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Secretary for Environmental Protection

MEMORANDUM

TO: CalEPA Staff

FROM: Jared Blumenfeld 
Secretary for Environmental Protection
California Environmental Protection Agency

DATE: February 14, 2020

SUBJECT: Environmental Enforcement

Enforcement is an essential part of CalEPA's mission. A robust, equitable and forward leaning enforcement and compliance program enables us to protect California's residents and its natural resources from environmental degradation caused by those who violate environmental laws. Although California has an abundance of enforcement tools, the State faces persistent environmental challenges, including the disparate impact of pollution on environmental justice communities.

CalEPA's Office of the Secretary is responsible for developing a program to ensure that our boards, departments and offices (BDOs) take "consistent, effective and coordinated enforcement and compliance actions to protect public health and the environment." (Gov. Code § 12812.2 (a)(1).) While we share the responsibility for environmental enforcement and compliance with our federal, local and tribal partners, the public expects the State of California to take the lead in assuring that environmental laws are enforced. To do that, we must maximize state resources to achieve the most strategic outcomes in the most efficient ways possible.

Effective use of our enforcement tools not only assures that individual violators become compliant with regulatory requirements; it also serves as a deterrent to those similarly situated and thus has a multiplier effect. Strong enforcement also respects and honors the hard work by the public, non-governmental organizations, and legislators who have enacted environmental laws. Without effective enforcement, these laws risk losing meaning. By removing a potentially unfair business advantage, effective enforcement also levels the economic playing field and promotes a competitive market for the regulated community.

This memo sets forth the basic elements of a proactive state environmental enforcement program, with recognition that some of these elements already exist within the BDOs. This memo also provides a framework to strengthen CalEPA's coordination and oversight of enforcement work at the boards and the departments with the goal of achieving a high level of environmental compliance throughout the state.

Air Resources Board • Department of Pesticide Regulation • Department of Resources Recycling and Recovery • Department of Toxic Substances Control Office of Environmental Health Hazard Assessment • State Water Resources Control Board • Regional Water Quality Control Boards

1. Leadership

It is critical to establish a clear and consistent enforcement message, philosophy and policies across the CalEPA boards and departments.

CalEPA's enforcement authority is defined by: constitutional, jurisdictional, statutory, and regulatory authority; internal policy and guidance documents; and, common law. Within that legal framework, CalEPA holds discretion in the allocation of enforcement resources and prioritization of enforcement goals. CalEPA seeks to apply that discretion to achieve a robust deterrent-based enforcement and compliance program that the general public and businesses trust. At core, we need a clear and consistent enforcement message, philosophy and policy that is implemented across the boards and departments. I will be asking the CalEPA General Counsel's Office to work with the BDOs to help develop and implement a consistent enforcement philosophy, as well as consistent messages and programs across all the BDOs. We will also engage in more data-driven monitoring of board and department enforcement efforts to make certain that enforcement efforts are yielding tangible and significant pollution-reduction results.

2. Planning, Prioritization and Effective Resource Utilization

It is critical that CalEPA strategically deploy limited resources to address the most pressing environmental enforcement and compliance priorities, violations and emerging issues.

A successful enforcement and compliance program requires strategic vision, targeting and resource allocation decisions, and effective adaptability, within the bounds of CalEPA's jurisdictional authority. The program must implement core enforcement functions as well as incorporate new initiatives designed to promote CalEPA's enforcement goals. Enhanced CalEPA enforcement leadership will facilitate effective deployment of limited resources and will include strategic sharing of resources, including personnel and equipment, to address ongoing and evolving enforcement challenges.

In the spirit of a "one CalEPA" culture," and to ensure that CalEPA as a whole is effectively allocating its enforcement resources, CalEPA will track the enforcement work of the boards and departments. This will include a regular review of:

- Bi-annual sectoral prioritization (e.g., facilities using large quantities of flammable materials);
- Geographic targeting focused on environmental risk;
- The number and type of active enforcement investigations and cases;
- The amount of pollution/risk reduction as a result of enforcement efforts;
- The penalties assessed on violators through enforcement;
- Injunctive relief to remediate violations and SEPs incorporated into settlements;
- Results-focused, inter-agency coordination of investigation/inspection/enforcement;
- Compliance rates of regulated industries; and
- Most common types of violations observed.

3. Local Government Enforcement Oversight and Coordination

Environmental enforcement programs must promote strong local action, through work-sharing, resource utilization and effective oversight.

Local partners are critical to the success of California's enforcement and compliance programs. CalEPA's oversight responsibilities require that we establish clear guidelines, goals, deadlines, and consequences for all local environmental programs subject to state oversight, including but not limited to the CUPAs, the County Agricultural Commissioners, Air Quality Control Districts, and local solid waste enforcement agencies. Auditing of local agencies (such as DTSC and Water Board's periodic auditing of CUPAs) should be coordinated, consistent and complete.

To be successful, we will need to assess the strengths and weaknesses of local enforcement programs and work with partners to deploy their resources effectively. CalEPA staff should also make efforts to effectively coordinate with local agencies outside of the CalEPA's purview. For example, to the extent possible, the BDOs should coordinate investigation, inspection, enforcement and compliance assistance efforts with cities, counties, and District Attorneys. Close ties with local programs will also assist in collection of information and data that will assist in determining where to target state resources. Where oversight is indirect, and where appropriate, CalEPA will leverage its expertise to provide informal and formal input in local enforcement efforts. CalEPA also reserves the right to formally participate in the public processes provided by local agencies during permitting and enforcement activities.

4. Multi-Media and Cross-Program Enforcement

Effective enforcement looks across our statutory and organizational "stove-pipes" to successfully meet our goals to protect public health and the environment.

The CalEPA boards and departments, and CalEPA itself, have responsibility to assure compliance with a multitude of state and federal environmental laws. CalEPA is positioned to explore opportunities to effectively and efficiently conduct enforcement efforts that address a broad range of potential environmental violations. Multimedia enforcement, pursuing a single facility for violations occurring in more than one media and under more than one statutory scheme, can address violations more efficiently for both the state and for facilities than serial inspections/actions by several boards and departments. Furthermore, cross-program strategies to address environmental problems in disadvantaged communities are increasingly important as CalEPA pursues efforts to assure environmental justice.

5. Well-Trained Enforcement and Compliance Assistance Personnel

An effective environmental enforcement and compliance program requires well-trained personnel and state of the art enforcement tools.

It is critical to a strong enforcement program to attract and retain a strong and well-trained workforce of inspectors, case developers and other enforcement personnel who can meaningfully assist regulated entities in achieving compliance and readily pursue enforcement opportunities. Enforcement requires not only a high degree of technical knowledge and deep knowledge of the relevant regulations, but also the skills to interact appropriately with the

regulated community and, in particular, those who violate the law. We also want to build excellence by providing the support, encouragement, mentoring and training to assure that each member of the enforcement workforce has the necessary tools to inspect, develop and prosecute the type and number of complicated cases we want to bring. That effort includes exploring technological tools that integrate data analysis across agencies.

Well-trained enforcement personnel also understand how to meaningfully and transparently interact with impacted communities. Apart from being responsive to community complaints, CalEPA will consider pathways for incorporating community based science, traditional ecological knowledge and participatory research in data gathering efforts. BDOs should also develop protocols around communicating inspection and sampling results, along with enforcement outcomes, with affected communities.

6. State and Federal Enforcement Partners

Strong partnerships with other state and federal agencies are essential

Enforcement cases often involve partnerships with other entities, including the California Attorney General in their independent capacity, U.S. EPA, the U.S. DOJ, the Resources Agency, CalGEM, the State Lands Commission and others. The success of our state enforcement programs hinge on developing and maintaining excellent working relationships with these other state and federal enforcement entities. Having a central point of contact at CalEPA to coordinate enforcement work with other state and federal entities will enhance CalEPA's ability to lead state-wide. In addition, it is important that our state partners have a clear point of contact to raise enforcement related issues and a clear counterpart at the agency level with whom to coordinate on broad issues such as evaluation of legislative cross-media enforcement proposals and response to judicial decisions that have cross-media enforcement effects.

7. Tribal Enforcement Partners

Building strong government-to-government relations with California Native American Tribes

California has the second largest number of federally-recognized tribes in the nation, and, according to the 2010 US Census, the largest Native American population in the United States. All California Native American Tribes, whether officially recognized by the federal government or not, have environmental, economic and public health concerns that are at times different from and at times similar to concerns of non-Tribe California residents. Enforcement agencies need to establish strong government-to-government relations with California Native American Tribes and effective partnerships, including enforcement action partnerships, to ensure protection of members of Native American Tribes and Tribal resources from environmental harms.

8. Enforcement and Program Integration

A strong enforcement and compliance program requires coordination between permitting, policy and enforcement to assure that priorities are in alignment.

Program functions such as rulemaking and permitting must be carried out with a view toward the ultimate enforcement of the rules that are adopted and conditions included in permits. That requires coordination between enforcement staff and program staff in the update of current regulations and the development of new rules and permit conditions. CalEPA will develop agency-wide protocols for that coordination, including protocols for consideration in each permit decision and rulemaking decision of how compliance with new rule requirements and permit conditions will be monitored and enforced.

9. Enforcement and Communications Coordination

The deterrent effect of enforcement is lost if the regulated community never learns of enforcement actions by the CalEPA boards and departments. An effective enforcement program requires dedicated attention to the most effective methods of making certain that the regulated community and affected community members learn of all enforcement activity. This can be through traditional media for major enforcement actions, but can also be through trade publications and other resources for more routine enforcement actions. CalEPA will develop agency-wide protocols for coordination between enforcement with communications operations, with requirements that notice of all enforcement action be disseminated effectively to the regulated community.

10. Equity in Enforcement

The State recognizes historical and ongoing inequity in the distribution of environmental burdens and benefits among Californians. In an effort to remedy those inequities, CalEPA BDOs should develop policies and metrics to ensure equitable deployment of enforcement and compliance resources. A key goal of CalEPA's enforcement program is to prioritize the deployment of enforcement resources to communities with highest pollution burdens and environmental risks. This means that BDO enforcement chiefs should work closely with the EJ Task Force to ensure coordination and integration of the Task Force's work into each BDO's enforcement agenda. Likewise, BDOs should integrate community based enforcement leads, such as tips and complaints from the Identifying Violations Affecting Neighborhoods (IVAN) networks, into enforcement efforts.

To measure progress in enforcement equity, CalEPA should develop protocols to compare enforcement results, such as pounds of pollution reduced and penalties assessed, to data focused on environmental risk. Environmental risk may be measured through data-driven tools such as CalEnviroScreen.

Conclusion

I want to recognize the excellent enforcement work that has already taken place in CalEPA's boards and departments.

This plan to enhance CalEPA's enforcement coordination and oversight, including ensuring that all board and department enforcement efforts incorporate the elements set forth above, will require work by all of us. With this in mind, the Office of the Secretary's Assistant General Counsel for Enforcement (Enforcement AGC) will oversee and coordinate the development of a cross-BDO enforcement program that meets the goals set forth in this memo and provide regular updates on progress. The Enforcement AGC will work with the BDOs to first develop and document a baseline understanding of CalEPA's current enforcement activities. The Enforcement AGC will then work with the BDOs to develop policies and provide guidance aimed at building the enforcement capacities and cultures outlined above. CalEPA-wide enforcement staff meetings will be held quarterly.

I am looking forward to doing the required work together to produce the very best environmental results we can. Thank you.