

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.

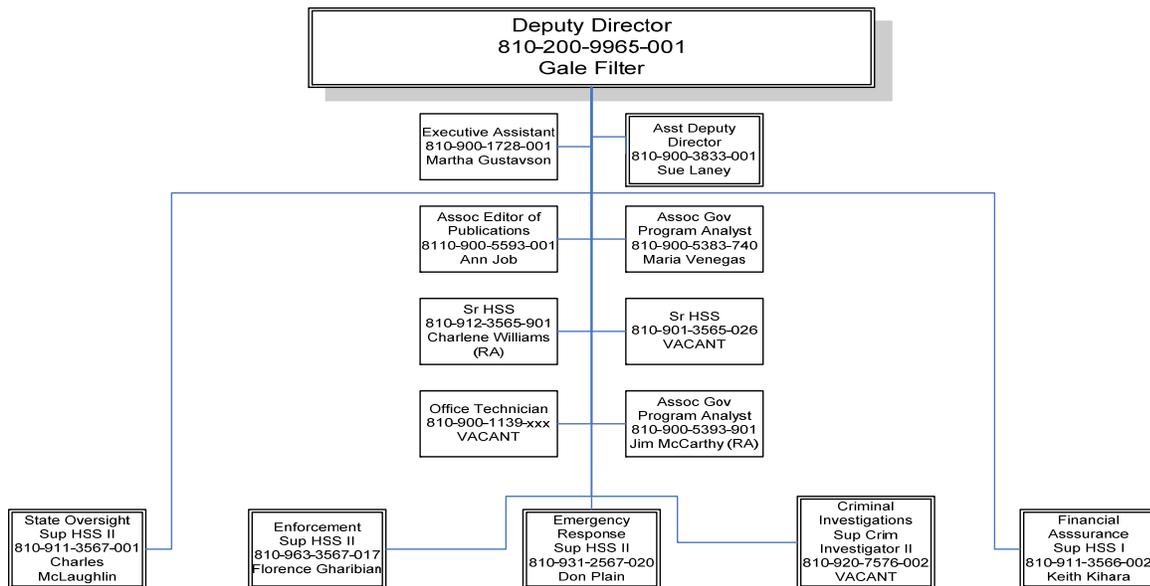
In addition to the work of the Compliance Assistance Team, compliance assistance is provided by many of the other Enforcement Program components in the form of training, developing and distributing educational materials. Specific compliance assistance activities are discussed in each component's portion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

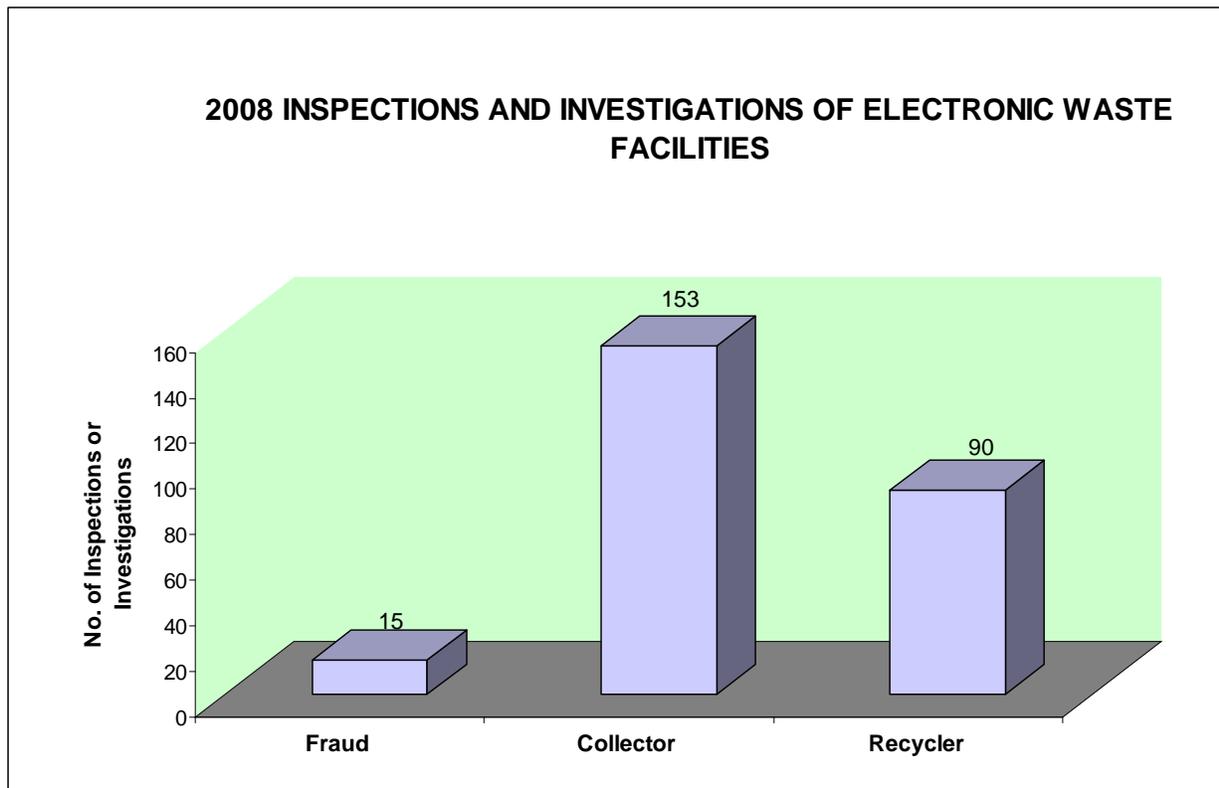
Program Resources

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

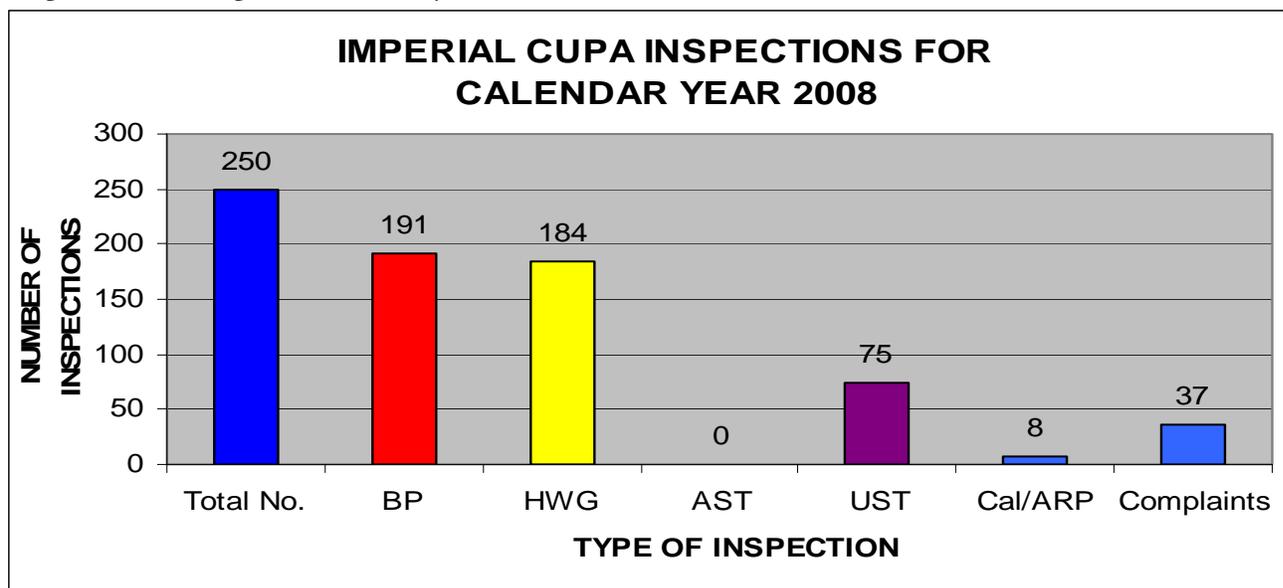
The Trinity CUPA has one position with the work performed part time by several staff. This one position also includes a portion of a supervisor’s time as well as administrative staff time. The Trinity CUPA staff are located in the Sacramento DTSC Cal Center office and travel to Trinity County to conduct 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

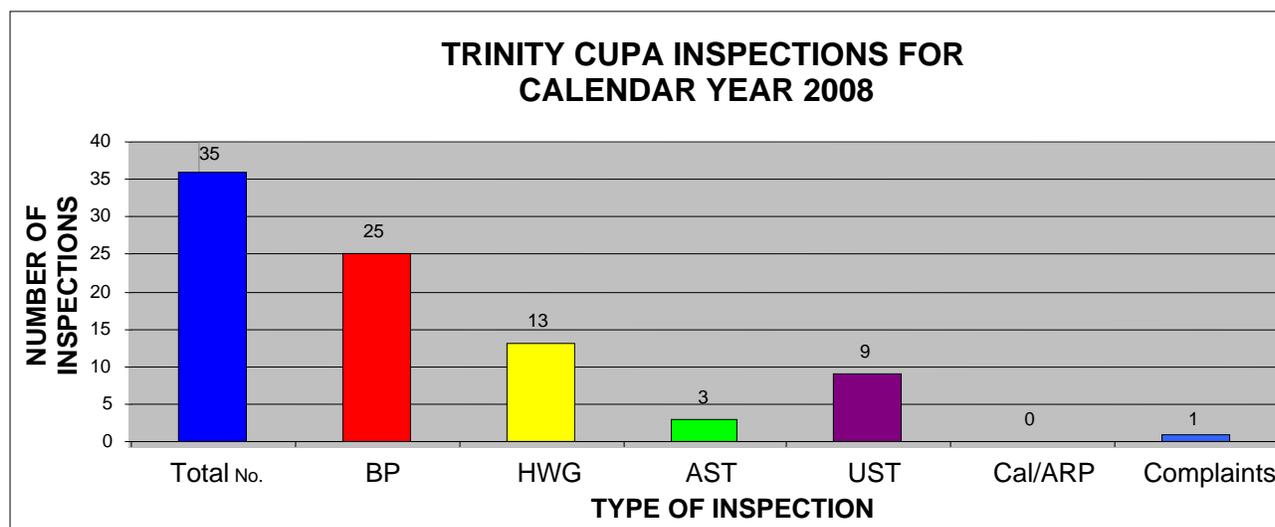
Both the Trinity and Imperial CUPAs continued to work on identifying their universes of regulated facilities. The Imperial CUPA inspected approximately 32% of their universe (250 facilities) and the Trinity CUPA inspected approximately 20% of their universe (28 facilities).

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.

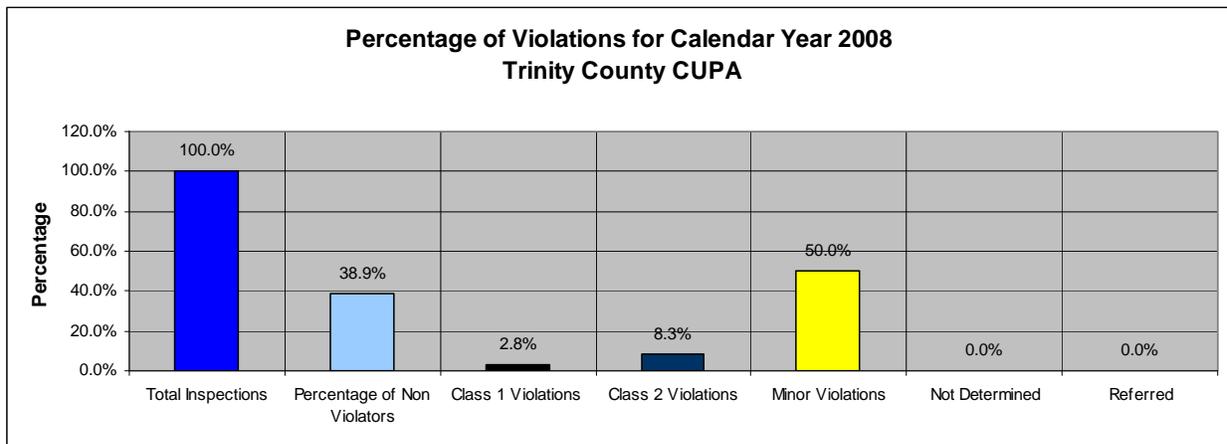
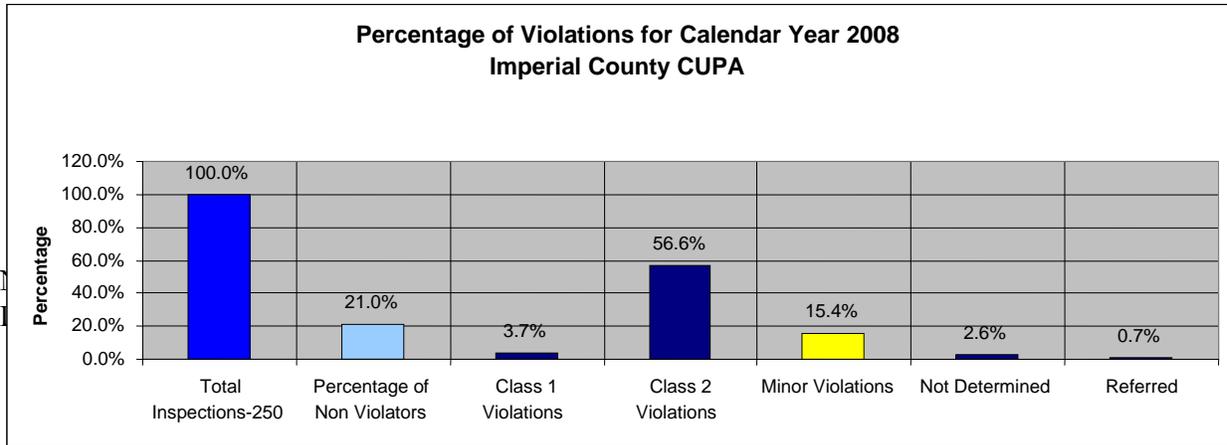
- Since some of these businesses have several program elements, the total of the types of inspections will exceed the total number of inspections.



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

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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

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