

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY**

**A Report to the Governor and Legislature
on Actions Taken in 2004 to Implement
Government Code Section 12812.2**

May 2005

CAL/EPA ENFORCEMENT PROGRAM UPDATE
A Report on Actions Taken in 2004
to Implement Government Code Section 12812.2

Government Code Section 12812.2 defines the duties of the California Environmental Protection Agency (Cal/EPA) Deputy Secretary for Law Enforcement and Counsel as follows:

- 1) Develop a program to ensure that Cal/EPA, its entities, and local government take consistent, effective, and coordinated enforcement actions. The program shall include training and cross training of inspection personnel to ensure consistent, effective, and coordinated enforcement.
- 2) Establish a cross media enforcement unit to assist Cal/EPA, its entities, and local government to investigate and prepare matters for enforcement action.
- 3) Refer violations of environmental law or regulation to outside prosecutors such as the Attorney General or District Attorney.

As required by subsection (c), this report provides an update on actions taken during 2004 by the Cal/EPA Office of the Secretary to implement this section.

Enforcement Initiative

In November 2003, Governor Schwarzenegger directed the Secretary of Cal/EPA to implement the Governor's Environmental Action Plan. Action Item # 6 identifies the need to "protect California's environment through the tough enforcement of existing laws."

In 2004, Cal/EPA conducted a year-long assessment that identified opportunities to strengthen existing enforcement efforts and reduce pollution. Essential to an effective enforcement effort are a number of key elements: a) focus on activities that present the greatest risk to the environment; b) place an emphasis on those outside the regulatory net and chronic violators, and; c) clearly defined compliance with adequate, consistent enforcement.

The following areas have been identified as areas of focus by Cal/EPA and its boards and departments.

- ***Improve Information Management***
Measurement of compliance rates or environmental results is sporadic and difficult to harness. Cal/EPA is looking at a combination of changes that will improve its ability to manage information and achieve real, on-the-ground, improvements in environmental quality.

- ***Organize Enforcement Personnel to Achieve Goals of Enforcement***
 Cal/EPA will align existing personnel and procedures so enforcement has a distinct presence in day-to-day program operations. Enforcement intelligence teams will focus on violations outside our permitting inspection routines while determining compliance and measuring compliance rates.
- ***Development Strong Enforcement Culture/Maximize Deterrence***
 A strong communication component will greatly enhance the deterrent effect of our enforcement activities. Existing public information officers and external affairs staff will proactively and regularly communicate how we define compliance, how we measure it, and what consequences are imposed when rules are violated. Regional training centers, which will serve both internal regulatory staff and external regulated entities, will be deployed. Cross-media and local-state interactions will be strengthened through monthly enforcement “brown bag” sessions.
- ***Increase Field Presence***
 California’s unique regulatory structure involves a highly devolved framework of local, regional, and state regulators. Our local counterparts conduct the majority of front-line regulatory work under the oversight and supervision of state entities. Cal/EPA will reduce barriers that keep staff at their desks and would collaborate more closely with each other in the field offices and with our local enforcement agency partners.
- ***Increase Prosecutorial Outlets***
 Many agencies enforce similar statutory regulations and 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 while yet others is a difference related to institutional boundaries and management preferences.

Cal/EPA proposes to unify the statutory tools across the different media-specific environmental laws and provide access to the full range of administrative, civil and criminal prosecutorial resources. District Attorney Roundtables would be created to provide enhanced communications and strengthen enforcement abilities.

Cal/EPA has and will continue to identify those areas which the Secretary has determined have the potential to yield benefits and enhance and improve Cal/EPA's enforcement efforts. The enforcement initiative commits to ensuring Cal/EPA actions work to increase enforcement and compliance within and outside the permit net. Californians deserve clean air, clean water and a safe and healthy environment.

Actions taken through this initiative will result in a cleaner, and more protected California. Tighter controls on those who demonstrate non-compliance will protect and preserve California's natural resources for today and tomorrow.

In October 2004, then Secretary Tamminen took the first steps toward implementing these goals, see attached memo.

Enforcement Training

Cal/EPA took several steps to lower costs, improve efficiencies and seek alternative sources of funding for environmental enforcement training programs. Cal/EPA was able to fund several of these training events using money from the settlement of an enforcement action specifically designated for that use (referred to as "enforcement scholarships").

During 2004, delivery of the Cal/EPA Inspector Certification Program continued. The Cal/EPA Inspector Certification Program consists of three components: The Cal/EPA Basic Inspector Academy, the Cal/EPA Cross Media Enforcement Symposium, and a clearinghouse for cross media inspector training. Each of these components is discussed in detail below.

- 1) **The Cal/EPA Basic Inspector Academy.** The Academy provides baseline knowledge and works in conjunction with existing media-specific training to prepare tribal, state, and local environmental regulatory field staff to conduct efficient and professional inspections. Several changes were made to reduce delivery costs of this in light of budget reductions. The two-week training course was reduced to four days, the course was offered 3 times during the year instead of quarterly and registration fees were added in order to save costs. Modules including: report writing, sampling, field safety, inspection techniques, and an overview of California environmental laws and agencies. In 2004, a total of 88 inspection personnel completed the Academy which was offered in both Northern and Southern California. Additional delivery options such as online learning modules are being developed.

- 2) **The Cal/EPA Cross Media Enforcement Symposium.** This annual four-day training event is open to government, industry, and members of the public. Training sessions cover enforcement programs specific to each of Cal/EPA's boards and departments and their local counterparts. Mock administrative, civil, and criminal proceedings are presented. The Symposium is the continuing education and Commission on Peace Officer Standards and Training (POST) certified component of Cal/EPA's enforcement training program and provides up-to-date information on cross media environmental enforcement issues. A total of 189 individuals attended the Symposium in 2004 held in Sacramento. Using enforcement scholarships, Cal/EPA paid for all speaker travel costs and for registration

and/or travel costs for 91 enforcement staff from state, local, and tribal environmental regulatory programs.

- 3) **The 5th Annual Unified Program/Underground Storage Tank Conference.** The Unified Program (CUPA) consolidates permits, inspections, and enforcement activities for six hazardous materials, hazardous waste and emergency management programs. Cal/EPA coordinated the development of enforcement training at the 7th Annual Unified Program/Underground Storage Tank Conference held February 7-10, 2004 in Universal City California. This conference presented over 60 technical sessions on updates and included a dedicated enforcement “track” of sessions. Cal/EPA awarded 30 enforcement training scholarships to local CUPA staff and paid for travel costs for 11 speakers on enforcement subjects.

- 4) **Specialized Enforcement Training.** Cal/EPA began offering free monthly enforcement “brown bag” training sessions in 2004. Topics included procedural aspects of criminal law, search seizure issues, nuisance, inspection warrants and internet resources for enforcement. The brown bags are held at the Cal /EPA headquarters building and were broadcast over the intranet for regional Cal EPA employees.

The Environmental Circuit Prosecutor Project

The Environmental Circuit Prosecutor Project was established to fill a gap in the enforcement of environmental laws in California’s small counties. During 2004, Cal/EPA continued to provide the majority of funding for the project.

Penal Code 14300 the Environmental Enforcement and Training Act

This Act provides a method for the distribution of grant funds to the CDAA, the Environmental Circuit Prosecutor Project, and POST. Funding for the account comes from money designated for such use in state or federal court judgments in enforcement cases. These contributions are often referred to as Supplemental Environmental Projects or “SEPs”. Private contributions may also be received. No General Fund money is used in this program.

The date of October 14, 2004 was chosen as the distribution date for 2004. As of the date \$837,965.14 was in the account which was distributed as follows:

- \$209,491.28 to the Environmental Circuit Prosecutor Project
- \$209,491.28 to the California District Attorneys Association
- \$100,000 to the Peace Officers Standards Training Commission
- Remainder, \$318,982.56 to Cal/EPA to be awarded as discretionary grants

Discretionary Grants Awards

The Air Resources Board was awarded for \$10,000 for surveillance equipment.

The California District Attorneys Association requested funds to support the Circuit Prosecutor Project. These funds were needed as the Cal/EPA contract for the Project has been reduced from \$440,000 to \$300,000 and the Department of Fish and Game has ceased providing any funding. This request was approved in the amount of \$285,982.58.

The Riverside County Illegal Dumping Task Force received \$13,000 for enforcement training and surveillance equipment.

The District Attorney and City Attorney of San Diego were given \$10,000 for litigation support for on going investigations.

Cal/EPA Cross Media Enforcement Unit

Pursuant to a Memorandum of Understanding (MOU) between the ARB and Cal/EPA, investigative staff at ARB has been designated as Cal/EPA's cross media enforcement unit for purposes of Government Code section 12812.2. The Department of Toxic Substances Control also contributes to cross media enforcement efforts through its Criminal Investigations Branch and Taskforce Support and Special Investigations Branch. Other Cal/EPA BDOs contribute resources on an as-needed basis. In 2004, staff continued to investigate environmental enforcement cases.