

## INTRODUCTION

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

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

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

### **A) California's Environmental Law Enforcement System**

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

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

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

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

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

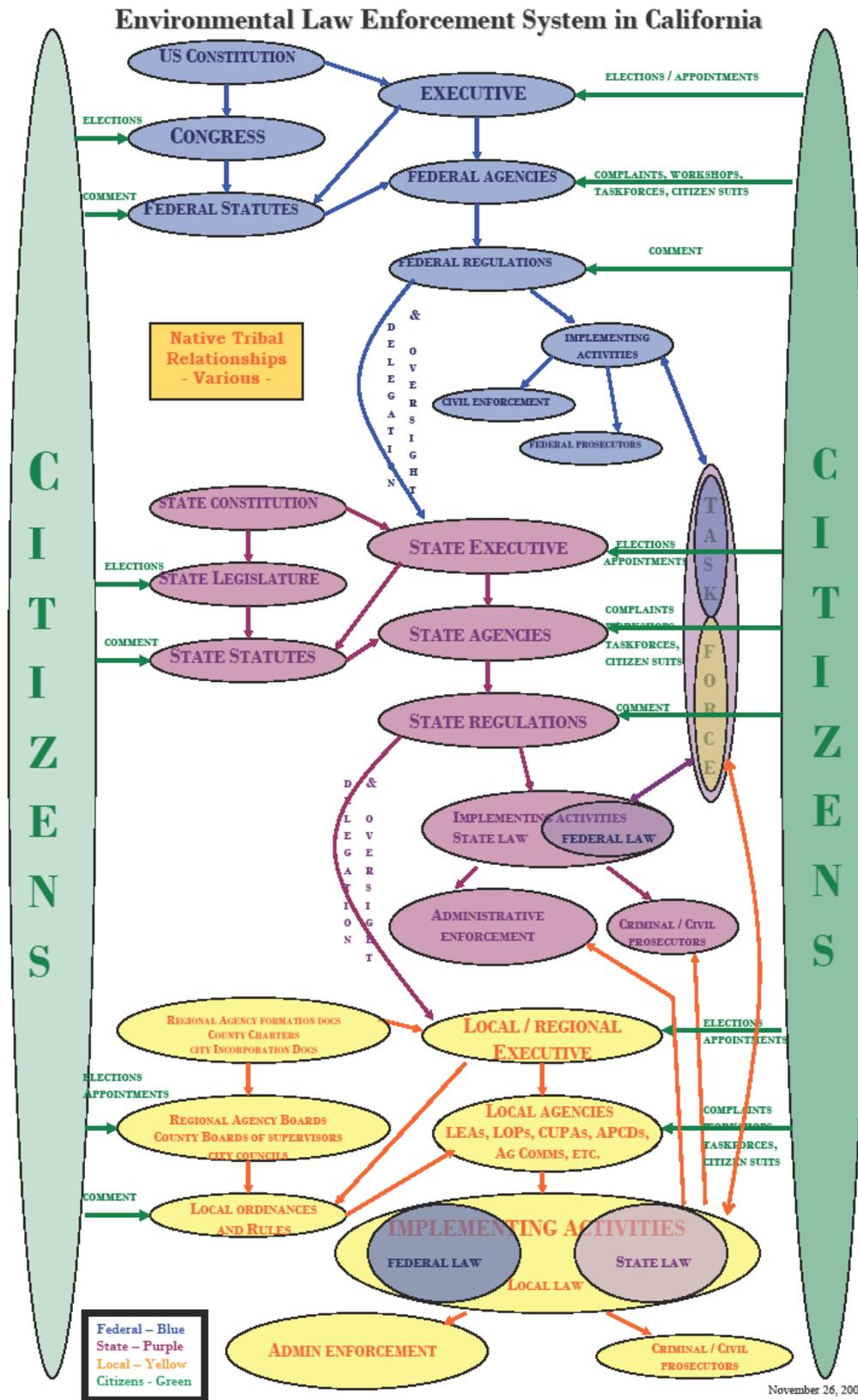
Federal agencies such as the U. S. Environmental Protection Agency (US EPA) only ensure compliance with federal environmental laws. As a result of agreements between the various levels of government, state agencies often agree to be responsible for the enforcement of both state and federal environmental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

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

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

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

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



## **B) The Need for Accurate and Timely Information**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Pesticides: Report by the Department of Pesticide Regulation

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

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

### Solid Waste: Report by the Integrated Waste Management Board

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

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

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

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

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

### Risk Assessment: Office of Environmental Health Hazard Assessment

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

### General Observations

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

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

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

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

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

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

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

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

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

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

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

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