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

Terry Tamminen
Agency Secretary

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 (FSR) 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.