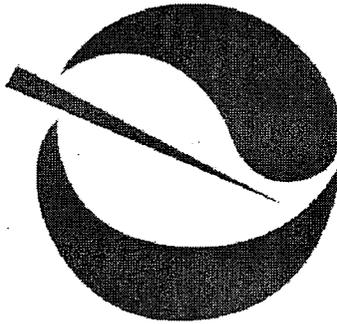


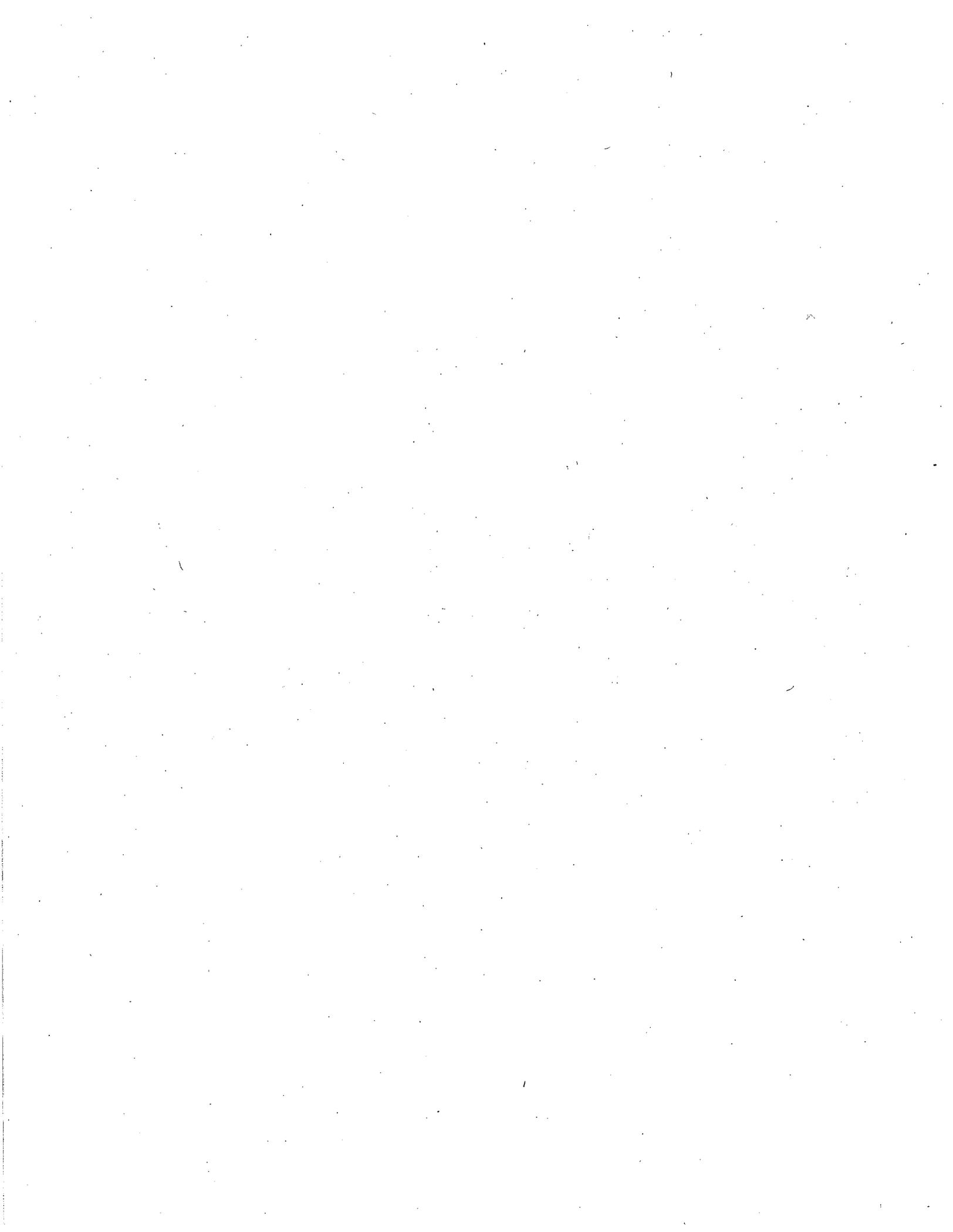
STATUS REPORT ON THE IMPLEMENTATION OF THE CROSS-AGENCY ENFORCEMENT INITIATIVE

Prepared by:
California Environmental Protection Agency
February 2006



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STATE OF CALIFORNIA
Arnold Schwarzenegger, Governor



**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY**

Alan C. Lloyd, Ph. D., Agency Secretary

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THE CROSS-AGENCY ENFORCEMENT INITIATIVE**

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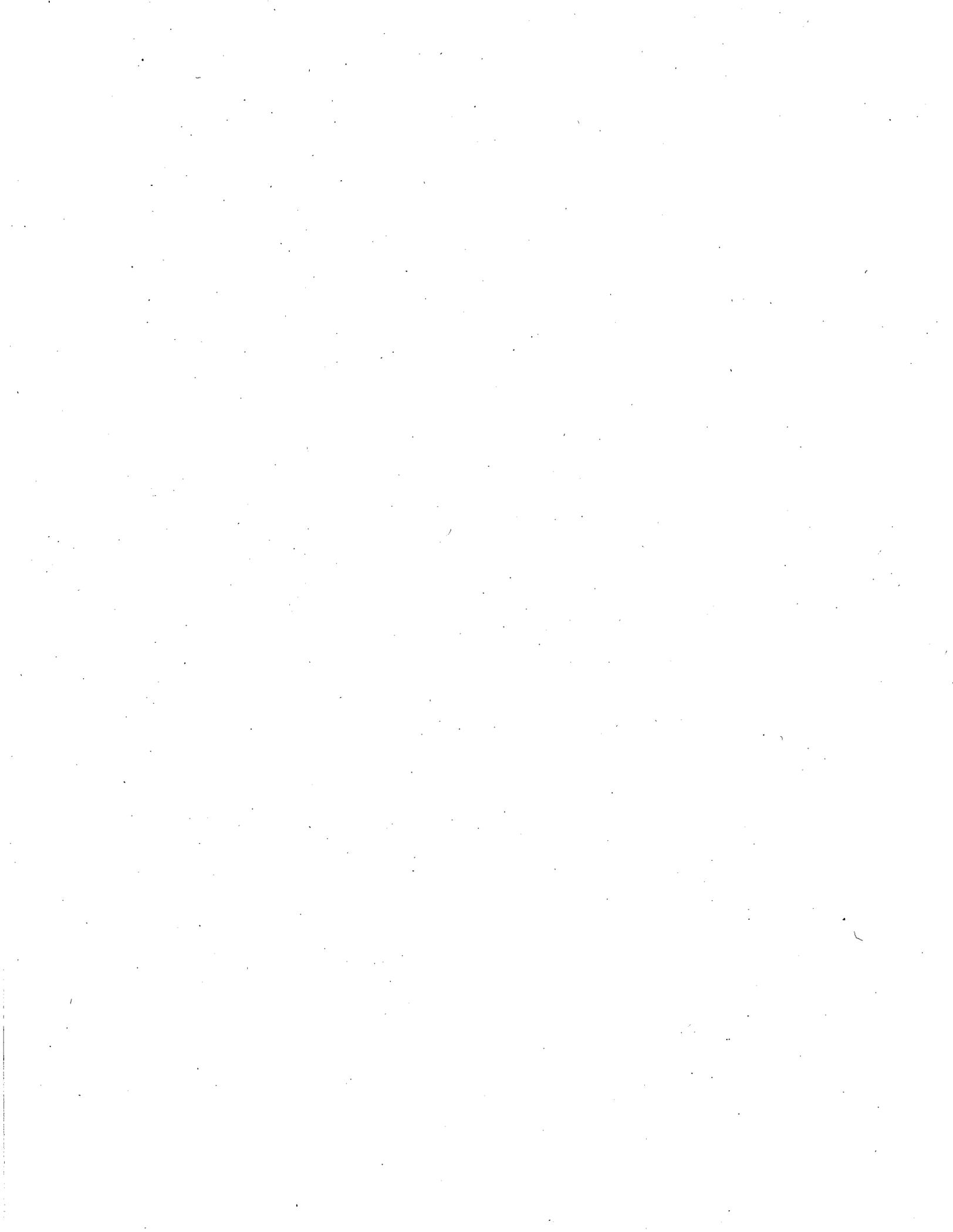


TABLE OF CONTENTS

PREFACE	1
PART I: THE VISION.....	2
PART II: HOW DID WE MEASURE UP?.....	2
BASELINE ASSESSMENT	2
Assessment Process.....	3
Assessment Results.....	3
A PLAN FOR ACTION.....	4
PART III: MAKING THE VISION REALITY.....	6
Enforcement Initiative Projects and Teams	7
1. Single Complaint Tracking System	7
2. Enforcement Operational Plan	8
3. Enforcement Intelligence.....	8
4. Integrated Data Dictionary.....	8
5. Environmental Data Exchange.....	9
6. Geographical Information Systems Contracts.....	9
7. Enforcement Training.....	9
8. Enforceable Permits.....	10
9. Communication Strategy.....	10
PART IV: IMPLEMENTING THE ENFORCEMENT INITIATIVE: PROGRESS REPORT	10
<input type="checkbox"/> Enforcement Staffing	10
<input type="checkbox"/> Targeted Enforcement.....	11
<input type="checkbox"/> Referrals to Prosecutors	11
<input type="checkbox"/> Enforcement Field Presence.....	11
<input type="checkbox"/> Enforcement Initiative Teams	11
PART V: AUGMENTATION OF RESOURCES: 2006-07 PROPOSED BUDGET	15
PART VI: THE ROAD AHEAD.....	16
APPENDIX A: Phase I Environmental Initiative Memo	18
APPENDIX B: Who Enforces California's Environmental Laws?.....	26
APPENDIX C: Survey of Enforcement Activities of State Agencies Versus their Local Counterparts	27

Tables

Table 1: Enforcement Teams Associated with Enforcement Areas.....	8
Table 2: Accomplishments Associated with Enforcement Areas.....	16

PREFACE

The California Environmental Protection Agency (Cal/EPA) was created in 1991 by Governor's Executive Order. The six boards, departments, and office (BDOs) that comprise Cal/EPA were placed within the Cal/EPA "umbrella" to create a cabinet level voice for the protection of human health and the environment and to assure the coordinated deployment of State resources. The six BDOs include the Air Resources Board, the California Integrated Waste Management Board, the Department of Pesticide Regulation, the Department of Toxic Substances Control, the Office of Environmental Health Hazard Assessment, and the State Water Resources Control Board (and the nine Regional Water Quality Control Boards). The term "Cal/EPA" is used both to refer to the Office of the Secretary and to the entire agency (the Office of the Secretary and the BDOs).

Cal/EPA's mission is to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality.

This report has been prepared by Cal/EPA in compliance with the provisions contained in the Supplemental Report of the 2005 Budget Act, Item 0555-001-0044. These provisions state:

"The Secretary for Environmental Protection shall report to the appropriate fiscal and policy committees of the Legislature, in conjunction with the submittal of the 2006-07 Governor's Budget, on the status of implementing its cross-agency enforcement initiative. The report shall include, but not be limited to, information on (1) how the Governor's 2006-07 budget proposal facilitates the implementation of the enforcement initiative and (2) examples of specific measures that will be used to track improvements in the performance of enforcement programs agency-wide."

The term "Enforcement Initiative" refers to all of the actions being taken by Cal/EPA and its BDOs to improve the quality and effectiveness of their environmental enforcement efforts. A memo issued by then Secretary Terry Tamminen on November 30, 2004 (see Appendix A) was the first phase of the Initiative, and directed the BDO executive throughout Cal/EPA to develop and implement a variety of administrative activities intended to improve the enforcement of California environmental laws.

PART I: THE VISION

When Governor Schwarzenegger assumed office in November 2003, he directed the Secretary of the California Environment Protection Agency (Cal/EPA) to implement the Governor's *Environmental Action Plan for the Environment*. Action Item #6 in the Action Plan identifies as an important goal the need to "protect California's environment through the tough enforcement of existing laws." As stated in the Action Plan:

"Strict law enforcement is vital to assure environmental protection, prevent polluters from achieving unfair competitive advantage against complying competitors, send a message of public values, and establish conditions conducive to creativity and participation in voluntary initiatives. My Administration will focus on keeping underlying statutes and regulations simple; simple rules are easiest to follow and comply with; unnecessarily complex rules are hard to comply with, hard to enforce, and encourage evasion. Particular attention will be given to better use of information technologies with strict, clear and rapid penalties for intentional or negligent misstatements or omissions."

Cal/EPA took action to implement the Governor's vision to ensure the enforcement of California's environmental laws, as well as to implement its statutorily mandated duties and responsibilities to ensure consistent, strong enforcement across all of its constituent boards, departments and offices (BDOs) and across all media.

PART II: HOW DID WE MEASURE UP?

BASELINE ASSESSMENT

The first step in implementing the Governor's vision was to gauge the effectiveness of existing state and local enforcement activities. Cal/EPA began this process by conducting an assessment of the enforcement programs. The assessment sought to answer some basic questions:

- Who performs environmental enforcement?
- How is the enforcement function organized?
- Where are enforcement resources located?
- How are enforcement resources allocated?
- How is the success of enforcement efforts measured?

And finally, given this baseline, in what areas should Cal/EPA focus its energies and resources to ensure the enforcement of California's environmental laws and implement the Governor's vision.

Assessment Process

The assessment process included literature reviews, self assessments, interviews, and surveys. Literature that was reviewed included reports prepared over the past decade by the Legislative Analyst's Office, the Bureau of State Audits, and the U.S. Environmental Protection Agency regarding performance of Cal/EPA's enforcement programs, as well as academic articles regarding the general effectiveness of regulatory enforcement regimes. Each BDO was asked to review their 1999 Self-Assessment Reports prepared at the request of then Cal/EPA Secretary Winston Hickox, as well as a 2003 update to those Self Assessment Reports, to determine what had been implemented and what had not. Over 190 enforcement professionals, including executives, managers, prosecutors and inspectors in the enforcement field throughout state and local government in California, provided either written comments or feedback through personal interviews.

Assessment Results

The assessment identified a number of key findings and observations.

- Variety in Enforcement Programs, Capabilities, and Functions
One of the key findings was that, not surprisingly, there is a wide variety in the enforcement practices and models among the 5 BDOs, 9 Regional Water Quality Control Boards, 35 Air Pollution Control Districts, 85 Certified Unified Program Agencies, 58 Agricultural Commissioners, and more than 50 Local Enforcement Agencies (see Appendix B for a chart of enforcement responsibilities). Some have robust, well-developed, and comprehensive enforcement "nets" able to detect violations, while others relied on a small set of routine tasks to detect violations in a subset of permit holders. Some of the differences were based on different statutory authorities, while some were based on the circumstances surrounding the historical development of the individual programs.
- Measuring Activities not Compliance
Another key finding was that, with limited exception, the environmental enforcement programs measure their own activities to measure their performance. Their assumption was that greater numbers of enforcement activities (e.g., numbers of inspections, numbers of enforcement actions, and value of penalty dollars collected) equate to greater enforcement success. This is contrary to regulatory literature and surveys that tend to agree that enforcement should be a means to the ends of attaining compliance—which is not currently measured.
- Focus on State's Efforts
Another key finding was that much of Cal/EPA's focus and attention in the past had been on the enforcement activities of the state programs. Given the decentralized structure which includes local government with thousands of field staff, versus the hundreds found in state government, it stands to reason that the

majority of enforcement activity, and thereby compliance results, occur at the local level (see Appendix C for a survey of state and local activities). Cal/EPA has a statutory duty to focus on its relationship with Certified Unified Program Agencies, but relationships with other local enforcement partners, has received much less attention.

- Additional Steps Needed

The assessment found that, although there was much activity (inspections, enforcement actions, penalties assessed and collected), it was difficult to determine how well the existing enforcement programs had done at achieving compliance with environmental laws. By and large, little data exists that allows for an identification of entities or violators that are outside of our inspection routines. There was also little data or effort to correlate inspection and enforcement efforts with environmental risks.

The assessment concluded that additional steps were needed to meet the variety of fundamental enforcement goals, namely:

- Enforcement resources targeted on priority areas, such as:
 - Activities that pose the highest environmental risk
 - Activities or entities with the highest incidences of non-compliance
 - Chronic or recalcitrant violators
 - Identification of entities outside of the current regulatory net;
- Enforcement response activities that are fair and consistent;
- Rules and permits that are clear and enforceable; and
- A system that can measure enforcement activities and correlates them to compliance and environmental results.

A PLAN FOR ACTION

Cal/EPA evaluated the information collected through the baseline assessment effort and through it identified five specific areas where changes could be made that could improve our enforcement efforts. These five areas were:

1. Modernized Information Management

The first area identified in Cal/EPA's assessment was the need to improve the management of information about the environment and compliance with laws. The assessment found that currently the enforcement staff and managers in Cal/EPA's BDOs and local government enforcement agencies regularly and systematically keep track of information about their activities – their numbers of inspections, enforcement actions, and penalty dollars – but do not keep regular and systematic track of information about the results of these activities.

There have been sporadic efforts to measure compliance rates or environmental results, however, the measurement of this information is not regular or systematic and is not produced in a useful way to better direct existing

enforcement resources to their highest and best use for improved environmental quality. Improved information management could help to direct resources and make the information more useful toward achieving real, on-the-ground, improvements in environmental quality.

2. Organize Enforcement Staff to Ensure Compliance

A variety of factors, ranging from mandated inspection frequency to reporting requirements, has caused enforcement agencies to limit their universe of potential violators to those who have obtained a permit and are in the system. In many programs, little to no effort is made to conduct enforcement operations to detect non-compliance outside the permit inspection routines. There is also little effort to identify fraud within the system – to identify those who are falsifying information or data they are reporting to the enforcement agencies. The effect on the environment and the regulated community is that the “good actors” retool their operations, obtain new permits and raise costs to meet the ever stricter requirements, while the “bad actors” continue to avoid the costs of compliance and harm the environment by their non-compliance.

A variety of improvements could help to focus available regulatory staff on their primary mission – ensuring compliance with environmental laws – and to complete the “enforcement net”:

- Realign existing regulatory staff to create clear divisions for enforcement staff;
- Redirect staff to determining compliance and measuring compliance rates;
- Focus enforcement staff on the potential violations outside our permitting inspection routines.
- Realign and add enforcement staff to identify fraud or false information.

3. Communication Strategy

Cal/EPA has the duty to enforce federal and state environmental laws. Like all government agencies and as in most every public or private organization, there are always more goals than can be achieved with existing resources. The challenge is to improve performance with the resources at hand. Improved communication could assist the coordination of the variety of enforcement programs and their activities, as well as enhance the deterrent effect of those enforcement activities.

4. Increased Field Presence

California’s history of enacting rigorous, cutting edge environmental laws creates a significant challenge. Each new statute that is added changes the rules, and with it the definition of “compliance” for those who are regulated and those who are enforcing. Every new law requires additional training and new techniques and tools to augment existing enforcement capabilities. In addition, Cal/EPA’s enforcement staff is diverted from the task of enforcing existing laws to the regulatory tasks of drafting new regulations, new permits and new permit conditions. Adding to this challenge is that some of the statutes specify

inspection intervals that dictate the time allocated by the remaining enforcement staff. Together these factors limit the discretion that California's enforcement agencies have to allocate their resources to the field.

These and other trends have reduced Cal/EPA's overall field presence. Increasing field presence and ensuring that staff is adequately trained would enhance California's environmental enforcement efforts.

5. Prosecutorial Outlets

California's environmental laws are enforced by a wide variety of state, regional and local agencies under a myriad of media-specific laws. Each law has its own statutory tools in the enforcement toolbox. Even agencies enforcing the same standards using the same tools pursue enforcement actions, administrative fines, civil penalties and prosecution in court in widely disparate ways. While some of the difference is a healthy result of local and regional preferences, some is due to unevenness in access to prosecutorial resources, such as in the case of our local enforcement agency partners. Improving access to prosecutorial outlets could improve the use of the full range of administrative, civil and criminal prosecutorial resources.

PART III: MAKING THE VISION REALITY

To achieve these goals and objectives, Cal/EPA identified a variety of immediate and longer term strategies. The BDOs were asked to implement a variety of changes that could be made using existing resources and authority. The specific changes the BDOs implemented are discussed in Part IV below.

Cal/EPA also wanted to build on success. Where good models and enforcement tools existed in the BDO and local enforcement programs, Cal/EPA sought to facilitate cross-program sharing and technology transfer so as to allow the "rising tide" provided by a successful program to "lift the boats" in the other programs. Cal/EPA organizations shared "best practices."

In his November 30, 2004 memo announcing the first phase of the Enforcement Initiative, then Cal/EPA Secretary Terry Tamminen announced the formation of nine "teams," each with a specific task or tasks:

1. Single Complaint Tracking Team
2. Enforcement Operational Plan Team
3. Enforcement Intelligence Team
4. Integrated Data Dictionary Team
5. Environmental Data Exchange Team
6. Geographical Information Systems Contracts Team

- 7. Enforcement Training Team
- 8. Enforceable Permits Team
- 9. Communication Strategy Team

Table 1 identifies the Teams and illustrates the Teams' relationship to the five areas identified in the assessment.

Table 1. Teams' Relationship to Focus Areas

Focus Area	Associated Teams
Modernized Information Management	Single Complaint Tracking System Team Integrated Data Dictionary Team Environmental Data Exchange Team Geographical Information Systems Contracts Team
Organize Enforcement Staff to Ensure Compliance	Enforcement Operational Plan Team Enforcement Intelligence Team Enforceable Permits Team
Communication Strategy	Communication Strategy Team
Increased Field Presence	Enforcement Training Team
Prosecutorial Outlets	

Enforcement Initiative Projects and Teams

The following is a description of the nine enforcement related projects and the goals of the teams formed to work on them:

1. Single Complaint Tracking System

Citizen complaints made to a specific Cal/EPA BDO often have environmental and regulatory impacts that require coordination and response from more than one Board, Department, or local entity. A coordinated approach was clearly needed that would assure that complaints are investigated properly and responded to completely. The Single Complaint Tracking Team, led by DTSC, was charged with the task of creating a single, Cal/EPA-wide complaint tracking system that would establish a method for tracking citizen complaints made to any BDO within Cal /EPA.

2. Enforcement Operational Plan

Cal/EPA's BDOs and, to lesser extent local enforcement agencies, are responsible for enforcement of single-media enforcement programs, often for a set of certain statutorily-prescribed set of potential violators. Each of these agencies is organized differently, uses different enforcement mechanisms and tools, and sets different performance goals for itself. This disparity has, not surprisingly, resulted in different enforcement tools, practices and philosophies that now deliver a confusing and inconsistent compliance message to the regulated entities and the community at large.

To address these issues, the Enforcement Operational Plan Team, led by Cal/EPA, was charged with the task of developing a model enforcement program operational plan. The plan is to include performance standards for local enforcement delivery, minimum investigatory resources (e.g., forensic accounting, economics, fraud detection, and criminal investigation capabilities), minimum training requirements, standards for penalty collections, standards by which to measure enforcement results, and a variety of other objectives. The model plan is to serve as a template for all Cal/EPA programs that integrates and coordinates compliance activities across all environmental media.

3. Enforcement Intelligence

Many different sources of information, both within and outside of government, are available to assist in targeting the use of enforcement resources, conducting inspections, investigations and enforcement actions. Making these information resources more readily available, and providing training on their use, would enhance our programs' capabilities.

Led by ARB, the Enforcement Intelligence Team's goal is to develop investigation resources and deliver investigative tools to field staff. The team has focused on identifying and improving the use of information sources, especially sources of online data, helping to identify enforcement priorities, and developing additional information resources to aid enforcement staff.

4. Integrated Data Dictionary

Each BDO and local agency stores and manages their own program information in ways that service their own organization and mission. The lack of consistent data standards complicates the sharing and combining of environmental and enforcement information across programs. Similarly, the differences in data systems and types of data collected results in regulated businesses having to submit similar data to multiple programs in slightly different ways. Sharing of this information, or integration of the information management systems, would allow each organization to benefit from the activities and knowledge of the others.

To facilitate the exchange and comparison of information and bring the enforcement programs closer to being able to develop an integrated data system, data elements must first be reconciled between programs.

Led by the Water Board, the Integrated Data Dictionary Team's goal is to reconcile the various data elements.

5. Environmental Data Exchange

Cal/EPA BDOs and their local counterparts collect and store information in over 60 different discrete data systems. Historically, the exchange of information was limited to a sharing of printed copies of the information. As with other types of information, the ability to share this information offers the benefit of increased coordination of efforts and improved ability to identify high risk or chronic violators.

The development of automated systems and electronic sharing of information has been steadily advancing, culminating in recent web services technology. A variety of efforts are being implemented, including the national Environmental Information Exchange Network, in which California is participating with eighteen other states (an additional twenty three states are developing their capabilities to participate).

Led by Cal/EPA, the Environmental Data Exchange Team's goal is to develop a system that can share data between the 60 plus Cal/EPA data systems, as well as to integrate data and systems outside of those that Cal/EPA maintains.

6. Geographical Information Systems Contracts

Each Cal/EPA BDO has individually developed and maintained geographic information systems (GIS). Each GIS system requires the purchase and licensing of the same proprietary datasets and software (e.g., roads and highways datasets) that enable the GIS system to identify regulated sites by their address. Maintaining six separate contracts is more costly and inefficient.

Led by DTSC, the Geographical Information Systems Contracts Team's goal is to consolidate GIS software licensing agreements into a master agreement agency-wide.

7. Enforcement Training

Cal/EPA's environmental laws are enforced through a highly decentralized matrix of State, regional and local regulatory, enforcement, and prosecuting agencies. Environmental laws and regulations change on a yearly basis or more often because of new laws and regulations, or technological advances. To achieve consistency and efficiency, a standardized training system is needed. Cal/EPA and each BDO have provided a variety of trainings in their respective programs, some periodically and some continuously, in various parts of the state. These training efforts could be made even more valuable if they were more readily available to enforcement staff at locations more convenient to those staff.

Led by ARB, the Enforcement Training Team's goal is to develop a Cal/EPA-wide enforcement training strategy and improve delivery of that training, especially to regional locations.

8. Enforceable Permits

One of the most significant difficulties faced by enforcement staff is overly complicated, ambiguous or poorly written permits or multiple, conflicting or confusing regulatory requirements in one permit. This complicates or compromises enforcement and makes compliance by regulated facilities more difficult to understand and ascertain. It is vital that permit requirements are unambiguous, and that they be written in clear, easy to understand terms.

Led by the Water Board, the Enforceable Permits Team's goal is to identify permit and other barriers to enforcement, and to improve clarity of what constitutes "compliance."

9. Communication Strategy

One of the most effective ways to enhance or maximize the deterrent effect of enforcement activities is to effectively communicate information about our efforts. Our typical communication effort on enforcement activities has been the occasional press release communicating the conclusion of various, individual enforcement cases. To more effectively communicate, Cal/EPA needs to develop a communication strategy to integrate enforcement communications into our larger programs and daily activities.

Led by DPR, the Communication Strategy Team's goal is to improve internal and external communication about enforcement, as well as to develop an enforcement culture.

PART IV: IMPLEMENTING THE ENFORCEMENT INITIATIVE: PROGRESS REPORT

Cal/EPA's enforcement programs have achieved tremendous progress in implementing the Enforcement Initiative and realizing the Governor's vision for the environment. The following are the most notable accomplishments to date:

- ***Enforcement Staffing***

The Cal/EPA BDOs have made enforcement a top priority when allocating their existing resources.

- The Water Board has shifted existing staff from permitting to enforcement functions, creating enforcement units at each of the regional boards. In addition, staff assigned to enforcement has increased from 17 positions in 2004 to 55 positions in 2005.
- The Water Board has announced and is recruiting for a new chief of enforcement to provide executive leadership to their enforcement efforts.

- The Air Board has added over 10 positions in the past two years to focus enforcement efforts near the Mexican border and the ports where measured non-compliance rates are higher than other parts of California.
 - The Waste Board is planning to create two new executive enforcement positions, a chief of enforcement and a senior enforcement attorney to develop a more robust program-wide enforcement emphasis.
 - The Waste Board has hired staff to work on illegal dumping enforcement and is planning to create a fiduciary fraud enforcement unit.
- **Targeted Enforcement**

Cal/EPA's enforcement programs have added a capability to detect violations outside their permitting routines, and have designed targeted enforcement at areas of highest environmental risk and highest non-compliance rates.

 - DTSC continued its successful "sting" operations to catch unlicensed hazardous waste transporters
 - Air Board conducted Internet "stings" to catch sales of engines that do not meet California emission requirements
 - Air Board has targeted environmental enforcement near the border and ports where noncompliance rates are higher
 - DPR targeted pesticides sales at retail and big box stores where the required mill tax is not being paid
 - DPR conducted Internet "stings" to catch sales of pesticides not registered in California
- **Referrals to Prosecutors**

DPR developed a protocol for state and local pesticide regulators to follow that ensures that all priority investigations are appropriately referred to prosecutors. The other BDOs are working with prosecutors to develop similar protocols for all Cal/EPA programs. In addition, the BDOs have assigned attorneys to focus on criminal case development and enforcement. Overall, criminal referrals from all BDOs increased from 17 in 2004 to over 50 in 2005.
- **Enforcement Field Presence**

Cal/EPA established a Certified Unified Program Agency (CUPA) program in the remaining two counties (Imperial and Trinity Counties) that had not yet formed a CUPA. For the first time since the program's inception, all 58 counties now have regulatory programs to ensure that hazardous wastes are appropriately managed.
- **Enforcement Initiative Teams**

In addition to the above accomplishments, each of the Enforcement Initiative Teams has made significant strides.

1. Single Complaint Tracking System Team

The Single Complaint Tracking System Team has developed its single complaint tracking system. On January 11, 2006, the new system was unveiled and can be accessed through a link on any of Cal/EPA's or the BDOs' Internet pages. It provides a single form and format to receive complaints regarding any environmental concerns.

2. Enforcement Operational Plan Team

To date, the Enforcement Operational Plan Team has:

- o Developed an outline and key concepts of a model enforcement program
- o Assessed existing legal authorities, gaps, and improvements needed
- o Developed common definitions of formal and informal enforcement actions
- o Identified essential enforcement policies to be included in the model plan.

3. Enforcement Intelligence Team

The Enforcement Intelligence Team has developed a variety of information resources and tools to assist enforcement staff, including a case development checklist and a catalogue of on-line information resources that has been made available to staff through an internal (intranet) web page. In addition, the team has developed & delivered training to enforcement staff on the use and value of these informational tools, and coordinated their use with environmental crimes task forces. The Team is currently developing methods, using the available information, to identify violations outside normal inspection routines, and is working on investigative resources to detect fraud.

4. Integrated Data Dictionary Team

The team authored a policy, adopted across Cal/EPA, which requires all BDOs to conform to the requirements of the data dictionary elements found in Title 27 of the California Code of Regulations. These regulations were designed to govern how the CUPAs collect and report data. The team also established a steering team of representatives from all Cal/EPA BDOs that is responsible for assuring all new enforcement data types conform to these standards, and to ensure that the Cal/EPA data dictionary is maintained.

5. Environmental Data Exchange Team

The team has developed a pilot shared database system using facility information from ARB, DTSC, the Waste Board, and the Water Boards. This system was made available to staff through an internal (Intranet) web page in December 2005. The pilot system is a GIS based system that allows the user to identify all sites of regulatory interest in proximity to an identified address. Training on the pilot system was delivered to enforcement staff on February 2, 2006.

6. Geographical Information Systems Contracts Team

The GIS Contracts Team has centralized the procurement and license management for streets data products within Cal/EPA using the Water Board as the central purchasing agent and developed a web-based application to track ordering, approval and delivery of software. In addition, the team has installed a shared license server and tested shared access and increased the use of existing licenses (making it available to more enforcement staff).

Through these efforts, the GIS Contracts Team has also realized a 15% cost savings through the consolidated license procurement.

7. Enforcement Training Team

The Enforcement Training Team has accomplished the following:

- Developed a list of 15 recommended basic courses for inspectors
- Drafted a training needs assessment
- Teamed with DTSC and the California Hazardous Materials Investigators Association to deliver training locally
- Delivered its first on-line enforcement training course.
- Developed an on-line, consolidated enforcement training calendar.
- Identified regional training centers.

In addition the Team is also involved in the following:

- Developing an enforcement "library" of available training materials.
- Making videotapes of more training sessions to include in the enforcement library.
- Coordinating with local task forces to identify training needs as well as to deliver training locally.

8. Enforceable Permits Team

The Enforceable Permits Team conducted a survey in January 2006 to identify key issues relating to enforcing permits. The results of the survey will be used to identify key issues and develop recommendations.

The Team is also developing a pilot project to form a team of enforcement and facility permitting staff to work cooperatively to identify key compliance elements. An example could include the development of a site specific checklist for a complex permit.

9. Communication Strategy Team

The Communication Strategy Team has engaged in multiple strategies to improve external and internal communications. These strategies include the development of criteria and procedures to be used by enforcement personnel to create press releases about significant enforcement activities and actions.

For those enforcement activities not likely to generate significant press coverage, the Team is developing a "template" to highlight completed enforcement cases.

This template will allow the collection of information from multiple cases into a monthly "history" of cases that can be accessed by the media and the public through the Cal/EPA Internet site, for use as background data for a press story.

Information regarding enforcement activities and cases has been made available to all enforcement staff through an Intranet web page. Monthly newsletters (the first published in December 2005) will include pertinent enforcement information and analyze current enforcement issues.

Table 2 Progress in each Focus Area

Focus Area	Achievements
Modernized Information Management	<p>Teams</p> <ul style="list-style-type: none"> • Single Complaint Tracking System • Data dictionary policy • Pilot shared database system • Centralized GIS contract
Organize Enforcement Staff to Ensure Compliance	<p>Program</p> <ul style="list-style-type: none"> • Water Board created enforcement executive position • Waste Board creating enforcement executive positions • Waste Board assigning staff to focus on illegal dumping and fraud <p>Teams</p> <ul style="list-style-type: none"> • Outline of a model enforcement program • Case development checklist • Catalogue of on-line information resources • Enforcement/Permitting staff pilot project • Permit survey
Communication Strategy	<p>Teams</p> <ul style="list-style-type: none"> • Press release templates • Monthly enforcement histories • Intranet web page • Monthly newsletter • Cal/EPA branded clothing
Increased Field Presence	<p>Program</p> <ul style="list-style-type: none"> • Water Board enforcement staff increase from 17 in 2004 to 55 in 2005 • Air Board assigned 10 staff to focus on efforts at border and ports • CUPAs established in Imperial and Trinity Counties <p>Teams</p> <ul style="list-style-type: none"> • Basic inspector training curriculum • Training needs assessment • Local training • On-line enforcement training course

Table 2 Progress in each Focus Area

Focus Area	Achievements
	<ul style="list-style-type: none"> • On-line training calendar • Regional training centers • Enforcement library • Videotaped training sessions • Task-force coordination
Prosecutorial Outlets	<p>Program</p> <ul style="list-style-type: none"> • BDO attorneys assigned to district attorney task forces • Participation in district attorney roundtables • BDO criminal case referrals increased from 17 in 2004 to over 50 in 2005

PART V: AUGMENTATION OF RESOURCES: 2006-07 PROPOSED BUDGET

As described and demonstrated in the prior parts of this report, much progress has been made towards realizing the Governor's vision through the implementation of the Enforcement Initiative. To date, these efforts have been focused on the development of a roadmap to align the existing programs and prioritize their enforcement resources in a way that enables them to achieve these goals. Although much has been done administratively to align existing resources and priorities to this vision, to fully achieve the expected results, Cal/EPA's BDOs must also augment their enforcement resources.

To strengthen Cal/EPA's environmental enforcement efforts, the 2006-07 Governor's Budget proposes an additional \$6.2 million in special funds, and 39.5 positions dedicated to specific enforcement activities that focus on fraud and those violators outside the current regulatory "net."

- \$4.0 million (\$2.7 million from the Motor Vehicle Account and \$1.3 million from the Air Pollution Control Fund) and 19 positions for the Air Resources Board to enforce heavy-duty diesel regulations, evaluate on-board diagnostic systems in vehicles, and replace older testing and diagnostic equipment.
- \$1.5 million from the Electronic Waste Recovery and Recycling Account and 13.8 positions for the Department of Toxic Substances Control to enhance existing enforcement efforts related to the electronic waste recycling program.
- \$223,000 from the Electronic Waste Recovery and Recycling Account and 2.9 positions for the Integrated Waste Management Board to investigate fraud in the electronic waste program.

- \$425,000 from the Pesticide Regulation Fund and 3.8 positions for the Department of Pesticide Regulation to conduct additional pesticide mill assessment audits.

PART VI: THE ROAD AHEAD

The Cal/EPA Enforcement Initiative is an ongoing process that is expected to be an integral component of the enforcement programs not only in FY 2006-07, but throughout years to come. What has been started, and the tremendous progress achieved, is only the first phase of the initiative. The next phase of this Enforcement Initiative will build on these efforts and continue to increase environmental compliance.

The Phase 2 Enforcement Initiative will consist of institutionalizing the program changes the Enforcement Initiative Teams have developed. This second phase will also focus on the development and implementation of Cal/EPA policy and guidance designed to coordinate and integrate the enforcement efforts of all of Cal/EPA BDOs, while improving and enhancing the enforcement capabilities in each of the programs.

In Phase 2, the efforts of all of the existing Enforcement Initiative Teams will continue. In addition, a new team will be established, focused on the development of improved enforcement performance measures, not only for all Cal/EPA BDOs, but also to include our local government partners. As identified in our baseline assessment, we still measure our program effectiveness by our activities, and are still no closer to being able to measure the true effectiveness of our programs. The Enforcement Performance Review Team will develop methods to measure performance that will provide a more meaningful way to evaluate the success of our programs and allow us to relate program performance to environmental performance using EPIC indicators. Once developed, this new method of evaluating the success of our enforcement programs will provide a better basis for allocating resources to achieve the greatest environmental benefit.

All of the Enforcement Initiative Teams will be responsible for the development and implementation of policies and procedures that will lead to better coordination and integration of our enforcement activities, which will lead to increased efficiency in the use of our enforcement resources and then ultimately to our goal of improving the health and environment of all California's.

All of these Enforcement Initiative efforts will enable all of California's environmental enforcement programs to focus on the core elements of an effective enforcement program:

- Resources devoted to those activities that pose the greatest risk to public health and the environment.
- Programs that also address to those outside of the regulatory net.
- Compliance defined clearly.
- Eliminate or greatly reduce the economic incentives to avoid compliance.

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY STATUS REPORT
ON THE IMPLEMENTATION OF THE CROSS-AGENCY ENFORCEMENT INITIATIVE**

The goal of these enforcement efforts is to achieve higher compliance rates, and with that compliance to realize the Governor's and all Californians; vision for our environment: cleaner air and cleaner water, and public health and safety for today and for our children's future.

APPENDIX A: Phase I Environmental Initiative Memo



Terry Tamminen
Agency Secretary

California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment
State Water Resources Control Board • Regional Water Quality Control Boards



Arnold Schwarzenegger
Governor

November 30, 2004

To: Board Chairs
Department Directors
Executive Officers

From: Terry Tamminen
Agency Secretary

Date: 30 November 2004

Subject: ENFORCEMENT INITIATIVE

Action Item # 6 in Governor Schwarzenegger's Action Plan for the Environment identifies the need to "protect California's environment through the tough enforcement of existing laws." The Governor's Environmental Action Plan states that:

"Strict law enforcement is vital to assure environmental protection, prevent polluters from achieving unfair competitive advantage against complying competitors, send a message of public values, and establish conditions conducive to creativity and participation in voluntary initiatives. My Administration will focus on keeping underlying statutes and regulations simple; simple rules are easiest to follow and comply with; unnecessarily complex rules are hard to comply with, hard to enforce, and encourage evasion. Particular attention will be given to better use of information technologies with strict, clear and rapid penalties for intentional or negligent misstatements or omissions."

A critical role of the California Environmental Protection Agency (Cal/EPA) as a part of the Executive Branch of State government is to enforce the laws enacted by the Legislative Branch. Each of the boards and departments at Cal/EPA could benefit from additional staff; however, it is critical that we make enforcement enough of a priority that we do an excellent job of it with existing staff levels.

Cal/EPA has conducted an assessment of our enforcement programs in order to establish a baseline and to identify areas in need of focus and resources to improve and enhance strict enforcement of the laws Cal/EPA is charged with implementing and enforcing. We have been working with your enforcement managers to communicate the findings of our

assessment and to identify specific concrete actions that can be taken to improve our enforcement results. While some of the improvements will require statutory change, institutional change, or augmentation or redirection of budget dollars for which we are prepared and committed to seek, there are many improvements that can be achieved administratively. The list below is not an exhaustive one, but contains some administrative improvements that we have determined are critical to improve the results of our enforcement programs.

Therefore, while there is much more that we will eventually put our hands to regarding enforcement, we must move expeditiously on that which is entirely in our control. To that end, I am asking each Board, Department and Office (BDO) to develop and implement as noted by May 1, 2005 the following:

1. Single Complaint Tracking System

Citizen complaints are a critical source of information about potential non-compliance with environmental laws. Citizens play an ever increasingly important role in advocating for an improved quality of life for California's natural and built environments. Currently, citizen complaints are made to a specific BDO but may involve cross-media impacts, (e.g. pesticides affecting groundwater and surface water quality and pesticide VOCs affecting air quality). Just as environmental impacts do not respect political boundaries, neither do they respect our current internal organizational boundaries. The current media specific response to complaints does not adequately ensure that the overall environmental quality for communities is protected from violators of our laws. While the Air Resources Board and Department of Toxic Substances Control have well-developed complaint triage and response tracking systems to ensure that all complaints are investigated and prosecuted properly, others have not had the resources to develop such systems.

Therefore, I am asking the Department of Toxic Substances Control to lead all the BDOs in the creation of a single complaint tracking system for citizen complaints in all media areas.

2. Enforcement Program Operational Plan

Enforcement without education is heavy-handed, while education without enforcement is naïve. While all Cal/EPA staff work to assure compliance with California's environmental laws in many ways, we know that we cannot achieve compliance without a strong enforcement program. Currently, each BDO and each local enforcement agency is responsible for enforcement of a single media enforcement program, and often for a certain statutorily-prescribed set of potential violators. Each agency organizes itself differently, uses different enforcement mechanisms and tools, and sets different performance goals for itself. The result of the multiple enforcement processes is inconsistency in reduction of environmental risks, an uneven playing field, perceptions of unfairness, missed opportunities for greater flexibility and effectiveness of field staff in reacting promptly to address cross-media risks, and gaps in the enforcement programs.

Therefore, I am asking each of the BDOs within Cal/EPA to work with the Assistant Secretary for Unified Program at the Office of the Secretary to develop a Cal/EPA model enforcement program operational plan. The model plan should include performance standards for local enforcement delivery; minimum investigatory resources such as forensics accounting, economics, fraud detection, criminal investigatory capabilities; minimum training requirements for enforcement staff; standards for penalty collections; measurement standards for enforcement results; U.S. Performance Track metrics; standards for allocation of enforcement resources where noncompliance has contributed to disproportionately high environmental impacts; mandatory participation in local task forces; referral protocols with local prosecutors; standardize tools in enforcement tool box and minimum resources for administrative, civil and criminal prosecution; and other such performance standards. This model plan will be used to define the enforcement programs for each BDO and serve as the Cal/EPA blueprint for advancing our enforcement programs, prioritizing our enforcement resources, and linking the activities of enforcement with environmental indicators.

3. Enforcement Intelligence Team

Currently, the information that Cal/EPA uses to manage and assess performance of its enforcement programs is stored by each individual BDO in more than a dozen data systems which were built to support a single media or specific environmental statutes. We currently collect and maintain data on the activities of enforcement, such as numbers of inspections conducted, numbers of enforcement actions prosecuted and amount of penalty dollars collected, but not the results of enforcement. We measure the activities of enforcement, rather than the results of enforcement which is improved environmental quality and higher compliance rates. We have not mined the existing sets of data to determine where non-compliance rates are highest and where non-compliance poses the greatest environmental risks in order to best allocate our scarce enforcement resources. While full integration of our existing datasets is costly and time-consuming, the task of pulling data from these many separate media systems as well as data collected by other branches of government and elsewhere and integrating it to produce information useful to the activities of our enforcement field staff can be accomplished with our existing talented staff.

Therefore, I am asking each BDO to assign enforcement staff to comprise an interdepartmental team to work with the Office of the Secretary on the operational intelligence team. An Assistant Secretary for Strategic Enforcement Intelligence from one of the BDOs will be designated to lead that team. The enforcement intelligence team will engage in proactive intelligence gathering, creative and exploratory data mining (both data collected by individual BDOs at CalEPA and by outside sources), and identify non-compliance problems outside our statutorily-mandated inspection routines (e.g, illegal dumping, noncompliance at federal facilities and ports, higher noncompliance in EJ communities) and produce information useful to field staff in identifying highest risks.

4. Create a Cal/EPA Wide Data Dictionary

Currently, there does not exist within Cal/EPA an integrated information system that can assure data is collected, analyzed and made available to all programs to prioritize and allocate their resources. The lack of consistent data standards across Cal/EPA has complicated the sharing and combining of environmental information across programs. Additionally, the lack of consistency in type of data collected has created a burden on those regulated by Cal/EPA by requiring them to submit similar data to multiple programs in slightly different ways. An important step in the quest to have an integrated information system is the development of uniform data dictionary across all environmental media, regulatory and enforcement programs. A single data dictionary will enable the sharing of data and the creation of useful information about environmental risks and benefits across BDOs and their individual programs.

Therefore, I am asking the State Water Resources Control Board (SWRCB) to lead the development of a Cal/EPA wide data dictionary that will be used by all Cal/EPA programs. This data dictionary is to be developed using the existing data dictionary fields standardized in Title 27 of the California Code of Regulations. Once the new data dictionary fields are developed, SWRCB shall work with Assistant Secretary for Unified Programs on the regulatory revisions necessary to update Title 27.

5. U.S. EPA Facility Registry System (FRS) Number

Effective cross-media enforcement requires that there be an approach for unambiguously identifying 'facilities'. In the information systems currently in use across the BDOs within Cal/EPA, there are a variety of different approaches used for identifying facilities based on name, address, or program-specific identifying numbers. U.S. EPA has addressed this issue in developing the Facility Registry System (FRS) to cross-validate facility information. Use of FRS provides a very effective and low-cost approach for providing a unique identifier (FRS#) for cross-referencing and uniquely identifying facilities within Cal/EPA automated systems.

Therefore, I am asking that all BDOs incorporate the FRS# and other relevant FRS information such as taxpayer identification numbers in addition to or in lieu of system-specific identifiers and facility information in all their automated data systems, and that this task as well as all automated systems development be coordinated with the Cal/EPA Chief Information Officer. For those facilities which are not candidates to be included as part of the U.S. EPA Facility Registry System (e.g., small business operations not meeting federal regulatory reporting requirements), Cal/EPA will develop a system to assign a CaFRS identifier number that must be used.

6. Environmental Information Exchange Network (EIEN)

All uses of environmental regulatory and monitoring information, including for enforcement and compliance oversight, is dependent upon effective access to and exchange

of information. Many years ago, this 'exchange' was limited to printed copies of information. With the expansion of automated systems, a first generation of options for electronic exchange of information between organizations was developed. Over the past decade, the rapid expansion of the Web has led to increasing access to information by individuals using Web Browsers. The next generation of electronic exchange options is designed to allow computer-to-computer exchange of information using standards-based Web Services technology. For environmental regulatory and monitoring information, this Web Services technology is being implemented as the Environmental Information Exchange Network (EIEN). At the present time, eighteen states including California (Cal/EPA) have an EIEN Exchange Node in production with twenty-three other states having Nodes in development or testing. Cal/EPA currently has eight separate projects underway that will involve EIEN Node-based exchanges with U.S. EPA, other California State organizations, and our local environmental enforcement agencies such as the Certified Unified Program Agencies (CUPAs). A major advantage of Web Services-based technology is the potential it offers for using the same technology to increase the efficiency and flexibility of information exchange between and among federal, state, local, and regional entities, and also with the regulated community.

Therefore, I am asking that all BDOs within Cal/EPA begin participation in Agency-led activities to be led by the Agency's Chief Information Officer related to EIEN and implement at least one data flow using Node-based exchange of information by January 1, 2006.

7. GIS Integration

Currently, geographic information systems (GIS) are being developed in each BDO. Each BDO is separately and individually purchasing the same proprietary "streets" datasets and software that allows an overlay of all of California's roads and highways which enable the GIS to identify regulated facilities by their address with layers of data about environmental conditions. As with the Westlaw contract, both savings and improved access to information can be achieved by consolidating the 6 separate contracts and negotiating a single site license.

Therefore, I am asking DTSC to lead the effort to renegotiate the 6 BDO contracts for both the StreetsMap database and ESRI software into a single Cal/EPA contract.

8. Regional Cross-Media Training Program

Currently, Cal/EPA's environmental laws are enforced by a highly decentralized matrix of multiple State, regional and local regulatory, enforcement and prosecutorial agencies. This is both a strength and a weakness of Cal/EPA's enforcement system. Cal/EPA has determined that a standard, consistent and high level of professional training will work to enhance the strengths and minimize the weaknesses of such a decentralized scheme. Cal/EPA provides three State-wide cross-media trainings a year, while the BDOs provide multiple trainings in their respective programs, some continuous and year round. In order to

maximize the training available to all eyes and ears in the field, particularly the field staff in our local enforcement in state, regional and local government, Cal/EPA needs to expand the audience and multiply the delivery methods of our existing training programs. The cross-program training curriculum shall provide more regularized and more frequent and short trainings on a weekly or monthly basis to the field. The cross-program training curriculum shall take existing training and expand the recipients for that training through more decentralized dissemination using Internet, webcast, and videoconferencing.

Therefore, I am asking the Air Resources Board to lead the Cal/EPA enforcement training program and the creation of a cross-program training curriculum for all field staff involved enforcement of our environmental laws, in all our state, regional and local branches of government. I am asking all the BDO's to provide a representative to work with the Air Board to implement this task. An Assistant Secretary for Enforcement Training will be designated to work with the Air Board and the BDOs.

9. Creation of Cal/EPA Regional Training Centers

In order to enhance the effectiveness of the enforcement field staff and to enable the more regularized provision of training, cross-training shall take place in the field, where potential violations occur and where field staff are located, where travel times can be minimized and access to information necessary to identify and enforce violations of Cal/EPA's environmental laws and regulations can be accessed by enforcement personnel at CUPAs, LEAs, APCDs, County Agricultural Commissioners as well as local police and code enforcement officers, and local city attorney and district attorney investigatory and prosecutorial staff. By maximizing opportunities to receive training locally, these regional training forums also have the potential to increase horizontal communications and networks among local and regional environmental enforcement personnel, increasing our field presence through cooperation, information-sharing and collaboration in the development of cases crossing our institutional jurisdictional boundaries.

Therefore, I hereby am asking the BDOs to establish Cal/EPA Regional Training Centers at existing BDO locations around the State which are for the most part currently equipped with videoconferencing facilities, so that there is a central regional location for all the state, regional and local enforcement field personnel to receive training.

North Central Valley Cal/EPA Training Center - Cal/EPA, Sacramento

South Central Valley Cal/EPA Training Center -DTSC, Clovis

Northern California Cal/EPA Training Center - RWQCB, Redding

East Bay Cal/EPA Training Center - RWCQB, Oakland

Central Coast Cal/EPA Training Center -RWQCB, San Luis Obispo

Los Angeles/Ventura Area Cal/EPA Training Center – DTSC, Glendale

Orange County Cal/EPA Training Center – DTSC, Cypress

Inland Empire Cal/EPA Training Center – RWQCB, Riverside

Coachella Valley Cal/EPA Training Center – RWQCB, Palm Desert

San Diego Cal/EPA Training Center – RWQCB, San Diego

10. Enforceable Permits and Regulations

Currently, one of the greatest difficulties faced by enforcement staff is complicated, ambiguous and/or poorly written permits or multiple, conflicting and confusing regulatory requirements that are unenforceable. There is a need to ensure that all BDO permits and requirements are enforceable. Permit requirements must be unambiguous. They should be written in such a way that they are clear, easy to understand, and determining compliance is simple. Similarly, the enforcement consequences for violation should be clear. Also, a majority of enforcement staff have identified the need to streamline existing code and regulations, with an emphasis on consistency among BDO relevant authorities.

Therefore, I am asking the SWRCB to lead the effort and each BDO to participate in a task force of regulatory staff, permit writers and enforcement field staff from our local, regional, and state branches to make recommendations on ensuring that our regulations and permits are enforceable by our enforcement staff.

11. Communication Strategy

Currently, we lack an effective communication strategy to maximize the deterrent effect of the enforcement activities we undertake. The current enforcement communication program consists of the occasional and irregular press release about the conclusion of various, individual enforcement cases. There is a need to develop a draft communication strategy that would integrate and make more systematic our enforcement communications in our larger programs and daily activities. Ron Baker of DTSC has drafted an initial strategy that should be refined and implemented by all BDOs.

Therefore, I am asking each BDO to direct their public information officers to work with the Cal/EPA Public Information Officer to refine and implement the strategy.

In conclusion, I thank you for your enthusiasm and commitment to accomplishing these tasks promptly and your dedication to improving the enforcement of environmental laws.

Finally, I have asked Cal/EPA's Undersecretary and the Deputy Secretary for Law Enforcement to convene a meeting with you in the next few weeks to further discuss the details of these efforts and to identify any additional actions that may be appropriate to add to this task list. I ask that you work directly with Cal/EPA's Deputy Secretary for Law Enforcement to select and assemble the team leaders for these tasks and develop the action plans, with dates and milestones by January 31, 2005 for success in the achievement of these tasks by May 1, 2005 (and the EIEN by January 1, 2006). In my new position as Cabinet Secretary for the Governor, I will be monitoring the progress of this initiative and requesting status updates of the new Cal/EPA Secretary, and I will be inviting you to a meeting with the Governor and his Cabinet Secretaries to give a briefing on the successes of your efforts. Through the accomplishment of these tasks, I am confident that Cal/EPA will once again show its leadership and prove to be a model for the rest of the State's Cabinet agencies as we strive to improve the delivery and performance of State government and its important public benefits.

APPENDIX B: Who Enforces California's Environmental Laws?

Media	State Enforcement Agency	Local Enforcement Agency
Air	Air Resources Board	Air Quality Management Districts/Air Pollution Control Districts
Water	State Water Resources Control Board/Regional Water Quality Control Boards	
Hazardous Waste	Department of Toxic Substances Control	Certified Unified Program Agencies
Solid Waste	Integrated Waste Management Board	Local Enforcement Agencies
Pesticides	Department of Pesticide Regulation	County Agricultural Commissioners

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY STATUS REPORT
ON THE IMPLEMENTATION OF THE CROSS-AGENCY ENFORCEMENT INITIATIVE**

**APPENDIX C: Survey of Enforcement Activities of State Agencies Versus
their Local Counterparts ¹**

	ARB	APCDs/ AQMDs	IWMB	LEAs	DTSC	CUPAs	SWRCB/ RWQCBs	DPR	Ag Commissioners
Employees	980	2035	443	221	960	1500	1500	381	1000
No. of Staff Dedicated to Enforcement	88	486	33.5	0	142	0	17	50	300
No. of Staff That Do Some Enforcement	50	?	107	221	?	1500	750	0	18
Regulated Universe	10,000+	65,057	18,253	2,506	1,021	120,350	31,315	60,000+	58,996
Inspections (FY 2002/03)	50,000	115,502	29,418	19,449	730	100,836	5,254	1,026	41,229
Enforcement Actions (FY 2002/03)	2,772	17,183	1,174	211	85	628	?	3	1,096
Administrative Actions	2,760	?	1,174	211	73	272	?	0	1
Civil Actions	12	?	0	0	0	252	0	0	1,095
Criminal Actions	0	?	0	0	12	104	0	0	0
\$ Penalties Paid ²	\$11.2 million	\$17.5 million	\$73,000	\$0	\$2.3 million	\$2.5 million	\$3.7 million	\$978,000	\$669,000
Pounds of Pollutants	100 tons	unknown	34 million tons	unknown	N/A	unknown	unknown	unknown	unknown
Rate of Compliance	Information not collected or available								

Notes: 1. Information in table represents self-reported information gathered in 2005 as part of an initial survey of enforcement programs.
2. Does not include value of supplemental environmental projects.