Water Boards) issue permits and take enforcement actions for discharges of waste impacting the State's surface and ground waters. The Water Boards regulate more than 40,000 facilities that discharge waste or that may have an impact on water quality. The Water Boards also regulate and enforce water rights in California.

This report primarily addresses enforcement activities within the five core regulatory and water rights programs. During 2008, the Regional Water Boards were supported by 64 enforcement staff and 94 compliance staff within these programs. The State Water Board was supported by 22.5 enforcement staff. Based on information from the Water Boards' database, these staff brought more than 3,252 informal enforcement actions and more than 433 formal enforcement actions, where formal enforcement actions reflect the various enforcement authorities contained in statute. Approximately 259 of the 433 formal enforcement actions established nearly \$28 million in administrative civil liabilities (ACL).

In the Water Boards' "[Baseline Enforcement Report for Fiscal Year 2006-07](#)," released in May 2008, performance measures were identified for the core regulatory enforcement programs. Some of these measures are incorporated into this report. While data is currently available to report on most input and output measures, the programs currently do not track outcomes that measure the environmental benefit of water quality enforcement activity. Enforcement data for the Water Boards is also presented in several other reports, including the "[2008 Enforcement Report](#)," required by California Water Code section 13385(o)³ and the [Fiscal Year 2007-2008 Annual Enforcement Report](#), released in April, 2009. Additional information on the Water Boards enforcement activities is available at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/

A) Major Program Highlights

- **Main Accomplishments:**

The 2008 Statewide Initiative for Mandatory Minimum Penalty Enforcement. On Jan. 1, 2000, Senate Bill 709 required that certain permit violations under the *Water Code* be subject to mandatory minimum penalties (MMP). While the State Water Resources Control Board and the Regional Water Quality Control Boards (collectively Water Boards) did assess MMPs as a result of the new legislation, the [2007 Water Boards' Enforcement Report](#) showed that 7,880 violations (from Jan. 1, 2000 to Dec. 31, 2007) had not received a penalty at or above the mandatory minimum amount. In February 2008, the State Water Board's Office of Enforcement (OE) began examining many of the violations subject to MMPs in the California Integrated Water Quality System (CIWQS) dating back to January 1, 2000 that had not received an enforcement action to assess a MMP. After discussing the ways to efficiently address these outstanding violations, the Water Boards started the *Statewide Initiative for MMP Enforcement*. In total, State and Regional Water Board staff identified 12,348 backlogged violations from 464 facilities that had not received any enforcement action. As of March 31, 2009, the backlog of MMP violations without enforcement actions had been

³ Both reports are available at <http://www.waterboards.ca.gov/>.

substantially reduced. Several Regional Water Boards have addressed all outstanding violations, and most of the remaining Regional Water Boards are nearly finished. The Water Boards have addressed 13,812 MMP violations from 455 facilities statewide through enforcement activities related to the Initiative (which included some violations occurring after the Dec. 31, 2007). The enforcement activities consist of 123 ACL complaints and 332 expedited payment letters. Out of the 455 enforcement actions initiated, 228 matters have been resolved or settled which means that the Initiative resulted in liabilities assessed in the amount of \$15,595,500. A detailed report describing the accomplishments achieved with the initiative is available at the Water Boards web site http://www.waterboards.ca.gov/water_issues/programs/enforcement/

Enforcement Coordination with the Department of Fish and Game pilot project. The Department of Fish and Game (DFG) in coordination with Water Board personnel initiated a pilot project to develop a coordinated enforcement response to construction storm water violations. The expected output will be a field manual for joint use by DFG and Water Board staff. The goal of the initiative is to improve the coordination and effectiveness of both agencies' enforcement efforts related to discharges of construction stormwater. [This issue is identified in Action 7.4.1 of the Strategic Plan.](#) For a period of four months, the DFG/Regional Water Board teams completed joint inspections at the identified sites. Some of these joint inspections have led to formal or informal enforcement actions, while other investigations are ongoing. A workshop was held on September 4, 2008 at the Regional Water Board offices to update participating staff from both agencies on the progress made during the joint inspection period. A draft field manual is scheduled to be completed in early 2009. A detailed description of the project is available in the [Annual Enforcement Report for Fiscal Year 2007-2008.](#)

- **National Pollutant Discharge Elimination System (NPDES) Wastewater Program**

- Facilities regulated: 2,037
- Inspections conducted: 639
- Facilities with one or more violations: 601
- Violations documented: 5,417
- Percentage of violations with enforcement actions: 63%
- Enforcement actions issued: 855
- Penalties assessed: \$23,158,206

- **NPDES Stormwater Program**

- Facilities regulated: 28,805
- Inspections conducted: 2,472
- Facilities with one or more violations: 1,389
- Violations documented: 1,873
- Percentage of violations with enforcement actions: 93%
- Enforcement actions issued: 2,139
- Penalties assessed: \$2,757,960

- **Waste Discharge Requirements Program**

- Facilities regulated: 6,731
- Inspections conducted: 780
- Facilities with one or more violations: 825
- Violations documented: 5,179
- Percentage of violations with enforcement actions: 36%
- Enforcement actions issued: 551
- Penalties assessed: \$2,539,690

- **Land Disposal Program**
 - Facilities regulated: 790
 - Inspections conducted: 539
 - Facilities with one or more violations: 115
 - Violations documented: 277
 - Percentage of violations with enforcement actions: 78%
 - Enforcement actions issued: 87
 - Penalties assessed: \$126,950

- **401 Certification/Wetlands Program**
 - Projects regulated: 959
 - Inspections conducted: 60
 - Facilities with one or more violations: 12
 - Violations documented: 61
 - Percentage of violations with enforcement actions: 70%
 - Enforcement actions issued: 35
 - Penalties assessed: \$132,375

- **Office of Enforcement**
 - Cases Investigated: 323
 - Cases Closed: 19
 - Cases referred to District Attorney: 4
 - Enforcement actions issued: 8
 - Penalties assessed: \$57,500

- **Water Rights Enforcement**
 - Facilities regulated: 23,622
 - Inspections conducted: 65
 - Violations documented: 6,240
 - Percentage of violations with enforcement actions: 1%
 - Enforcement actions issued: 137
 - Cases Closed: 195
 - Penalties assessed: \$46,850

B) What the Reported Data Tells Us

An examination of the information presented in this report highlights the ongoing data and resource challenges of the Water Boards. The majority of the information presented in the tables and figures is generated from the Water Boards' California Integrated Water Quality System (CIWQS), which is a database containing information on the Water Board's water quality programs. For many of the core regulatory programs covered by this report, some data elements are either missing or incomplete. Variation in data entry is apparent from region to region and a lack of data should not be interpreted as inactivity by individual Regional Water Boards. An outcome of the broader Water Board initiative to make CIWQS functional to meet internal and external data management needs is to provide useful data on compliance and enforcement activities.

Key General Statistics

- In 2008 the Water Boards issued more than 3,700 enforcement actions.
- A total of 274 of enforcement actions with fines were issued during 2008.
- Statewide approximately 2,942 regulated facilities exceeded their discharge requirements at least once during 2008.
- Approximately 186 facilities under the core regulatory programs exceeded their permit limits more than ten times each and for more than one pollutant.
- Of the 274 Administrative Civil Liability (ACL) actions assessed for calendar year 2008, 184 were assessed at the mandatory minimum penalty (MMP) under the NPDES wastewater program, representing approximately two thirds of the total liabilities assessed.

Enforcement Response

- The amount of fines assessed in 2008 almost doubled compared to the fines assessed in 2007 and tripled compared to 2006. During calendar year 2008, 274 administrative liabilities were assessed for multiple violations resulting in \$28 million in liabilities assessed of which \$10,645,607 has been collected.
- Supplemental environmental projects and compliance projects represent 40% of fines collected.
- Enforcement policies and procedures do not appear to be implemented consistently which is likely due to resource limitations. Not all violations appear to be enforced according to policy and not all detected violations appear to be properly documented.
- Review of self monitoring reports (SMRs) has been substantially backlogged and CIWQS does not consistently track if reports are being received and reviewed.
- The Regional Water Boards are now close to current in addressing violations subject to MMPs. As of March 2009, only 1,709 MMP violations are still required to be addressed as a result of the 2008 Enforcement Initiative for MMP compared to the 12,348 backlogged violations identified in February 2008. This information is now updated on a [quarterly basis](#).

Data and Databases

- Entry of violation and enforcement data varies significantly among the regions. This limits opportunities to assess the magnitude, frequency and duration of violations necessary to prioritize the limited enforcement resources.
- General use of the CIWQS database is inconsistent among regional boards and programs.
- Ability to conduct historical trends analysis is limited due to the developing nature of the rules for data tracking and reporting.
- In compiling the information in this report, it was apparent that the Water Boards could make significant improvements in tracking the allocation of resources, outputs and time committed to enforcement activities.

C) How the Agency Will Use This Information

The Water Boards are working together to improve the collection of program data and environmental information. The Water Boards are in the process of identifying performance measures for all programs that will align Water Board strategies with environmental results (see [2008 baseline enforcement report](#) for a description of recommended performance measures for the enforcement program). The goal is to develop measurable targets and measurement systems for priority problems. These quantifiable targets should demonstrate improvement in water quality, regulatory compliance, staff efficiency, and program effectiveness. The Water Boards will integrate the data and information collected into its decision making process and everyday activities.

II. THE WATER BOARD'S ENFORCEMENT PROGRAM

A) Overview

Organization of the Report

The report provides compliance and enforcement information organized by water quality and water rights programs. Water quality programs reflect the different nature of the sources of pollution and the type of waterbody impacted (i.e. surface waters versus groundwater). The water rights program allocates surface waters taking into account prior water rights, the availability of water and the preservation of in-stream uses. This report also provides consistent metrics for the five main water quality core regulatory programs which include NPDES Wastewater, NPDES Stormwater, Waste Discharge Requirements (WDRs), Land Disposal and Wetlands/401. For other Water Board enforcement related activities performed by the Office of Enforcement and the Division of Water Rights, the report uses a combination of performance metrics and descriptive analysis.

Mission Statement

The mission of the Water Board is: "To preserve, enhance, and restore the quality of California's water resources and ensure their proper allocation and efficient use for the benefit of present and future generations. "

As described in the Water Board's [Water Quality Enforcement Policy](#), the Water Boards are responsible for swift and fair enforcement when the laws and regulations protecting our waterways are violated.

The Water Quality Enforcement Policy supports an environment where every violation should be met with a meaningful response from the Water Board and all significant violations should be addressed by formal enforcement action. Appropriate enforcement discourages violation of laws and instills public confidence. Within the Water Boards' regulatory framework, enforcement actions not only help to protect public health and the environment, but also help to create an "even playing field," ensuring that the regulated community and other water users who comply with the law are not placed at a competitive disadvantage by those who do not.

Water Boards Enforcement Program Goals/Desired Outcomes

Enforcement is a business function that supports the regulatory programs and authorities of the Water Boards. Compliance assurance and enforcement are integral components of all of the core regulatory programs. Both NPDES permits and WDRs may include a monitoring program to ensure compliance with discharge requirements. Water Board staff conduct inspections to ensure compliance with permits or WDR conditions.

The main expected outcome of enforcement is to encourage compliance. The Water Boards rely on deterrence-based enforcement with a strong and credible threat of punitive consequences to encourage voluntary compliance with water quality protection laws. The immediate goal of enforcement is to discover, document, report and properly respond to all violations in accordance with the water quality enforcement policy.

The Water Boards' core regulatory efforts promote compliance through a set of integrated actions that include:

- Ensuring permits are enforceable
- Conducting inspections
- Reviewing discharger Self Monitoring Reports (SMRs)
- Investigating complaints
- Addressing non-compliance with enforcement

The enforcement component of the core regulatory programs concentrates on:

- Documenting and tracking violations
- Initiating formal and informal enforcement actions
- Coordinating with law enforcement agencies
- Monitoring and reporting on the effectiveness of State and Regional Water Board actions.

The State Water Board's [Water Quality Enforcement Policy](#)⁴ describes the framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefit. Enforcement strategies range from the most informal to the very formal. An informal enforcement action can be as simple as a phone call or email while the most formal actions involve orders issued by the State and Regional Water Boards and the Attorney General. In between are Notices of Violation, Investigatory Orders, Cleanup and Abatement Orders, Cease and Desist Orders, and referrals for litigation. For the more formal actions, a hearing before the Regional Water Board will generally be necessary. Consistent use of formal enforcement actions to address the most serious violations is a fundamental goal of the Water Boards.

Ideally, serious violations must result in fair and appropriate consequences for the violators including consistent application of penalties and other wide-ranging sanctions available to the Water Boards by law. Moreover, penalties must be calculated to eliminate the economic advantage achieved through noncompliance with water quality laws

⁴ SWRCB Water Quality Enforcement Policy, February 19, 2002.

Organizational Structure

The Water Boards regulate water quality and administer a system of water rights in the state. The Regional Water Boards, funded and under the oversight of the State Water Board, implement water quality programs in accordance with policies, plans, and standards adopted by the State Water Board.

The Water Boards are organized by regional watersheds and by programs. Every program has an enforcement component and every Regional Water Board coordinates its enforcement activities through an enforcement coordinator. For the last several years, the Regional Water Boards have been improving their enforcement structure by separating staff responsible for compliance and enforcement of Water Board programs from those responsible for writing the permits. All of the Regional Water Boards have also created dedicated enforcement units that assume responsibility for much of the enforcement activity within a region. The Office of Enforcement at the State Water Board coordinates enforcement activities statewide.

The Water Boards also work with federal, state and local law enforcement, as well as other environmental agencies to ensure a coordinated approach to protecting human health and the environment.

Coordination between the nine Regional Water Boards and the State Water Board occurs through the enforcement roundtables and other Regional and State Water Board management meetings.

State Water Board

The State Water Board consists of five full-time salaried members, each filling a different specialty position. Board members are appointed to four-year terms by the Governor and confirmed by the Senate.

The State Water Board carries out its water quality responsibilities by (1) establishing discharge policies and standards; (2) implementing programs to ensure that the waters of the State are not contaminated by underground or aboveground tanks; and (3) administering state and federal loans and grants for the construction of wastewater treatment, water reclamation, and storm drainage facilities among others. Waste discharge permits are issued and enforced mainly by the Regional Water Boards, although the State Water Board issues some permits and initiates enforcement actions when deemed necessary.

The State Water Board is also responsible for the allocation of water rights in the state. It does this by issuing and reviewing permits and licenses to applicants who wish to take water from the state's streams, rivers, and lakes.

In February 2002, the State Water Board adopted the [Water Quality Enforcement Policy](#). The primary goal of this policy is to create a framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefits.

The State Water Board is currently in the process of [updating](#) the February 2002 Enforcement Policy.

Regional Water Quality Control Boards

There are nine semi-autonomous Regional Water Boards statewide comprised of nine part-time Board members appointed by the Governor and confirmed by the Senate. Regional boundaries are based on watersheds and water quality requirements are based on the unique differences in climate, topography,

geology and hydrology for each watershed. Each Regional Water Board makes critical water quality decisions for its region, including setting standards, issuing waste discharge requirements, determining compliance with those requirements, and taking appropriate enforcement action.

All of the nine Regional Water Boards now have a dedicated enforcement unit to conduct many of the compliance and enforcement activities. Typical resources in the enforcement units may also include students and retired annuitants that support the work of regular staff. The main functions of the enforcement units include compliance checking, enforcement and permitting for all or some of the programs. In addition to the dedicated enforcement units in most of the regions, some programs, in some regions, continue to conduct their own compliance assurance and enforcement activities.

Approximately 158 Regional Water Board staff conduct compliance assurance and enforcement activities statewide.

Most Regional Water Board enforcement units focus their attention on the five core regulatory programs such as NPDES or WDRs. The rest of the programs generally use their staff for both permitting, compliance assurance and enforcement activities where applicable (not all programs have a permitting and enforcement element).

In general, prosecution is conducted with the assistance of the Regional Water Boards' legal counsel and the State Water Board's Office of Chief Counsel and Office of Enforcement.

B) Water Quality Core Regulatory Enforcement Components

This report provides information on specific measures for the five core regulatory programs for which enforcement resources are most significant and a description of other enforcement activities. The five core regulatory programs described in this report include:

- National Pollutant Discharge Elimination System (NPDES), Wastewater
- National Pollutant Discharge Elimination System (NPDES), Stormwater
- Waste Discharge Requirements (WDR)
- Land Disposal
- Wetlands and 401 Certification

The report also includes information on the following programs in which enforcement is significant but are not considered core water quality regulatory programs:

- Water Rights Enforcement
- Operator Certification
- Underground Storage Tank

Enforcement coordination for the core water quality regulatory programs is accomplished through regular program roundtables. The Division of Water Quality at the State Water Board is responsible for ensuring that policies and guidelines are implemented consistently across Regional Water Boards and programs and supports 15 programmatic roundtables to coordinate these efforts.

Description of Five Core Regulatory Program Components

a. Organization of the Report

The following table summarizes the basic statistics for the five core water quality regulatory programs at the Water Board.

| Program 2008 Metrics | NPDES Waste Water | NPDES Storm Water | WDR | Land Disposal | 401 Wetland |
|---|--------------------------|--------------------------|--------------|----------------------|--------------------|
| Regulated Universe | 2,037 | 28,847 | 6,731 | 790 | 959 |
| Total Program Staff (PY) for Fiscal Year 08/09 | 98.7 | 96.6 | 80.4 | 70.8 | 18.8 |
| Program BUDGET FY 08/09 | \$22,527,653 | \$19,233,983 | \$14,489,391 | \$12,144,721 | \$2,908,864 |

b. National Pollutant Discharge Elimination System (NPDES) Wastewater Program

The NPDES Wastewater Program regulates the discharge of wastewater from point sources to surface waters (rivers, lakes, oceans, wetlands, etc), and discharges of treated groundwater to surface water. NPDES permits, issued by the Water Boards, are required for all point source pollution discharged directly into California’s surface waters. Point source discharges are defined as planned, non-agricultural waste discharges from man-made conveyance systems. The [NPDES program](#) is mandated by the Clean Water Act and administered by the State. California has approximately 2,037 active NPDES permits protecting the State’s water resources from industrial, municipal waste and other type of discharges.

The following table shows the number and type of permits regulated under the NPDES program:

| | |
|--|--------------|
| <u>Major</u> Wastewater Dischargers Regulated Under <u>Individual</u> Permits: | 267 |
| <u>Minor</u> Wastewater Dischargers Regulated Under <u>Individual</u> Permits: | 379 |
| <u>Minor</u> Wastewater Dischargers Regulated Under <u>General</u> Permits: | 1,391 |
| Total NPDES Wastewater: | 2,037 |

The NPDES Wastewater, NPDES Stormwater program and 401 Certification program are mandated by the federal Clean Water Act and administered by the State. The NPDES program is delegated to the State Water Board.

Funding for the NPDES program is partially provided by US EPA through grants and the Federal Trust Fund. The State Water Board and [US EPA Region 9](#) coordinate the implementation of the Surface Water Programs, under a Strategy Agreement in accordance with the 2003 California Clean Water Partnership Agreement.

The Clean Water Act Section 106 work plan for fiscal years 2008-2013 for California Water Boards identifies the expected compliance and enforcement activities. Inspections are to be conducted in conformance with the 2006 NPDES Memorandum of Agreement And all major dischargers are to be inspected at least once a year. Minor dischargers generally will be inspected once a year, as resources allow, but no less than once during a permit cycle. The workplan also identifies specific compliance and enforcement information that the Water Boards must submit to US EPA on a regular basis. Specifically, the Regional Water Boards are to report quarterly on all major NPDES dischargers in either significant or reportable noncompliance on the Quarterly Noncompliance Report (40 CFR, section 123.45).

US EPA also provides funding for direct contract assistance for inspections, audits and database development.

c. National Pollutant Discharge Elimination System (NPDES) Stormwater Program

The NPDES Stormwater Program regulates stormwater discharges generated by runoff from land and impervious areas such as paved streets, parking lots, industrial and construction sites during rainfall events. Pollution from construction and industrial sites is regulated under the stormwater construction and industrial program. Pollution from urban surface street stormwater runoff is regulated under the municipal stormwater program. Pollution from highways and roads is regulated under the statewide stormwater general permit for the California Department of Transportation (CALTRANS).

The following table shows the number and type of permittees regulated under the [stormwater program](#):

| | |
|---|---------------|
| Construction Stormwater: (regulated under 1 general statewide permit) | 18,471 |
| Industrial Stormwater: (regulated under 1 general statewide permit) | 9,868 |
| Municipal Phase I: Individual MS4 Permittees (26 permits) | 317 |
| Municipal Phase II: State Board General MS4 Enrollees (1 permit) | 149 |
| Total Stormwater: | 28,805 |

d. Waste Discharge Requirements (WDR) Program

The WDR Program regulates the discharge of wastewater from point sources to land and groundwater, waste generated from confined animal facilities (agricultural operations where animals are kept and raised in confined situations such as dairies, feedlots, stables, and poultry farms) and all other pollution sources that can affect water quality not covered by other programs.

Under the [WDR program](#), the Water Boards regulate liquid waste disposal impoundments and similar land disposal systems for liquid and solid wastes. The WDR program is authorized by provisions of the California Water Code. The permitting system addresses many types of waste discharges, including municipal, industrial and commercial sources. This system helps to protect California's groundwater resources from being adversely impacted from such waste disposal operations. Groundwater is an important source of water for the State as drinking water, for crop irrigation water and for water used in industrial and commercial operations. California has approximately 6,731 active WDRs protecting groundwater resources. The following table shows the number and type of permits regulated under the WDR program:

| | |
|---|--------------|
| Wastewater Treatment Plants Discharging to Land: | 1,694 |
| Industrial Wastewater and Food Processing Plants Discharging to Land: | 967 |
| Wastewater Collection Systems (sanitary sewer overflow prevention): | 1,077 |
| Dairies and Confined Animal Facilities: | 1,516 |
| Recycled Water Use, Timber Harvest Activities and Other Activities: | 1,477 |
| Total WDR/Non 15: | 6,731 |

e. Land Disposal Program

The Land Disposal Program regulates discharges of waste to land that need containment in order to protect water quality, including landfills, waste ponds, waste piles, and land treatment units. The Water Boards are specifically required to develop regulations to “ensure” adequate protection of water quality and statewide uniformity.

Statewide, approximately 790 sites are currently regulated under the program along with about 1,800 historic (i.e. closed, inactive and abandoned) facilities. About 140 of these regulated sites are active municipal solid waste landfills.

The following table shows the number and type of permits regulated under the [Land Disposal program](#):

| | |
|---|------------|
| Landfills: | 280 |
| Other (Surface impoundments, waste piles, and land treatment units, etc.) | 510 |
| Land Disposal: | 790 |

f. Dredge/Fill (401 Certification) and Wetlands Program

This program regulates the dredging and disposal of sediments, filling of wetlands or waters, and any other modification of a water body.

The [401 regulatory program](#) uses waste discharge requirements to regulate discharges of dredged or fill material into State waters, including wetlands, riparian and headwater areas. Dredge or fill activities can involve channelization of streams, diversions, road and trail crossings, release of sediments that harm aquatic resources and water quality, and the release of toxic materials from re-suspending pollutants adsorbed by bottom sediments. The Water Boards issue approximately 1,000 Water Quality Certifications permits (§ 401) annually. If the discharge of dredge and fill is to strictly state waters, then the Water Boards issue Waste Discharge Requirements. Enforcement of 401 certification permits is also conducted by the US Army Corps of Engineers’ 404 permit enforcement.

2) Enforcement Program Metrics

Data characteristics and conceptual model

Enforcement measures can be organized by the type of activity at each step in the compliance assurance and enforcement process. The Water Boards compliance assurance and enforcement strategy for the five core regulatory programs starts with monitoring compliance. Once violations are detected they must be properly

documented electronically and in the case files. The next step is to enforce the violations according to the Water Boards enforcement policy. Finally, all of the information collected will be shared with the public. Some of the basic management questions that can be answered through the use of performance measures for compliance and enforcement include:

| | Compliance Monitoring and Detection | Compliance Documentation | Enforcement | Information Sharing |
|-------------------|---|--|--|---|
| Inputs | What resources are available for monitoring and inspection? | What resources are available for documenting compliance? | What resources are available for enforcement? | What resources are available for information sharing? |
| Activities | What is the strategy to monitor compliance? | What is the process to document compliance? | What is the enforcement process? | What is the current approach to make information available? |
| Outputs | Is compliance assessed? | Is compliance documented? | Are violations enforced according to policy? | Is compliance and enforcement information available? |
| Outcomes | Is compliance achieved? | Is compliance information stored, available and useful? | Is enforcement effective in ensuring compliance? | Is compliance and enforcement information useful/used? |

For each category we can measure the resources available and used (inputs), the activities conducted, the products produced (outputs) and the environmental results (outcomes).

The data and statistics in this report are drawn directly from the CIWQS database and directly from the Regional Water Board enforcement coordinators and State Water Board program managers. It is important to note that while the CIWQS database was deployed in 2005, the Water Boards continue to work on the quality and completeness of the data as well as the functionality and reporting capabilities of the database. New business rules for data entry were implemented as the system was deployed and new information was required. Also the time needed to complete information for violations or compliance records was increased significantly. All of these factors affect the quality of the data and our ability to compare the data before and after June 2005.

CIWQS will provide the Water Boards with important compliance and water quality information to allow for better targeting of resources to areas of greatest need.

Enforcement Program Resources

Most compliance, investigation and enforcement activities are performed at the nine Regional Water Boards. Resources dedicated to compliance and enforcement activities vary significantly across both Regional Water Boards and programs.

The inputs, or resources for water quality protection, support many activities from planning and permitting, to taking eventual enforcement. Compliance and enforcement activities can require a high level of specialization and skill, from documenting inspections, identifying violations, preparing enforcement cases, to presenting expert testimony at hearing. Inspectors at the Water Boards ensure that requirements are complied with, review discharger's SMRs, and document violations in the database. Once violations are identified and documented, they are prioritized for enforcement. Cases are developed with the advice and assistance from the Water Boards' staff counsels. The Water Boards have approximately 158 staff dedicated to compliance and enforcement activities statewide. Permitting staff may also be involved in some enforcement activities.

The Office of Enforcement at the State Water Board had 22.5 staff dedicated for special investigations and enforcement during 2008. These staff included a team of 10 prosecutors assisting Water Board staff with their enforcement cases.

The Water Rights enforcement program at the State Water Board had 6.5 staff dedicated to enforcement during 2008.

In addition, compliance activities are also supported by student assistants who review SMRs, and US EPA contractors conducting inspections.

The table below shows Regional Water Board resources devoted to compliance and enforcement activities.

| PROGRAM 2008 METRICS | NPDES WASTEWATER | NPDES STORMWATER | WDR | LAND DISPOSAL | 401 WETLANDS |
|---|-----------------------------|-----------------------------|------------|--------------------------|-------------------------|
| Number of Total Staff (PY) in Program | 98.7 | 96.6 | 80.4 | 70.8 | 18.8 |
| Average Number of Permits/PY | 21 | 299 | 84 | 11 | 51 |
| Enforcement Dedicated Staff (PY) | 40 | 48 | 29 | 39 | 2 |
| Number of Permits Overseen Enforcement for Each Enforcement PY | 51 | 601 | 232 | 20 | 480 |

The table shows that, on average, each staff person dedicated to compliance and enforcement activities must review monitoring reports, inspect and provide enforcement for 51 NPDES Wastewater Treatment Facilities. This number varies significantly among programs with 601 facilities under the NPDES Stormwater Program, 232 under the Waste Discharge Requirements Programs and 480 for 401 certifications. The Land Disposal program has a lower number of facilities per dedicated enforcement staff reflecting the higher degree of compliance assurance and supervision (frequency of inspections) that landfills and other facilities regulated under the Land Disposal program require.

Enforcement Outputs and Activities

There are three main types of activities directly related to the Water Boards' enforcement program. First are activities to assess compliance with requirements. Those include reviewing monitoring reports and conducting inspections, documenting and recording violations and finally, ensuring that violations receive an appropriate level of enforcement to encourage compliance and deter non-compliance.

Inspections and Monitoring Reports: Compliance inspections provide the Water Boards an opportunity to verify that information submitted in Self Monitoring Reports (SMRs) is complete and accurate. Compliance inspections address compliance with waste discharge requirements, laboratory quality control and assurance procedures, record keeping and reporting, time schedules, best management practices, pollution prevention plans, and any other requirements.

The frequency of inspection varies from program to program and with facility type. The frequency depends on the risk, the threat to water quality and state and federal mandates. For example, facilities with a high threat to water quality, such as landfills and large waste water treatment plants may be inspected more than once per year whereas small facilities with a lower threat may be inspected once every five years.

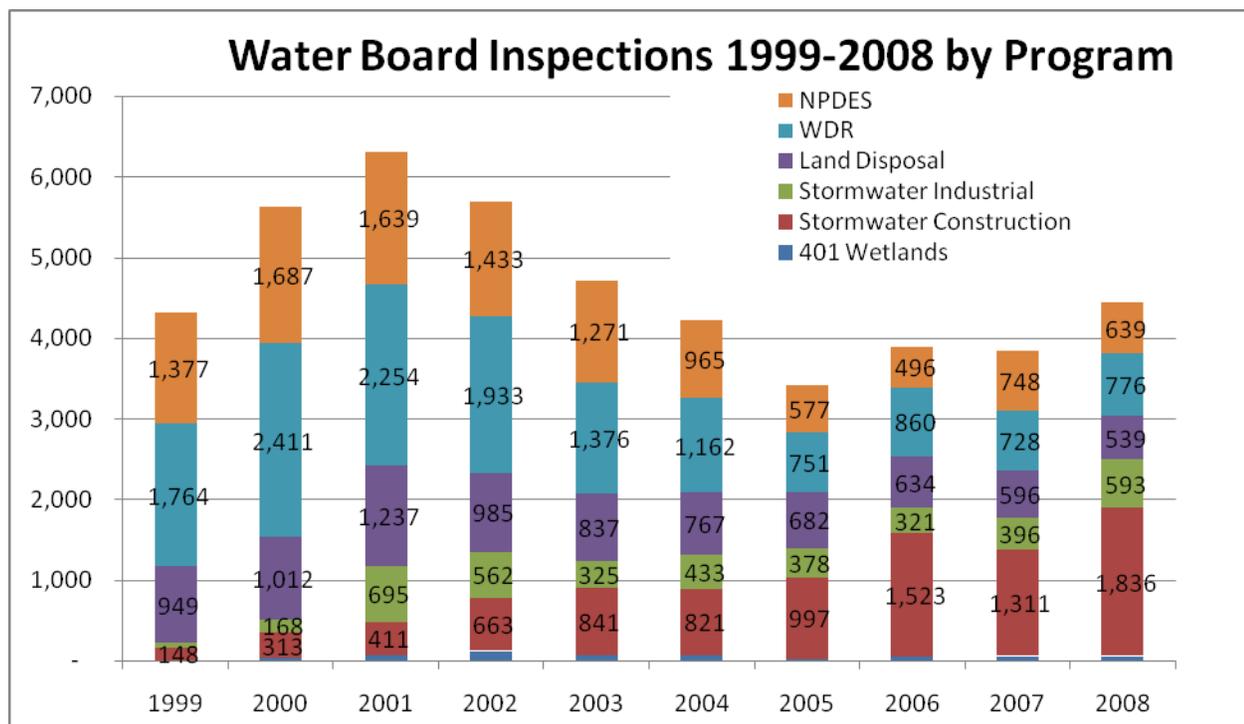
| PROGRAM 2008 METRICS | NPDES WASTEWATER | NPDES STORMWATER | WDR | LAND DISPOSAL | 401 WETLANDS |
|------------------------------------|------------------|------------------|---------|---------------|--------------|
| Monitoring Reports* | >12,000 | >10,000 | >19,000 | >2,000 | N/A- |
| Inspections | 639 | 2,472 | 780 | 539 | 60- |
| Facilities Inspected | 552 | 2,028 | 669 | 379 | 43 |
| Percentage of Facilities Inspected | 27%** | 7% | 25%*** | 47% | N/A- |

* The number of monitoring reports is estimated.

** Note that for the NPDES Wastewater program, 68% of facilities classified as major were inspected during calendar year 2007.

*** Does not include Collection Systems, Timber Harvest, Dairies, Water Use Recycling, and Other type facilities.

The following graph shows the number of inspections conducted under each core regulatory program and documented in our CIWQS database since 1999.



Violations detected and documented: Documenting violations is a key element in the Water Boards' enforcement strategy. Violations are detected through the review of discharger's SMRs and through inspections conducted. Staff tracks and documents the violations in the Regional Water Boards' case files and in the data management system (CIWQS).

| PROGRAM 2008 METRICS | NPDES WASTEWATER | NPDES STORMWATER | WDR | LAND DISPOSAL | 401 WETLANDS |
|---|-----------------------------|-----------------------------|------------|--------------------------|-------------------------|
| Total Number of Violations | 5,417 | 1,873 | 5,179 | 277 | 61 |
| Number of Priority Violations | 2,481 | 304 | 1,073 | 2 | 23 |
| Facilities With Violations | 601 | 1,389 | 825 | 115 | 12 |
| Facilities With Priority or Chronic Noncompliance Problems | 368 | 240 | 413 | 3 | 7 |

Violations are assessed for priority for enforcement according to the Water Boards Water Quality Enforcement Policy. A breakdown of violation types and the number of violations is presented in the following table. For the NPDES Wastewater and NPDES stormwater, a more detailed description of each violation category is provided in the 2008 mandated [13385\(o\) report](#).

| 2008 | | | | |
|--|---------------------|---------------------|---------------------------------|------------------|
| VIOLATION TYPE | NPDES WASTEWATER | NPDES Stormwater | Waste Discharge Requirements | Land Disposal |
| Effluent Category 1 Pollutant | 1,877 | | 820 | |
| Reporting Late Report | 981 | 1,026 | 1,232 | 26 |
| Reporting Deficient Report | 745 | 6 | 777 | 47 |
| Effluent Category 2 Pollutant | 662 | 1 | 18 | |
| Effluent Other Effluent Violation | 599 | 1 | 526 | |
| Deficient Monitoring | 100 | 19 | 494 | 92 |
| Unauthorized Discharge | 90 | 83 | 65 | 12 |
| Violation of Non-Effluent Permit Condition | 89 | 70 | 618 | 44 |
| Failure to Implement Best Management Practices | 73 | 420 | 4 | 1 |
| Water Quality Effluent | 65 | 5 | 103 | |
| Receiving Water Surface Water | 39 | | 9 | 4 |
| Effluent Acute Toxicity | 32 | | | |
| Other Reporting | 17 | 79 | 25 | 9 |
| Effluent Chronic Toxicity | 15 | | | |
| Sanitary Sewer Overflow/Spill/ Calculation | 13 | 5 | 289 | 1 |
| Water Quality | 4 | 2 | 4 | 7 |
| Monitoring | 3 | 3 | 33 | 6 |
| Other Codes | 3 | 1 | 37 | 2 |
| Other Requirement | 2 | 5 | 9 | 1 |
| Basin Plan Prohibition | 1 | 5 | 22 | |
| Failure to Pay Fees | 1 | 10 | | 1 |
| Pretreatment Requirements | 1 | 1 | | |
| Stormwater Pollution Prevention Plan Enforcement Action | 1 | 123 | 4 | 7 |
| Receiving Water Groundwater | | | | 2 |
| Stormwater Non-filer | | 4 | 87 | 22 |
| TOTAL | 5,417 | 1,873 | 5,179 | 277 |

Types of violations differ among programs. The most common documented type of violation is the failure to submit a required report.

Under the NPDES program certain violations, classified as serious and chronic, are subject to a mandatory minimum penalty (MMP) of \$3,000 per violation⁵. Updated information on the number and status of MMP violations is available at the Water Boards web site in the [Quarterly Update](#) of the 13385 report.

⁵ For a more detailed description and analysis of MMPs see the 2007 section 13385(o) Water Boards Enforcement Report

Enforcement Actions: The following table shows the number of formal enforcement actions taken by the Regional Water Boards during calendar year 2008. As detailed in the Water Quality Enforcement Policy, the Water Boards use progressive enforcement to initiate corrective actions. For some violations, an informal response or a Notice to Comply is sufficient to inform the discharger of the violation resulting in a swift return to compliance. If the violation continues, the enforcement is escalated to increasingly more formal and serious actions until compliance is achieved. Formal enforcement may also be an appropriate first response for serious violations.

The following table summarizes the number and type of actions for each core regulatory program during calendar year 2008. Level 1 enforcement includes actions that notify dischargers of violations and may require compliance informally and also may be used to investigate or to require specific information. Level 2 enforcement are actions that require compliance with requirements. Level 3 enforcement are those actions that may result in imposition of fines, liabilities or the completion of compliance projects or supplemental environmental projects.

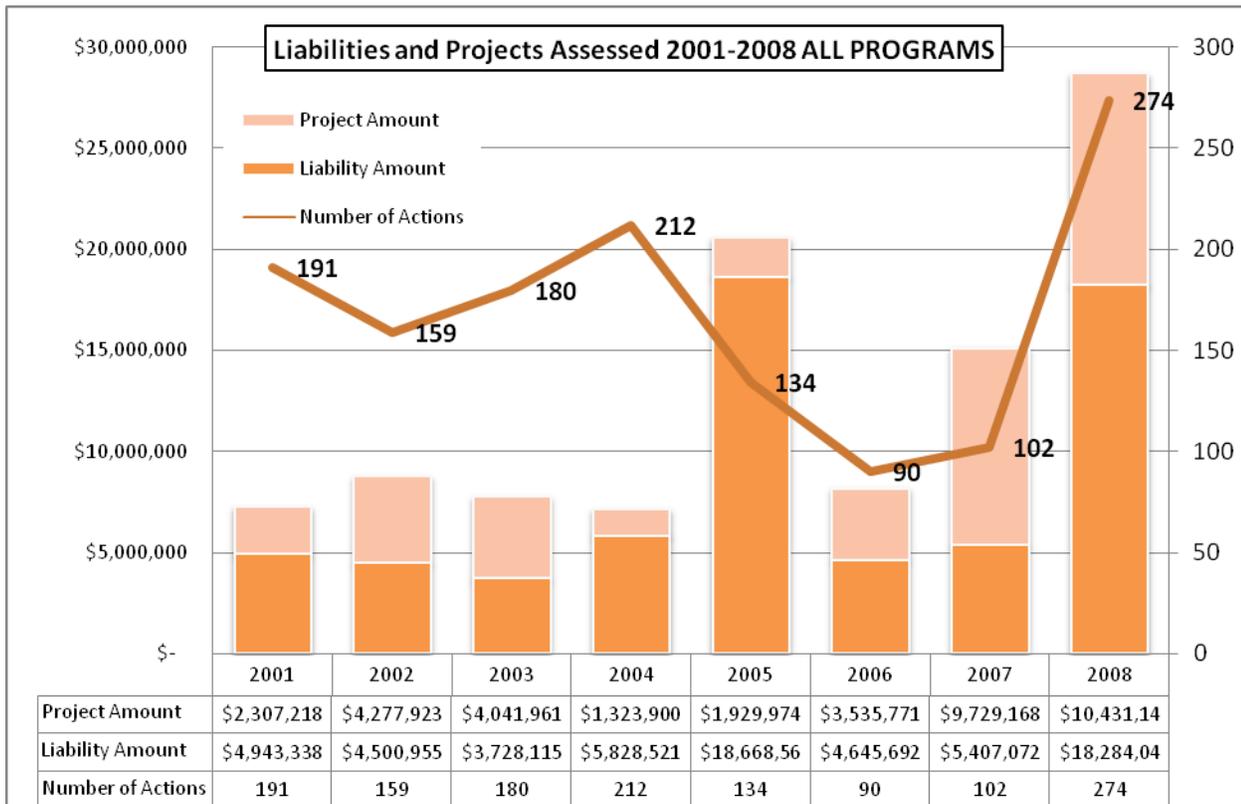
| Enforc. LEVEL | Enforcement Action Type | Enforcement Actions for Calendar Year 2008 | | | | | Total |
|------------------|--|--|----------------|------------|------------------|-----------------|--------------|
| | | PROGRAM | | | | | |
| | | NPDES | STORM WATER | WDR | LAND DISPOSAL | 401 WETLANDS | |
| 1 | Oral Communication | 50 | 207 | 105 | 8 | 4 | 374 |
| 1 | Staff Enforcement Action | 133 | 237 | 116 | 11 | 5 | 502 |
| 1 | Notice of Violation | 202 | 337 | 235 | 54 | 17 | 845 |
| 1 | Notice to Comply | 1 | 52 | - | 2 | 1 | 56 |
| 1 | Notice of Stormwater Non-compliance | - | 1,252 | - | - | - | 1,252 |
| 1 | 13267 Letter | 7 | 19 | 74 | 7 | 5 | 112 |
| 1 | Expedited Payment Letter | 223 | - | - | - | - | 223 |
| 2 | Time Schedule Order | 13 | 1 | - | - | - | 14 |
| 2 | Clean-up and Abatement Order | 1 | 3 | 7 | 4 | 3 | 18 |
| 2 | Cease and Desist Order | 19 | - | 3 | - | - | 22 |
| 2 | Waste Discharge Requirements | 1 | - | - | 1 | - | 2 |
| 3 | Administrative Civil Liability | 205 | 30 | 18 | 3 | 3 | 259 |
| 3 | Referral to Other Agency | 1 | 2 | - | - | - | 3 |
| 3 | Formal Referral to Attorney General | - | 1 | - | - | - | 1 |
| 3 | Settlement Court Order | - | 1 | - | 1 | - | 2 |
| TOTAL | | 856 | 2,142 | 558 | 91 | 38 | 3,685 |

Some enforcement actions are specific to certain programs such as the Notice of Stormwater Noncompliance issued under section 13399.31 of the California Water Code or Expedited payment Letters for NPDES violations subject to mandatory minimum penalties..

The number and amount of penalties assessed and satisfied under each one of the five core regulatory programs is displayed in the following table.

| Program 2008 Metrics | NPDES Wastewater | NPDES Stormwater | WDR | Land Disposal | 401 Wetlands |
|---|---------------------|--------------------|--------------------|------------------|------------------|
| Number of Administrative Civil Liability Actions Issued | 205 | 30 | 18 | 3 | 3 |
| Penalties Assessed | \$23,158,206 | \$2,757,960 | \$2,539,690 | \$126,950 | \$132,375 |
| <i>Received (paid) Liabilities</i> | <i>\$4,624,767</i> | <i>\$1,569,050</i> | <i>\$1,372,940</i> | <i>\$126,950</i> | <i>\$20,000</i> |
| <i>SEPs and Compliance Projects Completed</i> | <i>\$2,931,900</i> | <i>\$</i> | <i>\$</i> | <i>\$</i> | <i>\$</i> |

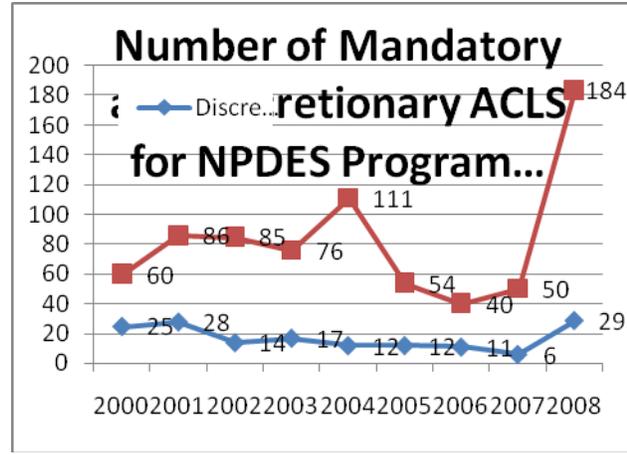
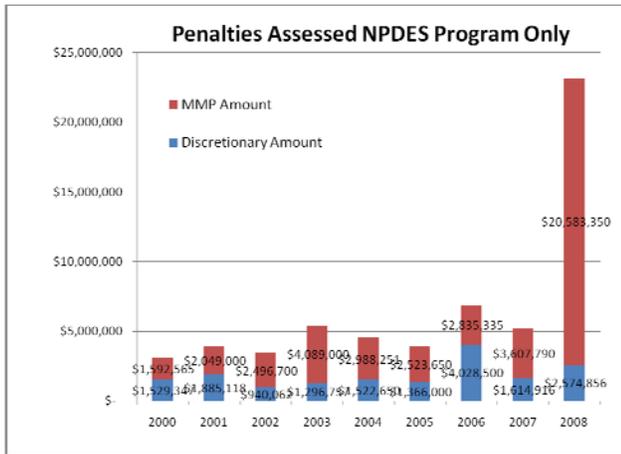
The following graph displays the amount of penalties assessed and proposed to be satisfied with a payment into one of the Water Boards’ funds or by completing a Supplemental Environmental Project or a Compliance Project from the calendar year 2000 to 2008. The number of administrative actions issued and the amount of penalties assessed during 2008 is the largest of the previous ten years as a result of the efforts conducted through the 2008 Statewide Initiative for MMP enforcement⁶.



Of the 274⁷ Administrative Civil Liability actions issued during calendar year 2008, 184 were assessed at the mandatory minimum amount under the NPDES program. The following graphs show that, for the NPDES program, 86% of the liability actions and 90% of the amount of the penalties were assessed at the mandatory minimum as a result of the 2008 Statewide Initiative for MMP enforcement.

⁶ See [2008 annual 13385](#) report, page 24, for a description of the initiative.

⁷ Includes 15 ACL actions taken for non-core regulatory programs.



Program Outcomes

Compliance Rates and Enforcement Response

At this point, we are not able to assess environmental results although measures and metrics have been developed and the Water Boards are working on a methodology to track and monitor the data necessary to evaluate the effectiveness of the enforcement programs and the environmental results achieved. The success of the enforcement program is being measured using two metrics: the enforcement response to violations and the overall compliance rate.

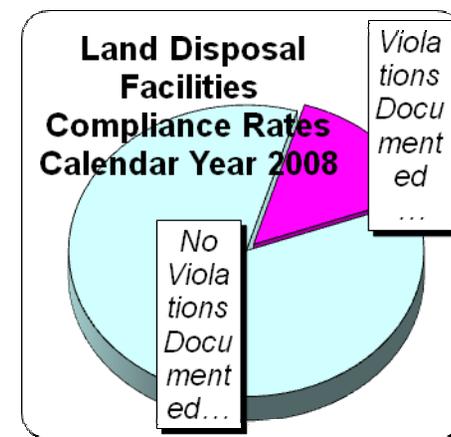
| Program 2008 Metrics | NPDES Wastewater | NPDES Stormwater | WDR | Land Disposal | 401 Wetlands |
|---|------------------|------------------|-----|---------------|--------------|
| ENFORCEMENT RESPONSE: | | | | | |
| % of Violations with Enforcement | 63% | 93% | 36% | 78% | 70% |
| <i>% of Violations with Level 1 Enforcement (only)</i> | 24% | 92% | 33% | 78% | 68% |
| <i>% of Violations with Level 2 Enforcement (or 2 and 1)</i> | 17% | 0% | 2% | 0% | 0% |
| <i>% of Violations with Level 3 Enforcement (or 3 and lower)</i> | 22% | 1% | 1% | 0% | 2% |
| OVERALL COMPLIANCE RATE (facilities without violations/regulated universe) | 70% | 95% | 79% | 85% | 99% |

* Does not include Timber Harvest, Dairies, Collection Systems, Water Use Recycling and Other WDR facilities.

WATER BOARDS CORE REGULATORY PROGRAMS COMPLIANCE RATES

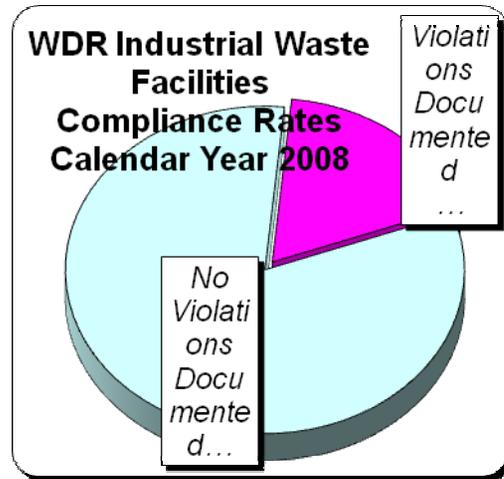
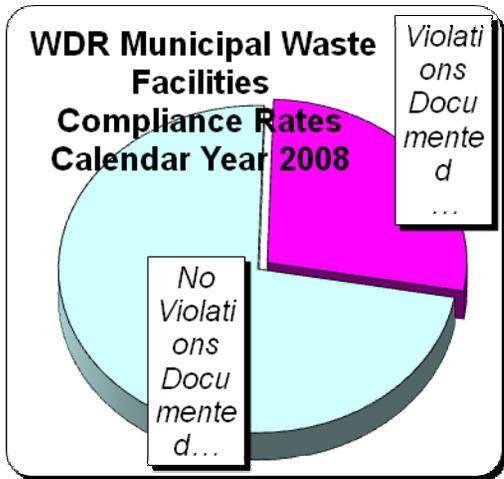
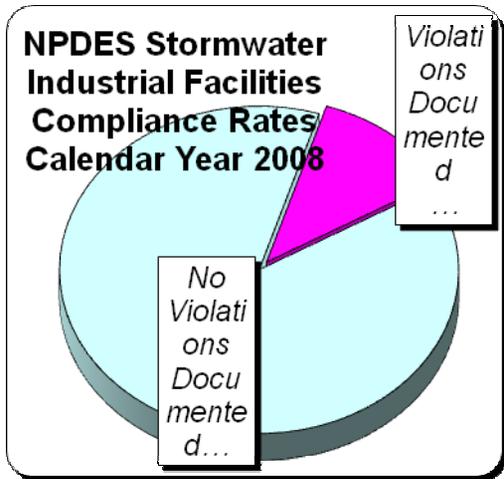
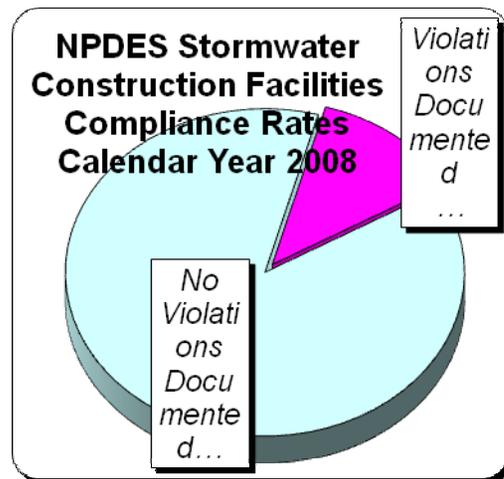
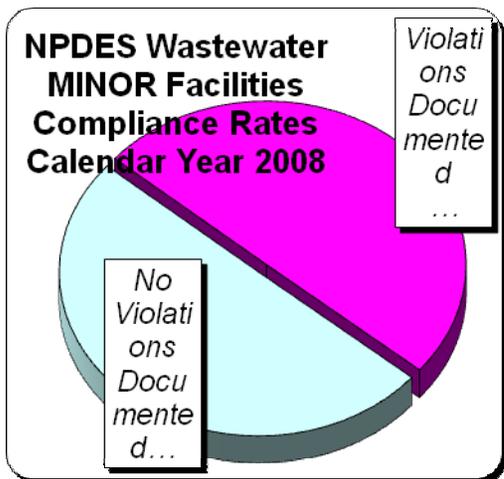
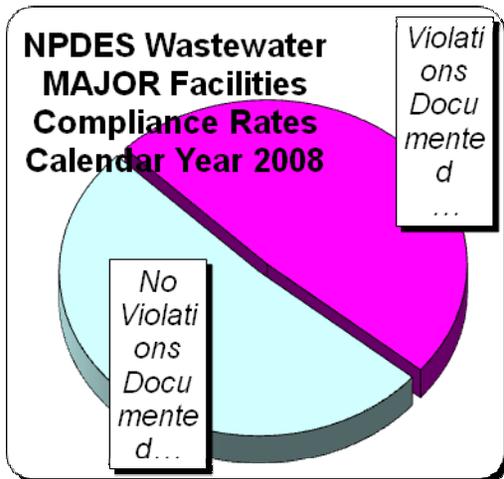
During calendar year 2008, Water Board enforcement staff participated with Cal/EPA in developing consistent compliance rates for the different programs. The following table displays the compliance rates for the core regulatory programs following the approach adopted. The NPDES storm water program has been divided into its two elements, construction and industrial to display in the charts. For purposes of the report, we define “compliance rate” as the number of facilities out of compliance divided by the total number of facilities for which compliance has been assessed (inspected, monitoring reports reviewed, etc). A facility is considered out of compliance if it has any violations during the reporting period.

Because we want to measure the magnitude, frequency and duration of noncompliance, we are measuring not just the number of facilities with at least one violation in the reporting period but also the number of facilities with priority violations and the number of facilities with repeated violations. Finally we also want to know the average number of violations per facility in violation.



| SELECTED WATER BOARD PROGRAMS COMPLIANCE RATES CALENDAR YEAR 2008 | | | | | | | | |
|---|---|---|---|--------------------|--------------------------------------|---------------------------------------|-------------------------------------|---|
| CORE REGULATORY PROGRAM AND FACILITY TYPE | Number of facilities with compliance Assessed | Facilities with one or more violations documented in the period | Percentage of facilities in violation (NON-COMPLIANCE RATE) | Total # violations | # of facilities with 1-10 violations | # of facilities with 11-25 violations | # of facilities with >25 violations | Average # of violations per facility In violation |
| NPDES WASTEWATER <i>MAJOR</i> | 267 | 130 | 49% | 1,447 | 97 | 17 | 16 | 11.1 |
| NPDES WASTEWATER <i>MINOR (Indiv.)</i> | 379 | 189 | 50% | 2,467 | 153 | 19 | 17 | 13.1 |
| NPDES STORMWATER <i>CONSTRUCTION</i> | 1,836 | 227 | 12% | 434 | 224 | 3 | 0 | 1.9 |
| NPDES STORMWATER <i>INDUSTRIAL</i> | 9,868 | 1,165 | 12% | 1,393 | 1,162 | 2 | 1 | 1.2 |
| WASTE DISCHARGE REQUIREMENTS <i>MUNICIPAL WASTE</i> | 1,694 | 462 | 27% | 3,040 | 378 | 66 | 18 | 6.6 |
| WASTE DISCHARGE REQUIREMENTS <i>INDUSTRIAL WASTE</i> | 967 | 173 | 18% | 882 | 147 | 22 | 4 | 5.1 |
| LAND DISPOSAL | 790 | 117 | 15% | 277 | 116 | 1 | 0 | 2.4 |
| TOTAL / AVERAGE | 15,801 | 2,463 | 16% | 9,940 | 2,277 | 130 | 56 | 4.0 |

WATER BOARDS CORE REGULATORY PROGRAMS COMPLIANCE RATES



In future reports, we plan to measure the compliance rates over time by facility type and size (wastewater treatment plants, major-minor, food processing plants etc.). We also plan to measure compliance rates for those receiving enforcement compared to those without any enforcement.

Other outcome measures proposed to be included in future reports are:

- Deterrence
- Recidivism
- Economic and Environmental Benefits

Environmental/Health Outcomes

The Water Boards are not currently tracking information on outcomes achieved from enforcement actions. The Environmental Protection Indicators for California include several indicators that will be related to enforcement actions in future reports, these include the coastal beach availability indicator and the spill/release episodes indicator among others.

3) Program Limitations

Resources: The Enforcement program requires many different skills and resources. Enforcement conducted as an element of the regulatory programs does not have a clearly identified budget and resources may be directed to other areas and activities based upon need. Training efforts must be directed to improve our ability to check compliance and take enforcement actions.

Data and Information: Our ability to process and manage data and information limit our ability to evaluate program performance and prioritize the allocation of enforcement resources to the highest threats of water quality.

Measuring Outcomes: Our tracking systems do not currently report on environmental outcomes. Although we are improving our ability to measure behavioral outcomes, such as compliance rates, the enforcement program is not currently measuring environmental outcomes achieved by the enforcement strategies.

C) Water Quality: Other Enforcement Program Components

Office of Enforcement, State Water Board

The Office was formed in mid-2006 to emphasize the importance of enforcement as a key component of the Water Boards' core regulatory functions and statutory responsibilities. The role of the Office is to ensure that violations of State and Regional Water Board orders and permits result in firm, fair, and consistent enforcement both through direct actions, the development of policies and guidance, and identification of metrics for decision-making on enforcement related issues.

The Office reports directly to the State Water Board's Executive Director. The Office is comprised of 10 legal and 13 investigative staff. The investigative staff is divided into two units, the Special Investigations Unit (SIU) (7.5 PY) and the Underground Storage Tanks (UST) Enforcement Unit (5PY). Consolidation of Water Boards' enforcement attorneys into the Office began in Fiscal Year 2006/2007 and is continuing into Fiscal Year 2007/2008.

Special Investigations Unit (SIU) in the Office of Enforcement, State Water Resources Control Board

This unit undertakes the following activities:

Operator Certification Program: The State Water Board enforces the laws and regulations governing waste water treatment plant (WWTP) operators. The Office of Operator Certification, within the Division of Financial Assistance, administers the WWTP operator certification program. The Special Investigations Unit (SIU) investigates potential cases of wrongdoing and takes enforcement action when warranted. During 2008, SIU investigated approximately 40 WWTP operator certification cases. Of those, 13 were new cases. SIU resolved about 16 WWTP operator certification cases during 2008.

SIU's investigations resulted in 4 disciplinary actions during this time, 1 ACL (\$10,000), 1 civil penalty (\$12,500) and 1 criminal conviction.

Regional Water Board Assistance: The State Water Board's SIU is often asked by the Regional Water Boards to provide technical and investigative assistance on some of their cases. In calendar year 2008, SIU assisted the Regional Water Boards with 12 cases. Of those, 3 cases were resolved during the fiscal year. As a result of these investigations, the Regional Water Boards have issued Administrative Civil Liabilities (ACLs) and Cease and Desist Orders (CDOs). SIU continues to assist the Regional Water Boards on pending cases, and in some instances is coordinating with other local, state and federal agencies to bring these cases to closure.

Usually, citizen complaints not related to WWTP operator certification are referred to the appropriate Regional Water Board for investigation and follow-up. Occasionally, however, the State Water Board leads the investigation. SIU investigated two such complaints during 2008.

Staff Training:

Statewide Water Conference - In January 2008 the SIU, in conjunction with the Water Board Training Academy, organized a conference entitled "Enforcenomics: Why Enforcement Makes Economic Sense." This event was attended by 82 attendees, most of them Water Board Staff.

Cal/EPA Enforcement Symposium – SIU staff and UST Enforcement staff assisted with the Development and delivery of the Cal/EPA Enforcement Symposium in May 2008.

Advanced Waste Water Treatment Plant Course - SIU Staff assisted with the development of Academy courses on advanced waste water treatment plant operation for Water Board staff.

Stormwater Enforcement Training - SIU Staff assisted with the development and delivery of Academy courses on waste water treatment plant for Water Board staff.

Collection Systems Training - SIU Staff assisted with the development and delivery of Academy courses on waste water treatment plant for Water Board staff.

Other Projects:

DFG/ Water Board Pilot Project – SIU and Stormwater Program Staff began a series of meetings intended to increase coordination on enforcement between DFG and Regional Water Board staff.

MMP Initiative – SIU initiated a plan with the Regional Water Boards to eliminate the MMP enforcement backlog by December 31, 2008

Enforcement Policy – SIU began revision and reissuance of the Water Quality Enforcement Policy.

Roundtables – SIU staff conducted eight Enforcement Roundtable Meetings with enforcement staff statewide. Additionally, SIU staff participated in other Water Board program roundtable meetings.

Complaints – SIU staff worked with Regional Water Board staff to ensure response to incoming complaints, and worked with Cal/EPA on development of the Cal/EPA Complaint Tracking System.

Underground Storage Tank (UST) Enforcement Unit, Office of Enforcement, State Water Resources Control Board

During calendar year 2008, the UST Enforcement Unit had a number of ongoing investigations regarding statewide UST construction issues, cleanup and Cleanup Fund fraud cases.

- **UST Leak Prevention:** 146 oil company/retail gas stations had been under investigation during 2008 for potentially more than 330 violations. Also 35 Major oil company/retail gas stations were investigated for more than 1065 potential violations. The unit is also assisting the Attorney General Office with the investigations of 500 sites. Furthermore, 40 City owned UST had been investigated during 2008 detecting more than 225 violations and referring the cases to other agencies for enforcement.
- **UST Cleanup Fund:** 43 cleanup fund claims and 25 claimants were investigated during 2008.
- **UST Remediation:** The unit assisted the Los Angeles Regional Water Quality Control Board with the violation of a Cleanup & Abatement Order at one retail gas station, which resulted in a civil liability of \$35,000. Of that amount, \$15,000 was paid and the remaining \$20,000 was suspended conditioned on maintaining compliance with the Cleanup & Abatement Order until the site is closed.
- **Licensing:** Seven companies were under investigation during 2008 for potential licensing violations including tank tester licensing. Four enforcement alerts were sent to regulators notifying them of potential licensing violations. One company was referred to the Attorney General's Office.

Prosecution Support, Office of Enforcement, State Water Resources Control Board

The Office's attorneys work with regional prosecution staff to bring administrative enforcement cases before the State Water Board and the Regional Water Boards including significant water quality enforcement cases and cases from programs that are implemented by the Regional Water Boards. The prosecution team at the Office of Enforcement has ten attorneys.

D) Water Rights Program

The State Water Board is the state agency with primary responsibility for the administration and regulation of water rights in California. The [Division of Water Rights](#) allocates water rights through a system of permits, licenses and registrations that grant individuals and others the right to beneficially use reasonable amounts of water. Water rights permits help to protect the environment from impacts that occur as a result of water diversions and include conditions to protect other water users and the environment. According to the State Water Board's water rights database system, there are 34,952 water right records throughout California. In addition, more water rights have been adjudicated by the courts, exempted by legislation, or are otherwise being exercised and not reported to the State Water Board.

The following table shows the number and type of water rights on file with the State Water Board:

| | |
|---|---------------|
| Applications*: | 466 |
| Permits*: | 1,535 |
| Licenses*: | 10,910 |
| Small Domestic and Livestock Stockpond Registrations*: | 728 |
| Stockpond Certificates*: | 5,305 |
| Groundwater Extraction Claims: | 3,797 |
| Statements of Water Diversion and Use: | 10,169 |
| Federal Fillings: | 1,974 |
| Other Water Rights: | 68 |
| Total Water rights: | 34,952 |

* Of these, the State Water Board has authority over the applications, permits, licenses, registrations and certifications.

Water Rights Enforcement Program Organization and Resources

The [Division's Enforcement Program](#) is responsible for statewide water right compliance and enforcement and to implement the [Water Rights Enforcement Policy](#). Currently, the Enforcement Program is comprised of three separate program areas:

- The [Licensing Program](#) focuses on ensuring reasonable beneficial use of water and checking compliance for the 1,535 permits. The unit has six full time staff of which 0.5 PY is dedicated to enforcement activities.
- The [Complaints Program](#) focuses on responding and analyzing approximately 45 complaints every year. Complaint allegations relate to unauthorized diversion and use of water, unreasonable or wasteful use of water, and impacts to public trust resources under all types of water rights. The unit has 4.8 staff of which 0.5 PY is dedicated to enforcement activities.
- The [Compliance Program](#) proactively conducts watershed-based investigations on permitted and licensed facilities and facilities that have no basis of right known by the State Water Board. The unit has six staff of which 5.5 PY is dedicated to enforcement.

All three programs initiate formal and informal enforcement actions to curtail illegal diversions and to protect prior rights and instream beneficial uses.

Compliance assurance with water rights requirements relies on reviewing of monitoring reports, conducting inspections and responding to complaints:

- Monitoring reports; The State Water Board requires water rights holders to complete and return self-monitoring reports including annual Progress Reports by Permittees and the Triennial Reports of Licensee. Special permit or license terms may also require submittal of special reports, such as those required to comply with water right Permit Terms 91 and 93. All self-monitoring reports are signed under penalty of perjury.
- Inspections; The State Water Board conducts compliance inspections and illegal diversion investigations in high resource-value watersheds including those containing threatened and endangered species. The State Water Board selects targeted watersheds annually based, in part, on recommendations from the Regional Water Quality Control Boards, the Department of Fish and Game, the U.S. Fish and Wildlife

- Service, and the National Marine Fisheries Service. For each target watershed, State Water Board staff develops a project priority list based on diversion quantity, special terms, or potential violations gleaned from self-monitoring reports and existing facilities without known water rights. During a five-year study period of compliance inspections from 1998 to 2003, the State Water Board determined that 38 percent of inspected facilities were in violation of water right requirements. Another 11 percent of facilities were subject to revocation or partial revocation of their water rights due to non-use of water. Thus, almost 50 percent of the inspected facilities were in violation of their water right.
- Complaints; The State Water Board relies on local residents, other agencies, and other interested persons to help them identify potential water right violations. Information regarding an actual or potential unauthorized activity is often obtained through a formal written complaint filed by the public or by another public agency. Complaints may be based on allegations that a diversion of water is in violation of permit or license terms or conditions, is without basis of right, constitutes a misuse of water (i.e., a waste or unreasonable use of water or unreasonable method of diversion), or adversely affects public trust resources in an unreasonable manner.

Water Rights Enforcement Program Outputs

All three enforcement programs initiate formal and informal enforcement actions to curtail illegal diversions and to protect prior rights and instream beneficial uses. The following table shows the number and type of enforcement actions taken by the State Water Board Division of Water Rights during calendar year 2008.

| Water Right Enforcement Actions for Calendar Year 2008 | | | | |
|--|----------------------------------|------------|------------|------------|
| Enforcement Action Type | Water Rights Enforcement Program | | | Total |
| | LICENSING | COMPLIANCE | COMPLAINTS | |
| Oral Communication | 14 | 0 | 3 | 17 |
| Staff Enforcement Action | 18 | 28 | 9 | 55 |
| Notice of Violation | - | - | - | - |
| Permit and License Revocation Orders Issued | 23 | 19 | 7 | 49 |
| Cease and Desist Order | 0 | 7 | 2 | 9 |
| Administrative Civil Liability | 0 | 5 | 2 | 7 |
| Referral to Other Agency | - | - | - | - |
| Formal Referral to Attorney General | - | - | - | - |
| Settlement Court Order | - | - | - | - |
| TOTAL | 55 | 59 | 23 | 137 |

The next table summarizes the basic statistics regarding the resources, the activities and actions taken by the three enforcement programs in the Division of Water Rights during calendar year 2008.

| WATER RIGHTS Enforcement Program Area | LICENSING | COMPLIANCE | COMPLAINTS | TOTAL Water Rights |
|---|------------------|-------------------|-------------------|-------------------------------|
| REGULATED UNIVERSE | 1,707 | 11,610 | 10,305 | 23,622 |
| Enforcement Section (PY) 08/09 | 6.0 | 6.0 | 4.8 | 16.8 |
| ENFORCEMENT BUDGET 08/09 | \$1,010,708 | \$937,323 | \$731,738 | \$2,679,769 |
| Enforcement Dedicated Resources (PY) | 0.5 | 5.5 | 0.5 | 6.5 |
| Permits/PY | 285 | 1,935 | 2,147 | 1,406 |
| Permits/Enforcement PY | 3,414 | 2,111 | 20,610 | 3,634 |
| Monitoring Reports Reviewed | 1,219 | 2,724 | 171 | 4,114 |
| Field Inspections Conducted | 29 | 15 | 21 | 65 |
| Violations* (not including reporting violations) | 361 | 3,097 | 2,782 | 6,240 |
| Violations for reports not submitted | 552 | 1,313 | 1,065 | 2,930 |
| Priority or Chronic noncompliance problems | 91 | 310 | 278 | 679 |
| Violations found by inspection | 32 | 15 | 12 | 59 |
| Priority violations detected | 3 | 1 | 2 | 6 |
| Enforcement Actions Taken | 55 | 59 | 23 | 137 |
| Formal Actions (Revocations, ACLs & CDOs) | 23 | 31 | 11 | 65 |
| Informal Actions | 32 | 28 | 12 | 72 |
| Cases Closed | 71 | 89 | 35 | 195 |
| Cease and Desist Orders | 0 | 3 | 2 | 5 |
| Administrative Civil Liability | 0 | 2 | 2 | 4 |
| Penalties Assessed | \$- | \$46,850 | \$- | \$46,850 |
| Enforcement Response % of violations with enforcement | 6% | 1% | 1% | 1% |
| Water Rights Compliance Rate | 47% | 62% | 63% | 61% |

* The number of non-reporting violations is estimated.

E) Compliance Assistance Activities

The Water Boards conduct diverse compliance assistance activities ranging from direct technical training and workshops to providing financial assistance through the loans and grants program. The [Division of Financial Assistance](#) at the State Water Board provides grants and loans for compliance assistance projects statewide.

On July 1st 2008, the State Water Board adopted resolution [2008-0048](#), directing staff to *“Identify new and supplemental funding sources, particularly to provide technical and compliance assistance support for small and/or disadvantaged communities. Review the State Water Board’s Cleanup and Abatement Account (CAA) as part of the current Enforcement Policy Update and recommend any appropriate CAA changes to support small and/or disadvantaged communities.”*

III. WHAT ARE WE GOING TO DO: FUTURE DIRECTIONS

A) Key Strategic Plan Enforcement Objectives

The Water Boards adopted the [Strategic Plan](#) for 2008-2012⁸ on September 2, 2008. The strategic plan update integrates enforcement strategies across the key environmental priorities identified in the plan. These priorities address the Water Boards core responsibilities to protect surface and groundwater and promote a sustainable water supply. The objectives and actions, including performance targets, that are enforcement related are excerpted below:

Objective 1.3. Take appropriate enforcement actions and innovative approaches as needed to protect and restore all surface waters.

Action 1.3.1. The Water Boards will reduce the backlog of facilities that are subject to mandatory minimum penalties by 50 percent by December 2009.

Action 1.3.2. The Water Boards will work collaboratively to pilot enforcement programs and other innovative approaches to protect and restore surface water quality, initially focusing on facilitating compliance with the regulatory programs for irrigated agriculture.

Action 1.3.3. The Water Boards will pilot enforcement programs and other innovative approaches to protect and restore coastal and ocean water quality by implementing AB 258 "nurdles" pollution prevention law and strengthening enforcement response to spills and illegal discharges.

Action 1.3.4. The State Water Board will adopt by December 2008 an updated Water Quality Enforcement Policy that includes factors for ranking enforcement priorities, metrics to measure enforcement effectiveness, and processes whereby the State Water Board will exercise its water quality enforcement authority.

Objective 2.2. Identify strategies to ensure that communities that rely on groundwater contaminated by anthropogenic sources will have a reliable drinking water supply, which may include surface water replacement, in the future.

Action 2.2.3. Upon identification of discharges contributing to the contamination of groundwater relied on by these communities; take appropriate regulatory or enforcement action.

Objective 5.4. Create a portal by July 2009 for the public on the State Water Board’s home page to access web-based water quality information for surface, ground, and coastal waters, and a web-based water quality report card, that will communicate to the public the quality of the State’s waters, the performance of the Water Boards in protecting those waters, and other Water Board-related issues that affect the public.

⁸ The Water Boards Strategic Plan is available at <http://www.swrcb.ca.gov/>

Action 5.4.1. Considering stakeholder input, develop annual web-based reports on the effectiveness of Water Board programs, beginning with a report on compliance and enforcement activities by January 2009, which track performance measures that are established in performance plans, and allows the Water Boards to adjust priorities and strategies for the coming year.

Objective 6.1. Target consistency improvements in process and policy for Water Board enforcement activities to promote compliance.

Action 6.1.1. Adopt and implement, by October 2008, revisions to the Water Quality Enforcement Policy to, at a minimum, ensure consistent enforcement response, assessment of penalties for all Class 1 violations, and assessment of liability in excess of the economic gain obtained as a result of non-compliance. The policy will also establish a clear, consistent statewide approach to the prioritization of enforcement targets, based on threats and adverse impacts to beneficial uses, including the identification of Class I violations.

Action 6.1.2. Develop uniform hearing procedures for contested enforcement matters, and templates for enforcement activities, including but not limited to subpoenas, administrative discovery, and investigation reports, by October 2008.

Action 6.1.3. Complete re-organization/re-direction of staff to separate enforcement personnel from permitting personnel by December 2009, and instill internal process for review of draft WDRs and draft WDR waivers for enforceability beginning in September 2008.

Objective 7.1. Enhance professional development opportunities for Water Board employees to increase their knowledge, skills, and expertise.

Action 7.1.1. Through the Water Boards' Training Academy, assess training needs by December 2008, and develop and deliver courses and core curricula to meet those needs, beginning with enforcement and stormwater regulation by March 2009.

Objective 7.4. Leverage resources and expertise through innovative approaches and teams across Water Board programs and regions and through partnerships with governmental and non-governmental organizations, to enhance existing workforce capacity and field presence, and provide information to help target Water Board efforts.

Action 7.4.1. Develop partnerships with other agencies that have environmental, regulatory enforcement authority to address threats to water quality, beginning with a pilot enforcement program, in collaboration with the Department of Fish and Game, focused on stormwater concerns in the Los Angeles region by December 2008.

Action 7.4.4. Identify and use existing or new staff teams to integrate Water Board programs, resolve cross-program issues, and reduce program inconsistencies such as a water quality data team, enforcement coordination team and a water rights/water quality integrated decision-making team by December 2011.

B) Recommendations for Future Actions

These actions are more fully described in the recently completed [Fiscal Year 2007-2008 Annual Enforcement Report](#) and are in addition to ongoing enforcement improvement efforts such as the proposed revisions to the Water Quality Enforcement Policy and implementation of the CIWQS review Panel recommendations.

#

LINKS TO ENFORCEMENT REPORTS AND DATA AVAILABLE AT THE WATER BOARD PUBLIC WEB SITES

State Water Board Enforcement

http://www.waterboards.ca.gov/water_issues/programs/enforcement/

CIWQS Public Reports

http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml

CWC section 13225(e) and (k) mandated Quarterly Enforcement Summaries

Region 1:

http://www.waterboards.ca.gov/northcoast/water_issues/programs/enforcement/

Region 2:

http://www.waterboards.ca.gov/sanfranciscobay/pending_en.shtml

<http://www.waterboards.ca.gov/sanfranciscobay/enforcement.shtml>

Region 3:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/enforcement/index.shtml

Region 4:

http://www.waterboards.ca.gov/losangeles/water_issues/programs/enforcement/

Region 5:

http://www.waterboards.ca.gov/centralvalley/water_issues/enforcement/index.shtml

Region 6:

http://www.waterboards.ca.gov/lahontan/water_issues/programs/enforcement/index.shtml

Region 7:

http://www.waterboards.ca.gov/coloradoriver/water_issues/programs/enforcement/

Region 8:

http://www.waterboards.ca.gov/santaana/water_issues/programs/investigations_enforcement/index.shtml

Region 9:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/enforcement/index.shtml

CWC section 13323(e) mandated Quarterly Enforcement Summaries

The list of Administrative Civil Liabilities proposed and imposed is available at:

<http://ciwqs.waterboards.ca.gov/ciwqs/readOnly/aclReport.jsp>

List of Enforcement Orders

<http://ciwqs.waterboards.ca.gov/ciwqs/enforcementOrders.jsp>

LIST OF ACRONYMS

| Acronym | Full Name |
|---------------------|---|
| ACL | Administrative Civil Liability |
| CAA | State Water Pollution Cleanup and Abatement Account |
| Cal EPA | California Environmental Protection Agency |
| CAFO | Concentrated Animal Feeding Operations |
| CAO | Cleanup and Abatement Order |
| CDO | Cease and Desist Order |
| CIWMB | California Integrated Waste Management Board |
| CIWQS | California Integrated Water Quality System |
| CSD | Community Services District |
| CTR | California Toxics Rule |
| CWA | Clean Water Act |
| DA | District Attorney |
| EO | Executive Officer |
| ICC | International Code Council |
| LID | Low Impact Development |
| MNP | Mandatory Minimum Penalties |
| MS4 | Municipal Separate Storm Sewer System |
| NPDES | National Pollutant Discharge Elimination System |
| NPS | Non-Point Source |
| NOV | Notice of Violation |
| O&M | Operations & Maintenance |
| OE or Office | Office of Enforcement |
| PCS | Permit Compliance System |
| PY | Personnel Year |
| POTW | Publicly Owned Treatment Works |
| PUD | Public Utilities District |
| QA/QC | Quality Assurance/Quality Control |
| RCRA | Federal Resource, Conservation, and Recovery Act |
| SEP | Supplemental Environmental Project |
| SIC | Standard Industrial Classification |
| SIU | Special Investigations Unit |
| SMCRA | Surface Mining Control and Reclamation Act |
| SMR | Self-Monitoring Report |
| SSMP | Sewer System Management Plan |
| SSO | Sanitary Sewer Overflow |
| TSO | Time Schedule Order |
| UST | Underground Storage Tanks |
| Water Boards | State and Regional Water Boards |
| WDR | Waste Discharge Requirements |
| WQBEL | Water Quality-Based Limitation |
| WWTP | Wastewater Treatment Plant |

ATTACHMENT A: Five Core Regulatory Programs 2008 Metrics

| PROGRAM 2008 METRICS <i>(Five Core Reg. Programs)</i> | NPDES WASTE- WATER | NPDES STORM- WATER | WDR | LAND DISPOSAL | 401 WETLANDS |
|--|-----------------------------------|-----------------------------------|--------------------|--------------------------|-------------------------|
| REGULATED UNIVERSE | 2,037 | 28,805 | 6,731 | 790 | 959 |
| Number of Staff in Program (PY) 08/09 | 98.7 | 96.6 | 80.4 | 70.8 | 18.8 |
| Total Program BUDGETED 08/09 | \$22,527,653 | \$19,233,983 | \$14,489,391 | \$12,144,721 | \$2,908,864 |
| Enforcement Resources (PY) | 40 | 48 | 29 | 39 | 2 |
| Permits/PY | 21 | 299 | 84 | 11 | 51 |
| Permits/Enforcement PY | 51 | 601 | 232 | 20 | 480 |
| Monitoring Reports* | >12,000 | >10,000 | >19,000 | >2,000 | - |
| Inspections | 639 | 2,472 | 780 | 539 | 60 |
| Percentage of Facilities Inspected | 31% | 9% | 29%* | 68% | 6% |
| Facilities With Violations | 601 | 1,389 | 825 | 115 | 12 |
| <i>Facilities With Priority or Chronic Noncompliance Problems</i> | 368 | 240 | 413 | 3 | 7 |
| Total Number of Violations | 5,417 | 1,873 | 5,179 | 277 | 61 |
| <i>Priority Violations</i> | 2,481 | 304 | 1,073 | 2 | 23 |
| Total Enforcement Actions | 855 | 2,139 | 551 | 87 | 35 |
| <i>Level 1 Enforcement (Notice of Violation, Verbal Notification, Request for Information, etc.)</i> | 617 | 2,107 | 530 | 82 | 32 |
| <i>Level 2 Enforcement (Actions Requiring Compliance, CDO, CAO, TSO, etc.)</i> | 33 | 1 | 3 | 1 | - |
| <i>Level 3 Enforcement (Actions Imposing Liabilities)</i> | 205 | 31 | 18 | 4 | 3 |
| Number of Administrative Civil Liability Actions Issued | 205 | 30 | 18 | 3 | 3 |
| Penalties Assessed | \$23,158,206 | \$2,757,960 | \$2,539,690 | \$126,950 | \$132,375 |
| <i>Received Liabilities (Paid)</i> | \$4,624,767 | \$1,569,050 | \$1,372,940 | \$126,950 | \$20,000 |
| <i>Projects Completed</i> | \$2,931,900 | \$- | \$- | \$- | \$- |
| ENFORCEMENT RESPONSE: <i>(% of Violations with Enforcement)</i> | 63% | 93% | 36% | 78% | 70% |
| <i>% of Violations with Level 1 Enforcement (only)</i> | 24% | 92% | 33% | 78% | 68% |
| <i>% of Violations with Level 2 Enforcement (or 2 and 1)</i> | 17% | 0% | 2% | 0% | 0% |
| <i>% of Violations with Level 3 Enforcement (or 3 and lower)</i> | 22% | 1% | 1% | 0% | 2% |
| OVERALL COMPLIANCE RATE: <i>(facilities without violations/regulated universe)</i> | 70% | 95% | 79% | 85% | 99% |

* The percentage of WDR facilities inspected does not include Timber Harvest, Dairies, Water Recycling and Other facilities.



STATE WATER RESOURCES CONTROL BOARD
REGIONAL WATER QUALITY CONTROL BOARDS

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State of California
Arnold Schwarzenegger, Governor

California Environmental Protection Agency
Linda S. Adams, Secretary

State Water Resources Control Board
Charles R. Hoppin, Chair
Dorothy Rice, Executive Director



OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

I. EXECUTIVE SUMMARY

Much of the scientific expertise in state government for the assessment of health risks posed by chemical contaminants in the environment is concentrated in the Office of Environmental Health Hazard Assessment (OEHHA). When the California Environmental Protection Agency (Cal/EPA) was established in 1991, OEHHA was deliberately created as a separate and distinct entity from the other five Cal/EPA boards and departments to provide adequate separation between the scientific work of “risk assessment” and the regulatory (“risk management”) activities of the other boards and departments, which must balance other considerations.

The mission of OEHHA is to protect and enhance public health and the environment by scientific evaluation of risks posed by hazardous substances. OEHHA has no enforcement authority. Instead, the Office performs many of the scientific assessments used by Cal/EPA boards and departments, the Department of Public Health (DPH) and other regulatory agencies as the basis for standards, regulations and other risk management decisions. These assessments help ensure that state regulations and policies focus on the most significant health threats, which in turn helps ensure that precious resources devoted to the protection of public health and the environment are expended in the most effective manner.

OEHHA’s responsibilities include:

- Assessing the hazardous characteristics of environmental contaminants (in air, water, food, and waste) and developing health-based criteria to support regulatory standards.
- Implementing the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).
- Developing tools and guidance for assessing human and ecological impacts and providing technical assistance concerning risk assessment to state and local agencies.
- Making recommendations regarding safe consumption of sport and commercial fish.
- Conducting special investigations of potential environmental causes of illness and deaths; including studies of the health effects of air pollutants, pesticides, and other chemical exposures.

These responsibilities are fulfilled by a staff of about 125, including toxicologists, physicians, research scientists and other public health professionals. OEHHA has an annual budget of approximately 18 million, with offices in Sacramento and Oakland.

II. OEHHA ACTIVITIES THAT SUPPORT REGULATORY AND ENFORCEMENT PROGRAMS

The OEHHA functions described in this section are limited to those that support standards setting, provide guidance in the evaluation of health risks for purposes of risk management decisions, or facilitate compliance with regulatory requirements.

How OEHHA supports Proposition 65 Implementation

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) requires the Governor to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. Two requirements apply to chemicals on the list: (1) a business is prohibited from discharging any listed

chemical to sources of drinking water; and (2) a business is required to give a warning prior to knowingly exposing a person to any listed chemical. There are currently 791 chemicals on the Proposition 65 list. The list is available at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html and in Title 27, Cal. Code of Regulations, section 12000.

The law is enforced through civil enforcement actions brought by the Attorney General's Office or local prosecutors, as well as private citizen suits. The majority of cases brought under Proposition 65 are for violations of the warning requirement. In most cases, these result in injunctive relief, such as reformulation of products to avoid exposure or provision of a warning on the product or source of exposure. Although OEHHA is the lead agency responsible for Proposition 65 implementation, it has no enforcement authority and does not oversee or direct other agencies' enforcement activities. The Attorney General's Office has independent authority to enforce Proposition 65 and general oversight authority over private enforcement actions. OEHHA provides scientific consultation to the Attorney General as needed regarding its enforcement cases.

Since it was passed in 1986, Proposition 65 has provided Californians with information they can use to reduce their exposures to chemicals that may not have been adequately controlled under other State or federal laws. This law has also increased public awareness about the adverse effects of exposures to listed chemicals. For example, Proposition 65 warnings on alcoholic beverages have resulted in greater awareness of the dangers of alcoholic beverage consumption during pregnancy. Many fast-food restaurants now post warnings concerning the presence of cancer-causing acrylamide in their fried and baked food products, and most California supermarkets post notices about the presence of methylmercury (a developmental toxin) in fresh and frozen fish. The law's warning requirements have provided an incentive for manufacturers to remove listed chemicals from their products. For example, toluene, which causes birth defects or other reproductive harm, has been removed from many nail care products. Proposition 65 enforcement actions have focused public attention on the presence of lead in imported candy, children's jewelry and a variety of other products.

In its capacity as the lead agency for Proposition 65 implementation, OEHHA carries out the following tasks:

- OEHHA maintains and updates the Proposition 65 list of chemicals known to cause cancer, birth defects or other reproductive harm. OEHHA administers two expert scientific panels that decide on the listing of chemicals and also lists chemicals that have been identified as carcinogens or reproductive toxicants by other authoritative scientific organizations.
- OEHHA adopts "safe harbor" levels for listed chemicals. No warning is required at exposures that occur below these levels, and discharges of listed chemicals into drinking water sources below these levels are exempt from the prohibition. Businesses use the safe harbor numbers to help them comply with Proposition 65, and the Attorney General and other prosecutors can use them in their enforcement activities. OEHHA has established safe harbor levels ("No Significant Risk Levels" or NSRLs for carcinogens and "Maximum Allowable Dose Levels" or MADLs for reproductive toxins) for 304 of the chemicals listed under Proposition 65, and continues to adopt them as time and resources allow.
- OEHHA updates and improves its Proposition 65 regulations on an ongoing basis. Recognizing that compliance with Proposition 65 comes at a price, OEHHA strives to make the regulatory requirements as clear as possible.

- OEHHA provides technical guidance concerning the application of the law and implementing regulations to specific factual scenarios through the issuance of “Safe Use Determinations,” Interpretive Guidance and informational letters. Businesses can use this guidance to help them comply with Proposition 65 requirements.

OEHHA’s Proposition 65 work products can be used by Cal/EPA boards and departments as well as by other state agencies. Chemicals added to the Proposition 65 list are often incorporated by the other BDOs into their programs. For example, the ARB Hot Spots program incorporates the Proposition 65 list by reference. The safe harbor levels may be used by Cal/EPA programs in their risk management and enforcement activities. Also, the listing of several phthalate compounds as reproductive toxins informed the passage of 2007 legislation (AB 1108, Chapter 672) that bans several of these compounds in toys and children’s products.

Accomplishments in 2008:

In 2008, 12 chemicals were added to the Proposition 65 List – eight as causing cancer and four as causing reproductive toxicity. Safe harbor levels were adopted for two carcinogens (nitromethane and C.I. Direct Blue 218) and one chemical causing reproductive toxicity (di-*n*-hexyl phthalate). An Interpretive Guideline was issued for hand-to-mouth transfer of lead through exposure to fishing tackle, based on a formal request for technical guidance from the Sports Fishing Coalition. The 199 Proposition 65 settlements in 2008 resulted in increased warnings and citizen awareness of potential sources of exposures to carcinogens and reproductive toxicants.

How OEHHA supports air quality programs

OEHHA conducts health risk assessments of chemical contaminants in air. These assessments provide the basis for regulatory actions and control measures implemented by the Air Resources Board (ARB) and local and regional air districts. OEHHA’s activities relating to air quality include:

- Conduct risk assessments to support the designation of air pollutants as *toxic air contaminants*.
- Develop and update risk assessment guidance and establishing reference exposure levels and cancer potency factors for use in site-specific risk assessments under the Air Toxics Hot Spots Act.
- Develop risk assessment methods to ensure that infants and children are explicitly considered in evaluating the health risks of air pollutants.
- Recommend Ambient Air Quality Standards for *criteria air pollutants* to protect the health of all Californians.
- Conduct epidemiological investigations of the health effects of criteria air pollutants, particularly on sensitive subpopulations such as children and the elderly. These investigations also are examining the impacts of climate change, and specifically rising temperatures, on public health in California.
- Evaluate the health effects of chemicals commonly found in indoor air and developing reference exposure levels for assessing indoor air exposure.
- Characterize human and environmental health risks of air pollution associated with gasoline use. These activities complement those of ARB in their ongoing efforts to identify and regulate mobile sources of air pollution. This work on the air exposure pathway for gasoline-related air pollutants is a component of the multimedia evaluation of motor vehicle fuels mandated under state law.

Accomplishments in 2008

In 2008, OEHHA completed the revised *Air Toxics Hot Spots Guidelines for Determining Non-cancer Reference Exposure Levels*. The revised guidelines more explicitly account for children’s susceptibilities. Reference exposure levels for acute, repeated 8-hour and chronic exposures for six chemicals were established.

How OEHHA supports the drinking water program

OEHHA performs risk assessment and hazard evaluation activities relating to chemical contaminants in California's drinking water. These activities include developing public health goals (PHGs), health advisories, and notification levels for chemical substances in drinking water. OEHHA also provides toxicological assistance for interpreting chemical monitoring of the drinking water supply. Public health goals are concentrations of chemicals in drinking water that are not anticipated to produce adverse health effects following long-term exposures. These health-protective advisory levels are determined after a comprehensive review of applicable toxicity data, and presented in the form of detailed documents that are posted on the OEHHA Web site at www.oehha.ca.gov/water/phg/allphgs.html. PHGs are used as the health basis for the state's primary drinking water standards (maximum contaminant levels, or MCLs), which are established by the California Department of Public Health (DPH). To date, OEHHA has developed PHGs for 83 chemicals and completed updated assessments on 16 of them.

Accomplishments in 2008:

In 2008, PHGs were adopted for copper and endrin (updates), and molinate. Eight draft PHGs were issued. About twenty-four risk assessments were in progress during the year.

How OEHHA supports pesticide programs

OEHHA carries out the following activities relating to pesticides:

- Reviews risk characterizations of pesticide active ingredients prepared by the Department of Pesticide Regulation (DPR) and evaluates pesticide toxicity data in support of pesticide use and regulation in California.
- Reviews and evaluates data to identify pesticides as Toxic Air Contaminants.
- Pesticide illness surveillance activities:
 - Provides epidemiological and other assistance to local health officers in the event of pesticide poisoning outbreaks (Health and Safety Code Section 105210).
 - Is responsible for creating the Pesticide Illness Report Form that is used for reporting pesticide illnesses (Health and Safety Code Sections 105200).
 - Provides training to physicians on their requirement to report pesticide illnesses, how to complete the reports, and penalties for not reporting (Health and Safety Code Sections 105200 and 105205).
 - Identifies problem pesticides and establishes trends and history of poisonings.
- Assists DPR with development of worker health and safety regulations for pesticide use, handling, notification and enforcement (Food and Agricultural Code Sections 12980 and 12981) and reviews worker exposure protocols for scientific merits and ethical considerations.
- Provides health effects data and toxicological evaluations of pesticides and associated formulation products used to combat invasive species in support of pest eradication programs of the Department of Food and Agriculture.

Accomplishments in 2008:

In 2008, OEHHA conducted six physician trainings on recognition and management of pesticide poisoning. Three pesticide reviews were completed, three initiated and permit conditions recommended for metam sodium/metam potassium application. Worker exposure protocols were reviewed for various pesticide products.

OEHHA prepared a report summarizing symptoms reported following aerial pheromone application in Monterey and Santa Cruz counties and a risk assessment of twist ties to control the light brown apple moth (LBAM). In collaboration with DPR and the Department of Public Health, OEHHA also reviewed and analyzed the results of acute toxicity studies on four potential LBAM eradication products as well as the LBAM pheromone active ingredient.

How OEHHA supports site cleanup programs

OEHHA supports site cleanup programs through two types of activities:

- **Development of health-based values for assessing risks at contaminated sites**

OEHHA develops: (a) child-specific reference levels to assess risks at proposed or existing California school sites; (b) screening concentrations for contaminants in soil and soil vapors (CHHSLs) for use by community organizations, property owners, developers, and local government officials to assist in the remediation of contaminated properties; (c) wildlife toxicity values for ecological risk assessments; and (d) cleanup standards for properties contaminated by the clandestine manufacture of methamphetamine.

- **Risk assessment reviews**

OEHHA assists the Regional Water Quality Control Boards, the California Integrated Waste Management Board (CIWMB) and local government entities to identify health and ecological risks from exposure to hazardous materials at contaminated sites.

Accomplishments in 2008:

In 2008, OEHHA reviewed health risk assessments and supporting documents for 63 contaminated sites in California. OEHHA also provided risk assessment trainings for local enforcement agencies who participate in site cleanup activities.

Other OEHHA programs and activities

- **Fish Advisory Program:**

OEHHA evaluates contaminants in fish and wildlife and develops fish consumption health advisories. Fish consumption advisories are published in the California Sport Fish Regulations. OEHHA developed advisories for 235 miles of river, 220,000 acres of estuary, and 11,990 acres of lake in 2008. The advisories serve as a public communications program intended to help protect citizens, including sensitive subpopulations, against toxic chemicals present in fish. Advisories are also used by the State Water Resources Control Board for their Integrated Report of Water Quality and to prioritize developing Total Daily Maximum Loads. The program also advises the Department of Fish and Game on the closure of commercial and sport fishing in marine areas impacted by oil spills.

- **EPIC Project:**

OEHHA hosts the [Cal/EPA Environmental Protection Indicators for California \(EPIC\) Program](#), where Cal/EPA BDOs, the Resources Agency and other state agencies provide input towards developing and maintaining environmental indicators. *Environmental indicators* are scientifically based measures that convey information on environmental status and trends. They are intended to assist environmental programs in evaluating outcomes of their efforts and in identifying areas that require more attention. Indicators are considered in strategic planning, policy formation, resource allocation and priority setting. The current focus of the EPIC project is to develop and update indicators of the impacts of climate change on California.

- **Artificial turf fields evaluation:**

OEHHA is conducting a safety study of the new generation of artificial turf playing fields in support of the CIWMB's stewardship of recycling in California. These fields contain crumb rubber infill made from recycled tires. OEHHA conducted an evaluation of existing knowledge in 2008 and prepared a report dated Feb 2009. OEHHA is currently testing whether these fields release harmful chemicals or particles into the air. In addition, the fields are also being assayed for bacteria capable of infecting athletes.

- **Ecotoxicology Program:**

OEHHA develops tools and technical resources to assess the impacts of chemical, physical, and biological stressors on ecosystems. Some of the work being carried out by the Ecotoxicology Program includes: developing a tool for estimating imperviousness—a key stressor in most urban watersheds; conducting a risk assessment of the Dry Creek watershed, a rapidly urbanizing watershed spanning Sacramento and Placer Counties; providing guidance, training and technical assistance in conducting watershed assessments; and participating in the California Water and Land Use Partnership (Cal WaLUP), a network of state, local, and non-governmental organizations engaged in outreach and education efforts to promote a better understanding of the relationship between land use decisions and aquatic/water resources.

III. FUTURE DIRECTIONS

In addition to the ongoing activities described above, OEHHA will address current and emerging issues and provide support to regulatory activities of Cal/EPA boards and departments and other state and local agencies through the following projects:

- **Cumulative Impacts and Precautionary Approaches (CI/PA):**

The CI/PA Project is a Cal/EPA program for the development of a framework and guidance for Cal/EPA programs to use in addressing the cumulative impacts in California communities of environmental pollution from multiple sources. OEHHA is leading this agency-wide effort. This framework and guidance will be instrumental in helping Cal/EPA BDOs conduct their regulatory activities, particularly in communities disproportionately impacted by pollution.

- **Green Chemistry:**

Pursuant to recent legislation (SB 509, Simitian, Chapter 560, Statutes of 2008), OEHHA is evaluating chemical-hazard traits and environmental and toxicological effects to be included in a Toxics Information Clearinghouse. A key goal of the Clearinghouse is to increase public knowledge about the toxicity and hazards of the thousands of chemicals in commerce. The traits, effects and other characteristics specified by OEHHA must be incorporated by the Department of Toxic Substances Control (DTSC) into criteria for evaluating toxic chemicals and safer alternatives. OEHHA is also providing consultation to DTSC in the development of the regulatory process for identifying and prioritizing chemicals of concern in consumer products.

- **Biomonitoring:**

The California Environmental Contaminant Biomonitoring Program, or CECBP, is a collaborative effort of CDPH, OEHHA, and DTSC. This program is designed to measure levels of environmental chemicals in biological samples from statewide participants and establish trends over time. In the start-up phase, the program is identifying priority chemicals for biomonitoring and conducting pilot studies to develop laboratory and field methods. The information generated by CECBP will be used to assess the effectiveness of regulatory programs intended to decrease exposures to specific chemicals.

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