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CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY

ENFORCEMENT PROGRESS REPORT
1999-2002

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CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
ENFORCEMENT PROGRESS REPORT

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EXECUTIVE SUMMARY

The California Environmental Protection Agency (Cal/EPA[1]) and its Boards and Departments have made great strides toward effective implementation of their enforcement mandates. This report is both an accounting of our successes and a blueprint for effective environmental enforcement in the years ahead.

In 2002, Cal/EPA published the first "Enforcement Progress Report" that described the progress achieved at Cal/EPA and its Boards and Departments. This report is a four-year review of environmental enforcement efforts at Cal/EPA.

Cal/EPA enforcement accomplishments during 1999-2002 include:

- Bringing precedent setting enforcement cases.
- Rebuilding California's environmental enforcement infrastructure.
- Improved enforcement training.
- Stabilized funding for the Circuit Prosecutors program.
- Initiatives to coordinate enforcement cases on a cross media,[2] cross program basis.
- Creation of a Cal/EPA cross media enforcement unit.
- Creation of the first statewide underground tank enforcement unit.
- Improved public access to enforcement information.

This report includes information from each of Cal/EPA's Boards and Departments. It is a snapshot, not a complete description of enforcement activities. As each of Cal/EPA's Boards and Departments has a very different enforcement mandate, inspection and permitting protocols as well as different enforcement mechanisms, information for the report was gathered from a variety of sources of existing information. Therefore, differences will be noted such as whether data is kept on fiscal year or calendar year basis.

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[1] For a complete list of acronyms used in this report, see Appendix A.

[2] Various terms including "cross media," "multimedia" and "cross program" are used to describe enforcement cases that involve more than one media (a violation that affects air, water, and/or land) and/or more than one regulatory program (for example, a water discharge that violates waste water pretreatment, hazardous waste and Fish and Game regulations.).

Contained in this report are both quantitative information (numbers of inspections and number of enforcement actions) and qualitative information (initiatives and improvements). This report does not include all environmental enforcement activities that occur throughout California. For example, some enforcement actions taken by local environmental agencies are not included as this information is not required to be gathered and transmitted to the state and therefore is not easily available.

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I

CAL/EPA'S ENFORCEMENT ACCOMPLISHMENTS

A. BACKGROUND

In 1991, California's environmental authority was unified in a single cabinet level agency--the California Environmental Protection Agency (Cal/EPA). This brought the Air Resources Board, State Water Quality Control Board, Regional Water Quality Control Boards and the Integrated Waste Management Board under an umbrella agency with the newly created Department of Toxic Substances Control, Office of Environmental Health Hazard Assessment and the Department of Pesticide Regulation. Cal/EPA's Office of the Secretary heads Cal/EPA and is responsible for overseeing and coordinating the activities of all six Boards, Departments and Office and the activities of the various local agencies that implement our environmental programs in California.

The Secretary does not direct policies and decisions of the Boards, Departments and Office on a day to day basis. As an officer of the Governor's Cabinet, functions performed within the Office of the Secretary of Cal/EPA include budget review, review of legislation, information management coordination and strategic planning.

The Legislature has also given the Office of the Secretary several specific programmatic responsibilities, including:

1. Border Program
2. Unified Program
3. Children's Environmental Health
4. Enforcement
5. Environmental Justice
6. Permit Assistance
7. Quality Improvement

More information about these programs can be obtained from the Cal/EPA website at calepa.ca.gov.

Though California has long led the nation in environmental protection, the trend towards increasing environmental protection has been a cyclical journey. In the early to mid-1990's, the resources of Cal/EPA's Boards and Departments were limited due to economic recession and were directed toward industry compliance assistance and voluntary compliance programs. Traditional enforcement programs suffered reduced support. Many agencies deleted the word "enforcement" from their official vocabularies. Voluntary and educational approaches to industry compliance, while beneficial in many respects, were

found to be ineffective in deterring environmental violations. Environmental enforcement programs and compliance rates deteriorated. What was made clear by this experience is that in order to achieve compliance with environmental standards all regulatory tools should be used, but enforcement is the foundation upon which the others must be built.

The first steps taken in 1999 were to review Cal/EPA's overall structure and set a clear vision and goals. The enforcement of environmental laws is at its core, a traditional exercise in law enforcement. It involves the identification of illegal activity, remedying the harm, and punishing the violator. There must be sufficient numerical enforcement presence and processes that ensure swift and predictable action to deter violators, to ensure a level playing field for business and a consistent level of protection for the community.

B. CAL/EPA'S MISSION AND VISION

Cal/EPA's mission is to improve environmental quality in order to protect public health, the welfare of our citizens, and California's natural resources. Cal/EPA seeks to achieve its mission in an equitable, efficient, and cost-effective manner. Cal/EPA's "Strategic Vision" defines many ambitious goals including:

GOAL 1 Air that is healthy to breathe, sustains and improves our ecosystems, and preserves natural and cultural resources.

GOAL 2 Rivers, lakes, estuaries, and marine waters that are fishable, swimmable, support healthy ecosystems and other beneficial uses.

GOAL 3 Groundwater that is safe for drinking and other beneficial uses.

GOAL 4 Communities that are free from unacceptable human health and ecological risks due to exposure from hazardous substances and other potential harmful agents.

GOAL 5 Reduce or eliminate the disproportionate impacts of pollution on low-income and minority populations.

GOAL 6 Ensure the efficient use of natural resources.

GOAL 7 Continuous improvement and application of science and technology.

GOAL 8 An efficient and effective Cal/EPA in pursuit of its mission.

The Strategic Vision is viewable at www.calepa.ca.gov/publications.

The Strategic Vision also recognizes that to achieve these goals, enforcement has a role to play. By promoting integrated permitting, inspection and enforcement programs; by expanding and improving cross media communications, collaboration, and training; by establishing agency-wide enforcement policy, standards and reporting; and by conducting continuous evaluations of program effectiveness, enforcement is an indispensable component of Cal/EPA's environmental protection mission.

At the request of the Governor and Legislature, a report was prepared that reviewed the organizational and fiscal structure of Cal/EPA. This report identified a number of essential components to an effective enforcement program, including:

> "There should be an overall prioritization of enforcement activities to address those who cause the most environmental harm. "
>
> "There must be sufficient enforcement activity to deter those who are not inspected from violating the law."
>
> "Inspectors must be well-trained."
>
> "There must be a consistent, fair, and rapid enforcement process, with opportunities for interaction with the regulated entity at the beginning, middle, and end of the process."
>
> "There must be an emphasis on corrective action (or injunctive-type relief) to stop further violations."
>
> "Fines and penalties must be consistent among programs and among violators to maintain a level playing field, they must deprive violators of the economic benefit of noncompliance, and they should deter further violations without being out of proportion to the violation committed or harm (if any) caused to the environment."
>
> ("A Structural and Fiscal Review of the California Environmental Protection Agency"; Cal/EPA; 2000; pages 33-36; www.calepa.ca.gov/Publications/Reports/#Legislature.)

This was the framework from which Cal/EPA sought to rebuild enforcement programs.

C. RESPONSIBILITIES FOR THE CAL/EPA DEPUTY SECRETARY FOR LAW ENFORCEMENT AND COUNSEL

Cal/EPA was created based on the recognition of the need for a consistent and coordinated cross media approach to environmental protection in California. This same recognition resulted in legislation that gave Cal/EPA the authority to coordinate and improve enforcement.

Government Code 12812.2, enacted in 2000, defines the enforcement responsibilities for the Deputy Secretary for Law Enforcement and Counsel as follows:

1) To develop a program to ensure that Cal/EPA boards, departments, and local agencies take consistent, effective, and coordinated enforcement actions. The program shall include training and cross training of inspection and enforcement personnel.

2) To establish a cross media enforcement unit to assist Cal/EPA boards, departments, and local agencies to investigate matters for enforcement action.

3) The authority to refer violations of laws or regulations within the jurisdiction of Cal/EPA boards and departments or local agencies to the Attorney General, district attorney, or city attorney for the filing of a civil or criminal action.

Cal/EPA has utilized these new tools to improve statewide coordination of environmental enforcement and to re-establish enforcement as a primary compliance assurance mechanism. As detailed in this report, Cal/EPA's actions regarding training, cross media case coordination, investigative assistance, and case referrals, have been instrumental in carrying out the legislative mandate.

D. ENFORCEMENT BUDGETS

In 1999, incoming Cal/EPA Secretary Winston Hickox requested that Cal/EPA Boards and Departments review their enforcement programs and identify the regulatory, statutory, policy and budgetary changes needed for improvement. This information was compiled in documents entitled, "Enforcement Initiatives" and was used for many purposes, including preparing budgets in later years.

In fiscal years 1999-2000 and 2000-2001, Cal/EPA was successful in partially rebuilding lost infrastructure in staff, equipment and training. Because of the current budget situation, state and local environmental enforcement programs are severely challenged to maintain satisfactory levels of performance. The challenge is to maintain enforcement programs that ensure compliance with environmental standards as efficiently as possible. This report details new initiatives that have reduced costs and improved efficiency in Cal/EPA enforcement programs.

1. FISCAL YEAR 1999-2000

In 1999-2000, funds were appropriated to implement the new enforcement mandates of the Gov. Code § 12812.2 (effective January 1, 2000). These funds were allocated for:

1) $150,000 for funding for the CDAA Circuit Prosecutor's Program. Details regarding this program are provided below.

2) $250,000 was used to fund a new enforcement position at Cal/EPA and 2.5 positions housed at the Air Resources Board to develop and deliver cross media training.

3) $100,000 for support of training, including the Cal/EPA Cross Media Enforcement Symposium. This funding was used over a two year period.

During this fiscal year, the first statewide underground tank enforcement unit was established at the State Water Resources Control Board (SWRCB). Details regarding the accomplishments of this unit are detailed below.

2. FISCAL YEAR 2000-2001

This was the year of Cal/EPA's Comprehensive Enforcement Budget Plan. This proposal was drafted based upon information derived from the Enforcement Initiatives developed in 1999. This included additional resources to partially restore the enforcement decline of the last decade and was structured to address a number of new regulatory and/or statutory requirements. The comprehensive approach enabled Cal/EPA to address critical environmental enforcement needs and infrastructure tools, such as updated laboratory analytical equipment.

For fiscal year 2000-2001, enforcement related budget changes included:

<u>Air Resources Board</u>: An increase in air district subvention funds; funds to upgrade and replace equipment and instrumentation; and funds to

augment the cross media enforcement training program with training staff and equipment.

Integrated Waste Management Board: Positions to staff the illegal dump site characterization and enforcement program.

Department of Pesticide Regulation: Five positions to develop strategies for program improvements through continuous evaluation of goals, priorities, and performance indicators and to increase capabilities to coordinate multi-jurisdictional and multi-media investigations.

State Water Resources Control Board: Seven positions to strengthen enforcement against dischargers who habitually violate the provisions of their permits and state and federal law; and one position to establish a Criminal Investigations Support and Training Officer to coordinate potential criminal actions. Two positions were added to the water rights compliance and enforcement program to augment its resources for the protection of prior water rights and environmental resources.

Department of Toxic Substances Control: Twenty -seven positions that included task force support, criminal investigator positions, and $549,000 to upgrade outdated lab equipment.

3. FISCAL YEARS 2001-2002 and 2002-2003

Given the budget situation, Cal/EPA has and is aggressively pursuing alternate sources of funding, such as federal grant money and monies from enforcement cases, to improve data systems, maintain training levels and other vital enforcement infrastructure.

E. CROSS MEDIA ENFORCEMENT

1. POLICY COORDINATION

A Cross Media Enforcement Coordinating Group was established in 2000, consisting of representatives of each Cal/EPA's Boards and Departments and chaired by the Deputy Secretary for Law Enforcement and Counsel. The group continues to meet and provide input and direction on long range cross media enforcement and policy direction issues such as the collection of environmental enforcement data.

2. CROSS MEDIA INVESTIGATIONS

In June 2000, the Air Resources Board (ARB) and Cal/EPA executed a Memorandum of Understanding (MOU) to formalize and extend their working

relationship involving cross media environmental enforcement activities. The MOU designates staff at ARB 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 Task Force Support and Special Investigations Branch. Other Cal/EPA Boards and Departments contribute resources on an as needed basis.

Several pending enforcement cases have been identified and investigations are underway. These investigations include cases that involve inedible food grease waste haulers, underground storage tanks, and landfills among others. As described below, Cal/EPA has worked with state and local agencies to bring precedent setting environmental enforcement cases**.**

Atlantic Richfield Company (ARCO). Cal/EPA, the State Water Resources Control Board and the ARB investigated and referred this case to the Attorney General's Office. The civil complaint filed alleged that over 50 ARCO stations had failed to meet the 1998 upgrade requirements for underground storage tanks. The terms of the consent judgment required ARCO to pay $25 million in fines and costs and to perform $20.8 million in improvements at its stations, above those required by law. This was the largest penalty ever imposed in an underground storage tank enforcement case in the nation.

TXI. Cal/EPA, in conjunction with the Air Resources Board and the Ventura Air Pollution Control District, jointly referred this case to the Attorney General's Office. Pacific Custom Materials, also known as TXI Inc., is involved in the manufacture of lightweight aggregate materials used in construction. The company operates a clay mine on the property, along with large kilns and various other equipment requiring Air District permits and pollution control and monitoring equipment. The civil complaint alleges negligent and/or intentional illegal discharge of air contaminants, such as particulate matter, nitrogen dioxide and sulfur dioxide in violation of the company's permit and Air District rules, and causing a public nuisance. The case is pending.

Thrifty Best/Grease Haulers Task Force. Cal/EPA coordinated efforts between prosecutors and investigators in Northern and Southern California to stop the widespread illegal disposal of restaurant grease. These illegal disposals to sewers, storm drains and to unsuspecting customers cause sewage blockages, environmental degradation and potential health threats. Thirteen district attorney (DA) offices throughout the state have filed a coordinated civil complaint. Restraining orders were sought and obtained to prohibit further illegal disposals. This is the largest multi-county DA action ever brought in an environmental case.

3. CROSS MEDIA ENFORCEMENT PROJECTS

This section outlines specific proactive projects that Cal/EPA is pursuing in order to improve and make more effective environmental enforcement in California.

a. The Chrome Analysis Project: Cross Media Analysis of a Single Industry

This project marks the first time a specific industry has been studied from a cross media perspective. This pilot project was coordinated by the Air Resources Board and involved Cal/EPA, the Department of Toxic Substances Control, the State and Regional Water Boards, U.S. EPA and a large number of local agencies.

Thirty-seven chrome plating operations in the Los Angeles area were inspected by representatives from three programs (air, hazardous waste, water). Compliance with all three programs was documented during a single visit. The inspections indicated that of the thirty-seven facilities 43% had at least one violation in all three program areas. Eighty-nine percent had an air district violation, of which 73% were related to hexavalent chromium. 16% of the facilities inspected received Notices of Violations from the district based on excess chromium emissions.

Follow up enforcement actions included three administrative actions by the Department of Toxic Substances Control, 16 Notices of Violations and imposition of penalties by the South Coast Air District, and one case was referred to the District Attorney.

The Project Report is available at www.arb.ca.gov/enf/chromeplating.

b. Jewelry Mart: A Project Using Enforcement and Compliance Assistance

Cal/EPA became aware of uncontrolled releases of hazardous jewelry manufacturing wastes from the jewelry businesses in downtown Los Angeles in an area known as the “Jewelry Mart.” The Jewelry Mart is comprised of 35-40 multi-story office buildings that over many years were illegally converted to jewelry manufacturing uses. Hazardous emissions and wastes are produced by furnaces, grinding and buffing operations. Cal/EPA coordinated an investigation by the Air Resources Board (ARB), the Department of Toxic Substances Control (DTSC) and local unified program agencies. One case involving a specific building and some of its tenants was referred to the Attorney General’s Office. Cal/EPA, ARB and DTSC worked with local officials and industry in a coordinated outreach effort to inform the Jewelry Mart businesses about regulatory requirements and available compliance assistance information.

In early 2002, an outreach and education seminar was offered as a joint effort of the local business community, the City of Los Angeles and state and local environmental regulatory agencies. The seminar was followed by communication with the building owners in the Jewelry Mart and by inspections of the buildings. As of May 2003, inspections of the more than 2000 businesses are in progress. The outreach and education efforts give the owners and tenants the information they need to come into compliance and reduce the hazardous materials used in their businesses. Those who do not take advantage of these efforts and remain in violation will be subject to enforcement actions.

4. ENVIRONMENTAL TASK FORCES

One of Cal/EPA's traditional roles is the support of environmental task forces throughout California. The coordination of inspection and enforcement efforts improves government efficiency, benefits industry by providing a level playing field for fair competition, and provides more consistent protection of public health and the environment. Since 1999, every county in the state has been covered by a county or regional environmental enforcement task force.

The environmental task force (or strike force), approach of combining regulatory and law enforcement resources has proved a particularly effective tool because of the multimedia, cross program nature of environmental enforcement. Most environmental investigations involve allegations of noncompliance in more than one program or area. Enforcement task forces are comprised of voluntarily participating state, local, and federal agencies with enforcement authority. The effectiveness of the task force approach is due to the pooling and exchange of resources and intelligence between different law enforcement and regulatory agencies. The resulting partnerships allow task force members to pursue investigations in which no single entity would possess the resources and information gathering ability to complete the task individually.

Local participating agencies may include:

- Deputy District Attorney, Deputy Attorney General or Assistant U.S. Attorney (as Chair)
- Air Pollution Control District
- County/City Environmental Health Department
- County/City Code Enforcement
- County/City Fire Department
- Agricultural Commissioner
- Flood Control, Sanitation, Public Health Agencies
- Sheriff and/or Police

State representatives may include:

- Cal/EPA and its Boards and Departments
- California Highway Patrol
- Department of Fish and Game
- Attorney General's Office

Federal representatives may include:

- United States Environmental Protection Agency
- FBI
- U.S. Attorney's Office
- Bureau of Land Management
- U.S. Fish and Wildlife Service

The effectiveness of the Environmental Enforcement Task Forces cannot be overemphasized, and the presence today of environmental task forces in all of California's 58 counties is testament to the effectiveness of these task forces and the dedication of the involved personnel.

Contact information for California's Environmental Task Forces is available at www.calepa.ca.gov/Programs/TaskForce.

5. ENVIRONMENTAL ENFORCEMENT IN THE BORDER AREA

With the advent of the North American Free Trade Agreement (NAFTA), and the subsequent increase of business and industry in the California/Mexico border region, the environmental pressures and challenges along the border have never been greater. Cal/EPA is meeting these challenges with innovative thinking and dedication. In addition to the activities of the Border Affairs Unit, which the legal unit of Cal/EPA supports with legal and other staff work, Cal/EPA has coordinated many projects to improve enforcement at the border.

Cal/EPA legal staff co-chairs the Border Environmental Enforcement Task Force. This task force is a group of Federal, State, Tribal and local officials that meet quarterly in the Mexican/California border area to discuss border related environmental enforcement issues such as:

- Training needs for task force members

- Cross border impacts of agricultural burning

- Industrial pretreatment, sewage and industrial discharges

- Hazardous materials storage in customs brokers facilities

- Maquiladoras (foreign owned manufacturers located in the Mexican border area) and the international transportation of hazardous waste

- Tires and solid waste (illegal dumps) in the border region

- Cross border purchases and use of pesticides.

Legal staff also co-chairs another border environmental enforcement workgroup organized under the bi-national “Border XXI “ program (as of 2003, the “Border 2012 Program”) that meets in conjunction with the Border Task Force and includes Mexican environmental, customs and wildlife enforcement officials.

Border enforcement accomplishments include:

- Work with the U.S. Fish and Wildlife and Mexican officials to repatriate recovered plant and animal life illegally imported into U.S. from Mexico. For example, in 2000, 70 endangered species birds were intercepted at the border and were returned to the wild in Mexico.

- Communicating research on the New River by the Regional Water Board aimed at determining sources of pollutants to California and Mexican officials to better focus enforcement efforts.

- Establishment of an 800 number accessible by citizens in Mexico to call in complaints on agricultural burning that drifts across the border.

- Work with Mexican Attorney General for Environmental Protection (Procuraduria Federal de Proteccion al Medio Ambiente or PROFEPA) in removing hazardous wastes found in Mexico that originated in the U.S.

- Workshops in the border area on waste classification and pollution prevention.

Cal/EPA and Secretariat for the Environment and Natural Resources (SEMARNAT) have entered into a cooperative agreement to assist in exploring environmental protection and enforcement issues on both sides of the border. Examples include an agreement to help the City of Tijuana implement a smog inspection program for its city owned vehicles and agreements to share water monitoring information and to improve wastewater treatment in border areas.

In 2001, Cal/EPA's Deputy Secretary for Law Enforcement and Counsel directed the development of and spoke on an environmental enforcement panel for the 20th Border-States Attorneys General Conference sponsored by the Conference of Western Attorneys General. Attendees included Attorneys General from the United States and Mexico.

Since 2001, the Deputy Secretary has been the U.S. state representative to the North American Enforcement Working Group of the Commission for Environmental Cooperation, an international organization created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation, established to address regional environmental concerns, help prevent potential trade and environmental conflicts, and to promote the effective enforcement of environmental law. The Agreement complements the environmental provisions of the North American Free Trade Agreement (NAFTA). For more information see: www.CEC.org.

6 OUTREACH WITH CALIFORNIA TRIBES

Cal/EPA legal staff has made contact with various California Tribes, U.S. EPA, and the federal Bureau of Indian Affairs, to explore new ideas on how to work with Tribes on environmental enforcement issues. Tribal representatives have attended various environmental task forces and Cal/EPA enforcement training events.

Cal/EPA assisted the Integrated Waste Management Board with the production of an illegal solid waste disposal training program for Tribal and Local Enforcement Agency solid waste inspectors. This training provides solid waste inspectors enforcement tools and techniques for dealing with illegal disposals of solid waste in their areas. The training includes examples of Memorandums of Understanding between Tribal and local governments regarding solid waste, applicable solid waste laws, and standard procedures for addressing illegal disposals will be covered in the training. The first training was delivered in spring 2003. Information about this training is available at www.ciwmb.ca.gov/LEAT/Training/Illegal/Dump/Tribal.

7. IMPROVING STATE CONSISTENCY: THE CIRCUIT PROSECUTOR'S PROJECT

The Environmental Circuit Prosecutor Project (the "Project") is a unique program that provides environmental prosecutors for California's rural counties. The Project began in early 1998 and was initially funded as a three-year pilot program. Since then, the project has become, in the words of Attorney General Bill Lockyer, "an important part of California's environmental enforcement landscape."

The Project has been instrumental in bringing environmental enforcement to many of California's smaller counties. Since its inception, the Project has processed over 950 environmental cases[3], both civil and criminal, and obtained more than $22.2 million in fines, penalties, costs, and supplemental environmental projects. In 2001 alone, more than $12 million was obtained in fines, penalties, environmental projects and cost recovery. Circuit prosecutors have obtained significant jail time for egregious offenders. The Project also provides training and support to attorneys, law enforcement and regulatory staff at both state and local levels. Cal/EPA and the Department of Fish and Game provide most of the funding for the project. The Department of Fish and Game, the Department of Toxic Substance Control and the Attorney General's Office have loaned staff to the project. Cal/EPA contracts with the California District Attorneys Association (CDAA) to administer the program. The individual Circuit Prosecutors are employees of CDAA but work under the direction of the District Attorneys in the counties in which they are deputized.

Adequate funding for the Project to reach all small counties remains a challenge. In 2001, the Project lost one third of its funding base, due in part to the discontinuation of federal funding. Legislation was passed (AB 960 (2001)) that would have appropriated additional funds. Unfortunately, AB 960 coincided with an energy crisis, the events of September 11, 2001, and a deteriorating economy. In vetoing the bill, Governor Davis expressed his continued support for the Project and directed state environmental agencies to investigate ways in which the Project could be funded on a long-term basis. The Governor directed the Cal/EPA and Resources Agency to bring affected state agencies and stakeholders together to help craft a long term solution for supporting the Project. Cal/EPA lead a group of stakeholders who met in 2001-2002 to address the direction given by the Governor. New legislation, AB 2486 (2002), was the result of these stakeholder meetings.

AB 2486 was passed and signed in 2002. This bill established the Local Environmental Enforcement and Training Act of 2002 (Penal Code §142300 et seq.) that created a flexible source of funding for local prosecution assistance as well as public prosecutor, investigator, and environmental regulator training. The source of money for the fund will be donations from civil and criminal case settlements as well as from other types of donations.

The Act specifies that 25% of the funds go to provide additional support to the Circuit Prosecutor Project, 25% to the Peace Officer Standards Commission for environmental crime training for peace officers, 25% to CDAA for enforcement training of investigators, prosecutors and regulators and 25% to Cal/EPA to

[3]The "total" number of cases represents those cases not considered "minor" and that generally require two or more court appearances. The Project does not track the number of minor Fish and Game infractions handled by Circuit Prosecutors each year. For example, in 2000, the Project processed more than 1,000 minor Fish and Game cases.

award training and enforcement grants. Money donated to the fund will not be available for distribution until late 2003.

Cal/EPA also assisted in securing more immediate additional funding for the Project. In early 2002, the State Water Resources Control Board authorized $300,000 from the Clean Up and Abatement Fund to support specified Circuit Prosecutor Project activities. The Integrated Waste Management Board provided $300,000 to fund a circuit prosecutor for 2 years dedicated to handling waste tire cases. The importance of proper waste tire handling, and the environmental effects of improper handling as exemplified by the Wesley tire fires was the impetus for the grant.

F. IMPROVING ENFORCEMENT TRAINING

The Cal/EPA Inspector Certification Program was created to implement the training component of Government Code 12812.2. All Cal/EPA boards, departments, offices, and local implementing agencies have contributed to its development. The program consists of the Basic Inspector Academy, the annual Environmental Cross Media Enforcement Symposium, and the Inspector Training Clearinghouse. The staff resources for the Inspector Certification Program are housed in the California Air Resources Board (ARB), Stationary Source Division, and Training Section. The individual components of the Inspector Certification Program are discussed below. Also described below are other specialized enforcement training developed by Cal/EPA.

1. CAL/EPA BASIC INSPECTOR ACADEMY

In 2000, Cal/EPA and staff from the Boards and Departments developed the "Cal/EPA Basic Inspector Academy" (Academy) which provides core skills for all inspectors operating under the Cal/EPA umbrella and others including Tribal EPA staff. The training is conducted by a multi-disciplinary team of volunteer instructors lead by ARB training staff.

The Academy is intended to provide the skills necessary for new inspectors to successfully interact with, and communicate the importance of regulatory compliance to, the regulated community. The training covers many basic investigation/inspection techniques, as well as cross media issues that generally are not covered by other training. The Academy consists of both classroom presentation and inspection exercises. The courses includes such topics as: Environmental Law, Environmental Science, Elements of a Violation, Report Writing, Resolution of Non-Compliance, Working with other Agencies, Working with Task Forces, Interviewing, Evidence and Sample Collection, Report Analysis, and Field Safety.

The Academy is held on a quarterly basis. It is comprised of 80 hours of classroom instruction divided into two 40-hour (one-week) sessions. Locations alternate between Southern and Northern California.

Past Academy attendees include:

- Cal/EPA Boards and Departments
- Agricultural Commissioner's Offices
- Certified Unified Program Agencies
- Air Districts
- Local Flood Control and Sanitation Districts
- County Weights and Measures
- County Environmental Health
- City and County Fire Departments

To date, approximately 250 regulatory personnel have attended the training. The feedback from the course indicates that the training is a valuable source of introductory training for new inspectors. For more information, see www.calepa.ca.gov/Enforcement/Training/Basic.

2. THE CAL/EPA CROSS MEDIA ENFORCEMENT SYMPOSIUM

The Symposium is an annual four day training event that 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 to allow regulators to experience how their work can affect each type of action. Model documents such as inspection warrants are presented to support greater consistency and coordination throughout California's environmental enforcement community.

The Symposium has been modified from its prior format into an advanced continuing education program to better provide inspection staff with up to date information concerning current issues in environmental enforcement.

Symposium topics in 2002 included:

- Inspection warrants
- Case Studies
- Tribal Enforcement Issues
- Environmental Justice
- Civil/Criminal Case Determination
- Internet Information Resources
- Enforcement on Government Facilities
- Cal-OSHA/Cross Over Cases

- Sampling Procedures
- Techniques on Obtaining Evidence/Surveillance

3. TRAINING INFORMATION CLEARINGHOUSE

Cal/EPA and its Boards and Departments created an Inspector Training Clearinghouse at www.calepa.ca.gov/Enforcement/Training/Clearinghouse. This web site provides one stop shopping for training for environmental inspectors at both the state and local level. The Clearinghouse is designed to facilitate consistent and effective enforcement across environmental disciplines, encourage cross training, and help agencies share limited training resources. In addition to basic inspector training, the web page contains links to courses in air pollution, water pollution, hazardous waste, solid waste, and pesticide regulation.

4 ENVIRONMENTAL CRIME SCENE INVESTIGATIONS

The Cal/EPA Environmental Crime Scene Investigations course was created through collaboration with Cal/EPA, the University of California Riverside Extension Offices and the California Hazardous Materials Investigators Association (CHMIA). The course focuses on the latest criminal investigation methodology available to environmental investigators. It provides the latest forensic techniques available to investigators in the field and shows how these techniques can be utilized in the environmental context. The course is supported by registration fees and a grant from CHMIA.

On September 14/15, 2002, Cal/EPA delivered its first Environmental Crime Scene Investigations Course to 35 attendees in southern California. The class contents included:

- Crime Scene Management
- Crime Scene Photography
- Impression Evidence, Casting and Fingerprinting
- Computer Forensics
- Forensic Accounting
- Surveillance Techniques

The class was given in Sacramento in the spring of 2003 with over 50 attendees. The success of the course has resulted in offers from other agencies to host the class.

5. SPECIAL ENFORCEMENT TRAINING

In addition to formalized training, Cal/EPA hosts informal low or no cost training opportunities on special topics. In 2002 Cal/EPA offered several specialized training seminars including:

UST Enforcement Seminar: Cal/EPA offered a seminar on underground storage tank (UST) regulation for prosecutors and regulators, in both northern and southern California. The purpose of the seminars was to bring together those who inspect and investigate violations with those who ultimately bring civil and criminal cases so that both can understand their roles and needs.

Air Violations Seminar: Cal/EPA co-sponsored an Air Violations seminar along with the California District Attorney's Association and the Los Angeles County District Attorney's Office. This two-day seminar was presented in southern California and focused on issues related to the investigation and prosecution of air violations.

Sewage Treatment and Disposal Seminar: Cal/EPA offered a roundtable for environmental prosecutors on issues concerning the proper treatment and disposal of sewage waste. Presenters included regulators and enforcement personnel. The seminar included a tour of a local sewage treatment facility.

G. UNIFIED PROGRAM

In 1993, the Unified Program (also known as the "CUPA Program") was created to consolidate and coordinate the inspection and permitting functions of six environmental programs. The six program elements are: underground storage tanks, above ground tanks, hazardous waste generators, hazardous materials business plans, accidental release of hazardous substances, and the hazardous materials elements of the Fire Code. Collectively the Unified Program regulates 120,000 businesses within California. As of July 2001, direct oversight of the Unified program resides in the Cal/EPA, Office of the Secretary.

1. UNIFIED PROGRAM ENFORCEMENT WORKGROUP

To work cooperatively on improving Unified Program enforcement delivery, an Enforcement Workgroup was established consisting of representatives from the Cal-CUPA Forum (a statewide group of local senior management), each state agency with Unified Program responsibilities, and Cal/EPA Office of the Secretary legal and Unified Program staff.

In 2002-2002, the Enforcement Workgroup developed a legislative proposal to establish a single administrative enforcement order (AEO) authority for 5 of the 6 Unified Program elements. Effective January, 1st 2003, AB 2481 gives Unified Program Agencies (UPAs) a means to directly cite violators and impose penalties where appropriate This allows UPAs to work effectively with the local regulated community, facilitates quick return to compliance and provides easily accessible opportunities for communication between the UPA and the alleged violator. The bill also creates a "minor violation" process by

which violations that do not merit penalties are given a “fix it” ticket, allowing a maximum of 30 days to correct the problem. If not corrected within the time allowed, the violation is then subject to enforcement action, including penalties.

The Enforcement Workgroup developed comprehensive guidance on implementing the new authority. This included forms, letters and examples of settlement agreements. A contract was entered into with the Office of Administrative Hearings to provide hearings. Extensive training on the new AEO process was provided during the annual Unified Program Conference in February 2003. Guidance material was distributed on compact disc during the Conference and is available at www.calepa.ca.gov/CUPA/Publications.

2. RURAL CUPA ASSISTANCE FUNDING

During the initial start up of the Unified Program, 15 rural counties did not apply to become certified. The primary reason was the inability to fund the program through fees assessed on regulated businesses. Cal/EPA reported on this issue in a January 2001 report to the legislature. As a result, SB 1824 (2000) created the Rural CUPA Reimbursement Account. The account provides for a grant of up to $60,000 annually to each rural county seeking certification as a Unified Program Agency. Since the funds have become available, 11 of the 15 non-certified counties have become certified.

Four counties, Imperial, Sutter, Trinity, and Butte are still not certified. Cal/EPA is working with these counties to assist them in applying or to determine the most appropriate alternative for administering the program within these jurisdictions.

3. UNIFIED PROGRAM AGENCIES ENFORCEMENT STATISTICS

The success of an enforcement program cannot be entirely measured through numbers of inspections and enforcement actions, as the ultimate goals are compliance and environmental protection. However, such statistical information remains an important part of any evaluation of enforcement programs. Below are the quantitative statistics for Unified Program Agencies (UPA) compliance and enforcement activities.

INSPECTIONS[4]	*1997-1998*	*1998-1999*	*1999-2000*	*2000-2001*	*2001-2002*
HMRR Plans	35,445	43,797	42,642	46,532	49,674
CalARP	278	488	562	693	560
Underground Tanks	10,335	13,579	9,029	10,311	14,469
HW/Generators	30,311	29,910	32,967	29,850	31,300
Large Quantity Gen.	741	658	675	778	666
Recyclers	168	78	215	166	134
Onsite H/W Treatment	607	782	934	633	661
Household H/W PBR	55	67	89	69	71

VIOLATIONS	*1997-1998*	*1998-1999*	*1999-2000*	*2000-2001*	*2001-2002*
HMRR Plans	6,746	8,071	59,985[5]	10,772	12,636
CalARP	82	130	87	205	154
Underground Tanks	3,035	3,621	3,669	3,271	4,427
H/W Generators	5,253	14,941	18,631	15,033	16,500
Large Quantity Gen.s	487	391	274	299	331
Recyclers	88	144	59	83	61
Onsite H/W Treatment.	73	290	508	300	285
Household H/W PBR	6	23	24	10	12

INFORMAL ENFORCEMENT ACTIONS[6]

	1997-1998	*1998-1999*	*1999-2000*	*2000-2001*	*2001-2002*
HMRR Plans	4,799	9,308	11,088	11,710	13,111
CalARP	82	328	159	354	297
Underground Tanks	2,374	4,153	2,248	3,586	5,581
H/W Generators	4,985	14,981	12,111	9,417	13,171
Large Quantity Gen.	158	344	213	187	240
Recyclers	45	148	78	81	53
Onsite H/W Treatment	111	219	258	155	169
Household H/W PBR	4	13	14	9	11

[4] Inspection information includes only routine inspections and may not include inspections incident to execution of warrants or complaint inspections. “HMRR” refers to the Hazardous Materials Release Response Plan and Inventories; “CalARP” refers to the California Accidental Release Prevention;” H/W” refers to the hazardous waste program that includes large quantity generators, recyclers, onsite treatment, household hazardous waste programs and permit by rule.

[5] The increase was probably due to intense review of these plans in the months prior to the Y2K event (January 2000).

[6] “Informal Enforcement” includes notices to comply or other non-penalty verbal or written warnings.

FORMAL ENFORCEMENT ACTIONS[7]

	1997-1998	*1998-1999*	*1999-2000*	*2000-2001*	*2001-2002*
HMRR Plans	125	148	266	671	773
CalARP	0	2	1	2	6
Underground Tanks	63	105	188	123	89
H/W Generators	92	204	323	271	217
Large Quantity Gen.	4	4	2	9	5
Recyclers	0	0	1	1	1
Onsite H/W Treatment	3	2	7	5	16
Household H/W PBR	0	1	0	0	7

Total inspections continue to climb. In the first year of reporting, 1998, UPAs reported a total of 77,940 inspections for all programs. For the year ending June 2002, they reported a total of 97,535 inspections, a 20 percent increase from the first reporting period and an increase of 9.5 percent from the prior year.

During the same period of time, the number of violations observed by the UPAs increased over 100 percent (15,770 to 34,406). Additionally, the reported total fines assessed by UPAs in the state over all program elements have topped 12 million dollars. Although year over year fluctuations in total actions are expected, the overall increase in informal and formal enforcement actions has exceeded 163%. The number of informal enforcement actions taken increased by 160 percent (12,558 to 32,633), and the number of formal enforcement actions increased by 288 percent (287 to 1114). Informal actions increased by 60 percent and formal actions by 11 percent in the year from July 2001 to July 2002.

The Unified Program enforcement activities continue to improve in numbers and types of actions with increased coordination of actions through county or regionally based task forces. Cal/EPA is confident that the improvement of these local programs will continue to benefit law abiding businesses, human health and the environment.

4. CURRENT EFFORTS BY CAL/EPA AND THE CAL-CUPA FORUM

The SWRCB has been working with the Cal-CUPA Forum to develop new statutorily mandated training requirements for inspectors and industry. SB 989 (2000) added more stringent requirements for Underground Tanks and new training requirements for owners and operators, inspectors, installers and service technicians. Workgroups consisting of UPAs, SWRCB, and industry

[7] "Formal Enforcement Actions" include administrative, civil or criminal actions. One enforcement action may include more than one violation.

representatives worked during 2001 and 2002 to develop recommendations for regulations that are expected to be adopted in 2003.

The State Training Coordination Group, a long standing consortium of Cal/EPA, the Office of Emergency Services, the Office of the State Fire Marshal, and the Cal-CUPA Forum have developed a list of core curriculum for training Unified Program field inspectors and is researching ways to ensure that core curriculum classes are available to all UPA inspectors. These classes will help make inspections and enforcement actions more consistent statewide.

H. SIGNIFICANT ENFORCEMENT LEGISLATION 1999-2002

The past four years have seen the passage of many new laws that affect environmental programs. Those affecting Cal/EPA's environmental enforcement programs are summarized below.

AB 1102 (1999). This legislation codified the position of Deputy Secretary for Law Enforcement and Counsel in Cal/EPA and gave that position new enforcement authority (see Gov. Code, § 12812.2). This legislation requires Cal/EPA to develop a program to ensure that Cal/EPA offices, boards and departments and their local counterparts take consistent, effective, and coordinated enforcement actions to protect public health and the environment. This program includes training of inspection and enforcement personnel of state and local agencies. In addition, a Cal/EPA cross media enforcement unit was created to assist state and local agencies in investigation of environmental violations. The bill gave the Cal/EPA the authority to refer cases to prosecutors such as the Attorney General and District Attorneys for the filing of civil or criminal actions.

SB 989 (1999). SB 989 required that SWRCB review existing enforcement authorities for underground storage tanks. This report was delivered to the Secretary of Cal/EPA with recommendations for changes necessary to enable local agencies to take adequate enforcement action against owners and operators of underground storage tanks that failed to meet the 1998 upgrade requirements. Cal/EPA and the Cal-CUPA Forum are working together to implement many of the report's recommendations.

SB 709 (1999). This bill created mandatory minimum penalties for serious and/or repeated violations at National Pollutant Discharge Elimination System (NPDES) facilities. NPDES facilities are regulated under the federal Clean Water Act for regulation of discharges to surface waters. This has resulted in an increase in both the number and amount of administrative penalties imposed by Regional Water Quality Control Boards (see detailed report below). There has also been a decrease in the number of violations detected in these program areas, highlighting the deterrent effect of mandatory penalties.

AB 1058 (1999). In 1999, Governor Davis vetoed AB 1058, a bill that selected out one industry for special treatment after enforcement actions had been initiated. In his veto message the Governor stated his support of the basic tenet of many regulatory programs--that alleged ignorance of the law is not an excuse. The Governor also indicated his concern that the bill attempted to influence the outcome of a pending enforcement action.

SB 1865 (2000). This bill created the first air pollution felony in California for intentional violations of air pollution laws that cause great bodily injury or death. This legislation addressed the lack of serious criminal enforcement provisions in California's air program. Federal law and that of many other states have such felony provisions. This provision may be found at Health and Safety Code section 42400.3.

SB 1824 (2000). This bill created the Rural CUPA Reimbursement Account to provide grants up to $60,000 annually to each newly certified CUPA. As a result of these funds becoming available in the fiscal year 2001-02 budget, 11 counties applied for certification.

AB 2486 (2002). The Environmental Enforcement and Training Act of 2002 enables Cal/EPA to provide grants to state and local environmental agencies to assist them with pursuing their enforcement mandates. The grant program will provide the supplemental funding for the Circuit Prosecutor Project, environmental enforcement and training activities. The source of funds will be donations from enforcement case settlements. The Act is codified at Penal Code section 14300 et seq.

AB 2481 (2002). This bill reorganized Health and Safety Code Sections that deal with underground storage tanks; added new authority to "red tag" USTs in cases where a cease of operation was essential for safety; created a felony for perjury committed by licensed tank testers in their UST reports; and created administrative enforcement for each of the CUPA programs. (See more about the administrative enforcement program in the CUPA section.)

I. ENFORCEMENT DATA MANAGEMENT

Cal/EPA and its Boards, Departments and Offices ("BDOs") recognize the importance of being able to track enforcement related data, so that trends can be followed and resources properly allocated to where they are most needed. Much of this information should also be available to the public so that the status of environmental enforcement in California can be followed. Information management was identified as a priority in the Cal/EPA Enforcement Initiatives of 1999. Many upgrades and improvements to data tracking capabilities were achieved during 1999-2002.

Enforcement Data Pilot Project: In 2002, Cal/EPA received a U.S. EPA Network Readiness Grant. Through the Integrated Data Environmental Assessment (IDEA) project, this grant will provide a mechanism to integrate enforcement data among the Cal/EPA boards and departments (BDO's). Cal/EPA has chaired several meetings to gather ideas about how to collect data on environmental enforcement at the local and state levels, and collate this data into a form useable by stakeholders. Sacramento County is being used as a pilot for developing data tools to meet the enforcement needs of federal, state and local entities. Cal/EPA has also participated in the steering committee to coordinate this effort.

Cal/EPA has made integrating and ensuring the consistency of enforcement data a top priority. Cal/EPA plans to provide access to enforcement and compliance data to meet future environmental program, governmental and public needs by identifying and coordinating access to standardized enforcement data among Cal/EPA's BDOs, other governmental entities and the public.

Cal/EPA's objectives in this regard are:

- To help facilitate streamlined data collection methods between Cal/EPA and its BDOs in order to reduce data collection errors and improve data collection timelines.

- To coordinate with the BDOs to extract query reports from information collected in their databases allowing Cal/EPA to report comprehensive enforcement information.

- To improve current enforcement web pages and develop new formats and methods for accessing and reporting enforcement information.

As the data management initiative progresses, Cal/EPA is confident that the quality of information and access to that information will greatly assist in environmental enforcement efforts.

Improved Information on the Web: Cal/EPA worked with the BDOs to launch "Enforcement Homepages" on the websites for each Board and Department with enforcement authority. Cal/EPA has its own "Enforcement Homepage" that serves as a link to the BDO websites and other useful information at www.calepa.ca.gov/enforcement.

J. ENVIRONMENTAL JUSTICE

State law requires that Cal/EPA's enforcement policies and procedures ensure the fair and equitable enforcement of all environmental laws. This is an

important step toward our goal of achieving environmental justice in California. Goal Five in Cal/EPA's Strategic Plan addresses Environmental Justice and sets the overall direction of the Environmental Justice Program within the Agency as follows:

"Reduce or eliminate the disproportionate impacts of pollution on low-income and minority populations.

OBJECTIVES:

- Minimize the public health and environmental impacts of existing facilities.
- Assist the Governor's Office of Planning and Research and local land use agencies in developing model land use ordinances which address siting of future hazardous materials, waste, transportation or handling facilities and activities.
- Reduce the impacts of pollution from existing hazardous materials, waste, transportation and handling facilities or activities.
- Assist the Department of Education in developing model school siting policies to avoid exposing children to pollution."

Environmental Justice is defined as the "Fair treatment for people of all races, cultures, and incomes, with respect to the development, adoption, implementation and enforcement of environmental laws, regulations and policies" (Gov. Code, § 65040.12). Laws enacted and amended in the last several years require Cal/EPA and its boards, departments and office to undertake a number of environmental justice activities. These activities include the development of a mission statement (Gov. Code, § 65040.12) and the convening of an Interagency Working Group and an Environmental Justice Advisory Committee to begin identifying and addressing the issues and actions necessary to achieve environmental justice in California (Pub. Res. Code, §§ 71113-71114).

Cal/EPA is required by Public Resources Code section 71111 to conduct its programs, policies, and activities in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state. Cal/EPA is also required to promote equal enforcement of all health and environmental statutes; ensure greater public participation in the agency's development, adoption, and implementation of environmental regulations and policies; improve research and data collection; coordinate its efforts and share information with the USEPA; identify differential patterns of consumption of natural resources among people of

different socioeconomic classifications for programs within the agency; and consult with and review any information received from the Advisory Committee on Environmental Justice.

In order to promote the equal enforcement of all health and environmental statutes, Cal/EPA staff developed an environmental justice component for the Cross Media Enforcement Symposium and the enhancement of the environmental justice module for the Cal/EPA Basic Inspector Academy. Focused enforcement initiatives within low income and minority communities are also components of Cal/EPA's Boards and Department's enforcement programs.

The Air Resources Board (ARB) has developed specific enforcement projects and policies intended to benefit these communities including the Roadside Inspection of Heavy Duty Diesel Trucks Project in which the Enforcement Division of the ARB, in conjunction with the California Highway Patrol, conducts random roadside inspections of heavy duty diesel trucks to monitor for compliance with emissions, environmental, and safety regulations. In the third quarter of 2001, ARB staff conducted 1,237 truck inspections in low-income and minority communities, predominantly near the Ports of Los Angeles and Long Beach, and in the Boyle Heights area of Los Angeles. Approximately seven percent of the vehicles received citations or notices of violation for noncompliance. Cal/EPA staff fostered similar enforcement-related projects throughout the Agency in 2002.

Cal/EPA legal staff provides legal support for the Interagency Working Group and the Environmental Justice Advisory Committee formed as part of the implementation of Government Code sections 71113-71114. These groups will be instrumental in forming an agency-wide environmental justice strategy for Cal/EPA. In 2002, staff initiated the development of a legal strategy for environmental justice including a review of existing programs, laws, policies and regulations to determine what actions are possible within the existing legal framework and also what changes or legislative fixes may be necessary to advance the Environmental Justice program at Cal/EPA.

Cal/EPA staff attends meetings with the United States Environmental Protection Agency (USEPA) concerning complaints filed with that agency alleging violations of Title VI by one or more of the Cal/EPA boards, offices or departments. USEPA is pursuing resolution some of the complaints through a mediated process that will include participation by Cal/EPA.

K. CAL/EPA ENFORCEMENT PRIORITIES FOR 2003:

1. TRAINING

In light of the current state budget situation, Cal/EPA is reviewing training planned for 2003-2004 and making cancellations, modifications, and pursuing alternate sources of funding to minimize fiscal impacts. Training sessions are being reduced, relocated and modified to meet critical needs while minimizing costs. Cal/EPA will continue to offer training opportunities for California's environmental enforcement community through the Cal/EPA Basic Inspector Academy and other courses, as appropriate, and within budgetary constraints. We also plan to update our clearinghouse of environmental enforcement training opportunities. Alternative funding sources such as the Penal Code §14300 account and federal grants are being sought.

2. ENFORCEMENT REFERRALS

Cal/EPA expects to continue its cross media investigations, and to refer cases to the Attorney General's Office or other prosecutors as appropriate.

3. DATA PROJECT

Cal/EPA expects to continue coordination of the data integration project in cooperation with its Boards, Departments and Office and the local environmental enforcement community. Effective enforcement requires good data management and an ability to quickly obtain compliance histories of facilities being investigated. Cal/EPA recognizes that as the number of regulated facilities grows, the need for effective information management will also rise. The U.S. EPA Network Readiness Grant provided through the Integrated Data Environmental Assessment (IDEA) project, will enable Cal/EPA to make significant progress in this important area.

4. GRANT REGULATIONS

In 2003, Cal/EPA proposed regulations designed to implement the provisions of AB2486 (2002), the Environmental Enforcement and Training Act of 2002. The grant program established by the new law will provide needed supplemental funding for environmental enforcement and training activities through the California District Attorney's Association, the Peace Officer Standards and Training Commission, Cal/EPA and other state and local agencies.

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II.

STATE WATER RESOURCES CONTROL BOARD

A. AN OVERVIEW

1. STATE WATER RESOURCES CONTROL BOARD (SWRCB)

Created by the State Legislature in 1967, the SWRCB's mission is to preserve, enhance and restore the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations. The joint authority of water allocation and water quality protection enables the SWRCB to provide comprehensive protection for California's water. The SWRCB consists of five full time salaried members, each filling a different specialty position. Board members are appointed to four year terms by the Governor and confirmed by the Senate.

a. SWRCB Division Of Water Rights

Anyone wanting to divert water from a stream or river not adjacent to his or her property must first apply for a water right permit from the SWRCB. The SWRCB issues permits for water rights specifying amounts, conditions and construction timetables for diversion and storage. Decisions reflect water availability, recognizing prior rights and flows needed to preserve in-stream uses, such as recreation and fish habitat, and whether the diversion is in the public interest.

b. SWRCB Division of Water Quality (DWQ)

As of December 2002, the SWRCB's regulatory programs are now combined in DWQ. The Groundwater Quality Branch of DWQ includes programs that regulate underground storage tanks, Land disposal facilities, the Department of Defense, Forestry, Abandoned Mines, and the Non-Point Source Program. The Surface Water Regulatory Branch includes Basin Planning and Standards development, the TMDL Sections, and the NPDES (including Stormwater), WDR and Water Quality Certification Programs.

2. REGIONAL WATER QUALITY CONTROL BOARDS

There are nine Regional Water Quality Control Boards (Regional Boards). Their mission is to preserve and to enhance the quality of California's water resources and ensure proper allocation and efficient and beneficial use for present and future generations. The Regional Boards are organized on a watershed basis to accommodate local differences in climate, topography, geology and hydrology. Each Regional Board has nine part-time members who

are also appointed by the Governor and confirmed by the Senate. The Regional Boards develop basin plans for their hydrologic areas, issue waste discharge permits, take enforcement actions against violators and monitor water quality.

The Regional Boards have aggressive programs for protecting water quality in surface water and groundwater. The programs involve regulatory, planning, monitoring, cleanup, and enforcement actions related to both point source and non-point source discharges. Non-point sources of pollutants may arise from timber harvesting, dairies, construction projects, vineyards, and other activities. Point source discharges usually involve municipal or community wastewater treatment plants, solid waste disposal sites, industrial sites, and similar facilities. Cleanups may involve releases from underground tanks or spills and leaks from other containers or storage areas. The Regional Boards issue permits, develop water quality standards, implement pollutant control strategies, monitor the quality of the region's waters, conduct special investigations on water quality matters, and perform outreach to the regulated community and interested persons.

The nine Regional Boards lie within different watersheds (see figure 1 for map and contact information):

Figure 1. SWRCB and REGIONAL BOARD Contact Information

State Water Resources Control Board

P.O. Box 100, Sacramento, CA 95812-0100 • www.swrcb.ca.gov

Office of Legislative and Public Affairs:
Office of Legislative Information: (916) 341-5251
Office of Public Affairs Information: (916) 341-5254

Financial Assistance Information: (916) 341-5700
Water Quality Information: (916) 341-5455
Water Rights Information: (916) 341-5300

California Regional Water Quality Control Boards

North Coast Region (1)
Executive Director, Susan A. Warner
5550 Skylane Blvd., Ste. A
Santa Rosa, CA 95403
(707) 576-2220

San Francisco Bay Region (2)
Executive Director, Loretta K. Barsamian
1515 Clay Street, Ste. 1400
Oakland, CA 94612
(510) 622-2300

Central Coast Region (3)
Executive Director, Roger W. Briggs
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
(805) 549-3147

Los Angeles Region (4)
Executive Director, Dennis A. Dickerson
320 W. 4th Street, Ste. 200
Los Angeles, CA 90013
(213) 576-6600

Central Valley Region (5)
Executive Director, Tom Pinkos
3443 Routier Road, Suite A
Sacramento, CA 95827-3098
(916) 255-3000

Fresno Branch Office
1685 E. Street
Fresno, CA 93706
(559) 445-5116

Redding Branch Office
415 Knollcrest Drive, Suite 100
Redding, CA 96002
(530) 224-4845

Lahontan Region (6)
Executive Director, Harold J. Singer
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150
(530) 542-5400

Victorville Branch Office
15428 Civic Drive, Ste. 100
Victorville, CA 92392-2383
(760) 241-6583

Colorado River Basin Region (7)
Executive Director, Phil Gruenberg
73-720 Fred Waring Dr., Ste. 100
Palm Desert, CA 92260
(760) 346-7491

Santa Ana Region (8)
Executive Director, Gerard J. Thibeault
California Tower
3737 Main Street, Ste. 500
Riverside, CA 92501-3339
(909) 782-4130

San Diego Region (9)
Executive Director, John Robertus
9174 Skypark Ct., Ste. 100
San Diego, CA 92124-1324
(619) 467-2952

State of California
Gray Davis, Governor

California Environmental Protection Agency
Winston H. Hickox, Secretary

State Water Resources Control Board
Arthur G. Baggett, Jr., Chair

B. SWRCB AND REGIONAL BOARD ENFORCEMENT ACCOMPLISHMENTS

1. ENFORCEMENT ACCOMPLISHMENTS - GENERALLY

a. Improved Data Management Systems

The SWRCB's Strategic Plan includes a key strategic project designed to help the SWRCB and Regional Boards achieve measurable and continuing increases in the rate of compliance with state and federal laws. A key aspect of this is better data management. Unfortunately, the monumental challenge of the statewide General Fund deficit caused the funding scheduled for a major data system improvement to be cut. Alternative approaches and alternative funding sources continue to be investigated to find a winning combination of cost savings through system cutbacks and an effective revised system. Because of these cut backs and associated delays, delivery of a revised system will not occur earlier than Spring 2004. The primary goal of the revised system remains development of a system for electronic submittal of discharger self-monitoring reports and automatic screening for compliance. This project is referred to as the E-SMR project.

During 2001 and 2002, the SWRCB concentrated efforts on enhancements to the Compliance Module of the current system. The SWRCB remains committed to continuing its efforts to improve system functionality, provide user training, and address data quality concerns.

b. Revised Water Quality Enforcement Policy

On February 19, 2002, the SWRCB adopted Resolution No. 2002-0040, approving the revised Water Quality Enforcement Policy. The primary goal of the Water Quality Enforcement Policy is to solidify a framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefits.

The Policy includes the following elements:

- An overview of water quality enforcement options.
- A process for identifying enforcement priorities and to assist in choosing the appropriate enforcement response.
- Provisions for more efficient use of standardized permit and enforcement order language.
- Information to assist in integrated enforcement efforts with other agencies.

- Procedures for response to fraudulent reporting or knowingly withholding data.
- Specific guidance regarding assessment of administrative civil liability, use of supplemental environmental projects and compliance projects, handling of criminal activities, guidance on what constitutes minor violations, and standards for violation and enforcement reporting.

2. PROGRAMMATIC ENFORCEMENT ACCOMPLISHMENTS

a. SWRCB's Compliance Assurance and Enforcement Unit (CAEU)

CAEU was created in late 1997. The Unit's initial objective was to assess the SWRCB's and Regional Boards' enforcement programs and develop a Strategy to improve compliance assurance and enforcement activities statewide. CAEU strives to implement the recommendations of the Enforcement Strategy (1998), the Enforcement Initiative (1999), the Strategic Plan (2001), and the Water Quality Enforcement Policy (2002).

CAEU plays a lead role in the design and implementation of the compliance module of the SWIM database. CAEU organizes a bi-monthly Enforcement Roundtable where enforcement coordinators from all nine Regional Boards, Cal/EPA, USEPA, and local prosecutors meet to discuss/address current enforcement issues. CAEU provides support on proposed legislation, develops policies and procedures, provides training on compliance and enforcement topics and provides support on request for complex and/or criminal investigations.

b. National Pollutant Discharge Elimination System (NPDES) Program

NPDES permits, issued by the SWRCB or Regional Boards, are required for all point source pollution discharges going directly into California's surface waters. Point source discharges are defined as planned, non-agricultural waste discharges from man-made conveyance systems. The NPDES Program is mandated by the Clean Water Act and administered by the State. California has approximately 2,600 active NPDES permits protecting the State's water resources from industrial and municipal waste discharges.

c. Waste Discharge Requirement (WDR) Program

Under the WDR Program, the SWRCB and Regional Boards regulate liquid waste disposal impoundments and similar land disposal systems for liquid and solid wastes. The WDR program is authorized by provisions of the California Water Code. The permitting system addresses many types of waste discharges, including municipal, industrial and commercial sources. This system helps protect California's groundwater resources from being adversely

impacted from such waste disposal operations. Groundwater is an important source of water for the State as drinking water, crop irrigation water and water used in industrial and commercial operations. California has approximately 3,284 active WDRs protecting its groundwater resources.

d. Land Disposal Program

Through the Land Disposal Program, the SWRCB and Regional Boards regulate solid waste disposal sites that could impact water quality. These include landfills, surface impoundments, waste piles, and land treatment units. The SWRCB is specifically required to develop regulations to "ensure adequate protection of water quality and statewide uniformity in the sitting, operation and closure of waste discharge sites". These regulations establish a classification system for waste and disposal sites and include requirements for siting, construction, operation, monitoring, cleanup and closure. Statewide, approximately 795 sites have WDRs within the Program.

e. Underground Storage Tank Enforcement Unit

In 2001, an enforcement unit was created in the SWRCB Underground Storage Tank (UST) Program to investigate multi-jurisdictional violations of UST requirements and alleged fraud to the UST Cleanup Fund. This Unit also administers the Office of Tank Tester Licensing and enforces tank tester licensing violations. This unit was instrumental in the investigation of the ARCO UST case, described on below.

C. SWRCB QUANTITATIVE ENFORCEMENT INFORMATION-CRIMINAL, CIVIL, AND ADMINISTRATIVE CASE FILINGS

1. FORMAL ENFORCEMENT ACTIONS

a. Statistical Information

The following table shows the number of formal enforcement actions taken by the SWRCB and Regional Boards during the past four years. It does not include liabilities, penalties or settlements included below.

Type of action	Calendar Year			
	1999	2000	2001	2002
District Attorney/ US Attorney Referrals/Assists	31	34	53	45
Referrals to the Attorney General	8	10	3	3
Referrals to other Agencies	1	6	0	0
13267 Letters[8]	663	980	767	471
Time Schedule Orders[9]	6	28	11	13
Cleanup and Abatement Orders	178	148	113	171
Cease and Desist Orders	68	42	38	21

[8] California Water Code sections 13267(b) and 13383 allow RWQCBs to conduct investigations and to require technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste.

[9] Pursuant to California Water Code section 13300, the RWQCB can require the discharger to submit a time schedule which sets forth the actions that the discharger will take to address actual or threatened discharges of waste in violation of requirements.

b. The Total Of Liabilities, Penalties, And Restitution Recovered.

In the table below, "liabilities" are cash payments made in settlement of administrative civil liabilities (ACLs) and "penalties" are payments made for mandatory minimum penalties (also administrate penalties). The following table shows the total amount of money collected in payment of liabilities and penalties during the past four years.

Type of action	Fiscal Year			
	1998-1999	1999-2000	2000-2001	2001-2002
Liabilities and Penalties	$2,200,000	$6,400,000	$10,565,063	$6,089,205

In the table below "restitution" is cost reimbursement for cleanup activities in the Spills, Leaks, Investigations and Cleanup Program. The following table shows the total amount of money collected for cost reimbursement during the past four fiscal years.

Type of action	Calendar Year			
	1999	2000	2001	2002
Restitution	$ 3,642.285	$ 2,722,631	$ 4,046,988	$ 4,365,182

c. Supplemental Environmental Projects and the Number Cleanups and Corrective Actions initiated.

The SWRCB or Regional Board may allow a discharger to satisfy some or all of the monetary assessment imposed in an ACL Complaint or Order by funding Supplemental Environmental Projects or SEPs. SEPs are projects that enhance the beneficial uses of the waters of the State, provide a benefit to the public at large, and that are not otherwise required of the discharger. The following table lists the approximate value of Supplemental Environmental Projects approved by the SWRCB and Regional Boards during the past four fiscal years.

Supplemental Environmental Projects	Fiscal Year			
	1998/1999	1999/2000	2000/2001	2001/2002
Approximate value	$3,200,000	$1,300,000	$2,600,000	$3,160,000

As detailed in the Water Quality Enforcement Policy (SWRCB 2002), the SWRCB and Regional Boards use progressive enforcement to initiate corrective actions. For some violations, an informal response or a Notice to

Comply is sufficient to inform the discharger of the violation and to obtain a swift return to compliance. If the violation continues, the enforcement response is escalated to increasingly more formal and serious actions until compliance is achieved. Formal enforcement may be appropriate first response for serious violations

The following table identifies the number of Cleanup and Abatement Orders and Cease and Desist Orders issued to compel corrective actions during the past four calendar years.

Type of action	Calendar Year			
	1999	2000	2001	2002
Cleanup and Abatement Orders	178	148	113	171
Cease and Desist Orders	68	42	38	21

2. INFORMAL ENFORCEMENT ACTIONS

The following table identifies the number of informal enforcement actions taken by the SWRCB and Regional Boards during the past four calendar tears.

Type of action	Calendar Year			
	1999	2000	2001	2002
Verbal warning	275	833	683	640
Staff Letters	496	1632	1164	1378
Notices of Violation	2803	1634	1826	1732
Notice to Comply*	96	251	431	711

***** According to the SWRCB Enforcement Policy, Notices to Comply are formal enforcement action. However, they are included here as they are generally regarded as informal actions as no penalties apply.

3. INSPECTIONS

The following table identifies the number of inspections conducted by the SWRCB and Regional Boards during the past four fiscal years. Increases in the numbers of inspections are attributable to new staff positions received in 2000 and 2001.

Program	Fiscal Year			
	1998-99	1999-2000	2000-01	2001-02
NPDES	1163	1244	595	1581
Stormwater	1642	N/A	4130	4463
Land Disposal	1039	979	1044	1036
WDR Program	1526	1750	1569	2112
Underground Storage Tanks	32	65	104	1352
Pretreatment	19	33	71	67
Total	5421	4071	7513	10611

4. SIGNIFICANT ENFORCEMENT ACTIONS –OFFICE OF OPERATOR CERTIFICATION

The SWRCB Office of Operator Certification investigates complaints related to the activities and qualifications of Waste Water Treatment Plant operators. Since January 1999, the office has opened 90 new cases of which 81 cases have been resolved. The disciplinary actions taken during 2002 are described below.

Operator: Robert Doyle
Location: Armona CSD
Final Action: Restriction to Grade I for one year and Reprimand

Nature of Violation/Findings: Mr. Doyle failed to renew his Grade I operator certification for a period of 41 months after the expiration of the renewal grace period. Mr. Doyle also holds a water treatment operator certificate from DHS, and did renew that certification during the same time period. Mr. Doyle assured the District that he had renewed his certification during his annual performance appraisals by the District. In addition Mr. Doyle failed to insure that his subordinate operator obtained an operator-in-training certificate for a period of two years. The subordinate operator therefore failed to accumulate credit toward his certification. OOC proposed issuing Mr. Doyle a Grade I certificate and restrict him to Grade I for one year and reprimand him.

Operator: William Perley
Location: Crockett-Valona Sanitary District
Final Action: Suspend Grade V for One Year

Nature of Violation/Findings: From the early 1990s until mid-1998, Mr. Perley was the CPO for the District. During the period investigated, 1995 through 1999, approximately 50 chlorine residual permit violations were found that were not reported to the Regional Board. Mr. Perley was aware of these residual violations and the general problem the plant had maintaining its chlorine

discharge limit, but failed to ensure there was an adequate system in place to record and report the violations to the Regional Board. Mr. Perley also knowingly allowed an uncertified operator to operate for 78 days. OOC proposed to suspend Mr. Perley's certificate for one year; at the end of one year Mr. Perley's certificate will be reinstated provided all fees are current. Mr. Perley did not appeal OOC's decision.

Operator: Lowell Wilds
Location: Manteca, City of
Final Action: Reprimand

Nature of Violation/Findings: Mr. Wilds was responsible for arming the plant's audible alarms on the morning of July 16, 2001. Mr. Wilds did not arm the SCADA system at the beginning of his shift per the plant's checklist because the control room was occupied; Mr. Wilds intended to return later that morning to arm the system. Mr. Wilds did not return to the alarm system as he intended, and later that morning the SO_2 supply ran out. The plant discharged approximately 350,000 gallons of under chlorinated effluent before the problem was discovered. OOC reprimanded Mr. Wilds for his negligence. Mr. Wilds was also suspended by the City for three working days.

Operator: Evert Jacobson
Location: Hopland Public Utility District
Final Action: Paid $2800 Administrative Civil Liability (ACL)

Nature of Violation/Findings: Mr. Jacobson failed to submit monthly monitoring reports to the Regional Board for a period of two years and failed to report seven effluent violations. Mr. Jacobson received a Notice of Violation on behalf of the District in June 2001 for not submitting monitoring reports for the first year of the two-year period, but continued to neglect his responsibility to submit the reports for another year. An ACL for $2800 was issued and was paid.

Operator: Diego Martinez
Location: Eastern Municipal Water District
Final Action: Reprimand

Nature of Violation/Findings: Mr. Martinez was suspended by the District for 40 working hours for negligently allowing sludge to overflow a sludge drying area in June 2002. Mr. Martinez was responsible also for a similar incident in January 2002. Mr. Martinez was aware of the overflow in June 2002 and tried unsuccessfully to correct it, but left work without reporting the incident to his supervisor. The overflow was discovered the next day; Mr. Martinez admitted causing the overflow when confronted. The OOC reprimanded the OOC's decision.

5. SIGNIFICANT REGIONAL BOARD ENFORCEMENT ACTIONS

C&H Sugar: The San Francisco Bay Regional Board issued a $367,000 Administrative Civil Liability (ACL) and an accompanying $30,000 to C&H Sugar in May 2002. The primary violation was the discovery of falsified information supplied to the Board in monthly monitoring reports (discovered by a Board inspector). Regional Board staff also assisted the US Attorney in the successful criminally prosecution of the plant operator for falsifying information.

Alpine Road Winery: The San Francisco Bay Regional Board issued an $18,000 ACL in September 2002 for the illegal fill of a stream to construct a road from one part of the winery to another.

Hiddenbrook Golf Course: The San Francisco Bay Regional Board issued a $147,000 ACL in October 2002 for the intentional discharge of a pesticide to a pond at the golf course, which killed wildlife in the pond. The wildlife may have included the endangered red-legged frog, but since the pesticide turned the pond highly acidic and essentially dissolved the animals, it was not possible to prove this.

City of Hollister: At its November 2002 meeting, the Central Coast Regional Board issued an Administrative Civil Liability Order for $1.2 million to the City of Hollister's for its May 6, 2002 spill from the City's Industrial Wastewater Facility. The spill was a result of a catastrophic failure of one of the City's wastewater pond levees, resulting in fifteen million gallons of partially treated wastewater being released to the San Benito River (largest sewage spill in the history of the Central Coast Region). Of the $1.2 million, $1,176,000 were set aside for the completion of six compliance and supplemental environmental projects in the Hollister area. Twenty-four thousand dollars will be paid to the State Water Resources Control Board's Cleanup and Abatement fund for staff costs.

Weyrich Development Company, Inc., San Luis Obispo County: At its May 2002 meeting, the Central Coast Regional Board issued an Administrative Civil Liability Order in the amount of $192,375 to Weyrich Development Company, Inc., for violating its General Construction Storm Water Permit at a 90-acre construction project in Paso Robles. Violations included discharging sediment and other pollutants into waters of the state and failure to develop, revise and implement an adequate storm water pollution prevention plan. The Board assessed a civil liability of $192,375.

Pacific Gas and Electric Company (PG&E): At its December 2002 meeting, the Central Coast Regional Board approved a settlement with Pacific Gas and Electric Company, regarding alleged discharges of back flush water from the Moss Landing Power Plant (now owned by Duke Energy) to Moss Landing Harbor from 1974 through 1998. PG&E agreed to pay $5,000,000 for:

- “Non-Point Source Projects Fund” for projects in the harbor watershed consistent with the State’s Toxic Hot Spots Cleanup Plan or the Monterey Bay Marine Sanctuary’s Plan for Agriculture ($2,850,000);
- Monitoring the Non Point Source Fund projects to determine effectiveness and need for modification ($950,000);
- Central Coast Ambient Monitoring Program projects in Monterey Bay and associated watersheds ($950,000); and Regional Board staff oversight costs to conduct these projects ($50,000 per year for five years).

Clinical Laboratory, Santa Barbara: In September 2002, Central Coast Regional Board staff accompanied staff from the California Department of Health Service's Environmental Laboratory Accreditation Program on a joint inspection of Clinical Laboratories in Lompoc, Santa Barbara County. Regional Board staff provided the results of the inspection to the FBI. The United States Attorney's office is now handling the case.

United States Army Corps of Engineers (USACOE): The Los Angeles Regional Board issued a Cleanup and Abatement Order to the USACOE for violating creating a condition of pollution or nuisance by discharging piles of debris and vegetation into the Arroyo Seco waterway. The USACOE immediately initiated a cleanup and abatement program, and removed all piles of debris and vegetation.

City of Thousand Oaks: In October 2002 the Los Angeles Regional Board reconsidered the penalty assessment portion of its Decision on ACL Complaint No. 98-024 against the City of Thousand Oaks for a sewer line rupture on February 3, 1998, as required by the judgment and writ of mandate issued in the case of City of Thousand Oaks v. California Regional Water Quality Control Board and State Water Resources Control Board, and took action to impose a new penalty assessment against the City of Thousand Oaks for $2,146,725.

City of Avalon: The Los Angeles Regional Board issued an Administrative Civil Liability to the City of Avalon (City) for $85,058 for discharging approximately 130,000 gallons of raw sewage from the City’s sewage collection system on February 25, 2001 and approximately 13,000 gallons of raw sewage from the City’s sewage collection system on May 22, 2001 into the Pacific Ocean. The City has until February 15, 2003 to submit a signed waiver and the penalty assessed to the Regional Board.

Las Virgenes Municipal Water District, Tapia Water Reclamation Facility: The Los Angeles Regional Board issued an Administrative Civil Liability to the Las Virgenes Municipal Water District, Tapia Water Reclamation Facility for $20,000, for violating California Water Code section 13376, by discharging approximately 24,759 gallons of sewage sludge on October 13, 2002, and approximately 28,000 gallons of sewage sludge on December 8, 2002 into Las Virgenes Creek.

Tosco Refining Company: The Los Angeles Regional Board issued an Administrative Civil Liability to Tosco Refining Company, Wilmington Plant, for $84,640, for violating California Water Code Section 13376, by discharging 3.25 million gallons of oily wastewater to the wetland portion of Ken Malloy Regional Park and the Port of Los Angeles. Regional Board staff have received correspondence from Tosco Refining Company, dated October 21, 2002, consisting of a signed waiver, a check for $21,160 and a letter agreeing to commit $63,480 towards Supplemental Environmental Projects.

Storm water. In July 2002, the Los Angeles Regional Board issued ACLs to six dischargers for violating State Water Resources Control Board Water Quality Order No. 97-03-DWQ (NPDES Permit No. CAS000001), *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities*, for failure to develop, implement and maintain a Storm Water Pollution Prevention Plan on-site.

IMC Chemicals Corporation: The Lahontan Regional Board issued a $2,000,000 ACL to the IMC Chemicals Corporation in May 2002. IMC Chemicals operates three brine processing facilities at Searles Lake in San Bernardino County, and violated Orders of the Board by discharging petroleum products to Searles Lake that adversely affected wildlife. The ACL resulted in a cash payment of $250,000 to the State Cleanup and Abatement Account, a Compliance Project costing $475,000 to abate the discharges, and a Supplemental Environmental Project costing $1,275,000 to improve habitat conditions for wildlife.

CalTrans: The Lahontan Regional Board conducted a series of enforcement actions against CalTrans, Districts 3 and 9, associated with violations of its NPDES Construction Activity Stormwater Permit requirements. In 2002, District 3 was issued three separate ACLs totaling $160,000 for violations associated with the Interstate 80 Rehabilitation Project near Truckee. Of that amount, $140,000 was paid to the State Cleanup and Abatement Account, and $20,000 was stayed when CalTrans conducted Stormwater Pollution Prevention training for all personnel working on the project (at an estimated cost of $146,000). In 2001, a $20,500 ACL was issued to District 9 for violations associated with the U.S. Highway 395 Rush Creek Improvement Project near Mono Lake. In lieu of payment of the ACL, in August 2001 CalTrans completed a $45,000 Supplemental Environmental Project to treat stormwater discharges from the community of Lee Vining.

Squaw Valley Ski Corp (SVSC): In May 2001, the Lahontan Regional Board referred to the Attorney General previous and ongoing violations of Waste Discharge Requirements by the SVSC. In December 2001, the Lahontan Regional Board also adopted a Cleanup and Abatement Order on the entire Squaw Valley Ski Area, primarily to abate erosion and stormwater runoff problems adversely affecting Squaw Creek. To date, SVSC has submitted work

products in compliance with specific requirements of the CAO, and the Attorney General is continuing the prosecution against SVSC for the past violations.

Ultra Wheel, Orange County; Santa Ana Regional Board staff conducted surveillance of a suspected illegal discharge to the storm drain from Ultra Wheel facility located in the City of Buena Park, Orange County. Based on this findings the Orange County District Attorney's office filed criminal charges against the corporation and top managers for toxic waste dumping into Coyote Creek. The case is pending.

Rancho Transportation, Inc., San Bernardino County: Santa Ana Regional Board staff, in collaboration with the City of Highland, investigated the deliberate and belligerent dumping of cement wastes to the street from where it was discharged into Plunge Creek. The case was referred to the San Bernardino County District Attorney. The driver of the cement truck, Mr. Adono King, was sentenced to 90 days in the San Bernardino County jail.

Big Bear Valley Mutual Water Company, San Bernardino County: Santa Ana Regional Board staff and the San Bernardino County Environmental Crimes Task Force investigated the illegal dumping of drilling mud into Zanja Creek. The case was referred to the San Bernardino County District Attorney's office. The case was settled for civil penalties and cost recovery for the agencies that investigated the case. The reimbursement for Santa Ana Regional Board staff time was $5,550.00.

Vulcan Materials (Calmat), Riverside County: Santa Ana Regional Board staff and the Department of Fish and Game investigated the illegal discharge of asphalt and aggregate materials to Temescal Creek from the Vulcan Materials facility in Corona. The case was referred to the Riverside County District Attorney's office. Vulcan Materials entered into a settlement agreement with the District Attorney's office. The agreement included a work plan for removal of dumped materials and restoration of the area, a stipulation for civil penalty and reimbursement for all investigative costs. As part of this settlement, $1,400.00 was paid for Santa Ana Regional Board's staff time.

ARCO, Orange County: Santa Ana Regional Board staff assisted the Orange County District Attorney's office in its environmental protection lawsuit against Arco. The Orange County District Attorney filed a lawsuit against ARCO, ARCO Chemical Company, BP Amoco Corporation (owned by ARCO), Lyondell Chemical Company and Thrifty Oil Company. The lawsuit alleged that these companies violated numerous state statutes and regulations related to the installation, maintenance, monitoring, permitting, testing and overall operation of underground gasoline storage tanks. ARCO settled the case for $8 million dollars and agreed to clean up the sites and bring all ARCO sites into full compliance. The case against Lyondell Chemical Company and Thrifty Oil Company are pending.

Thrifty Best Service, San Bernardino and Riverside Counties: Santa Ana Regional Board staff conducted surveillance of suspected illegal dumping by Thrifty Best Service (Thrifty Best) in San Bernardino and Riverside counties. These surveillance activities were conducted, as part of a statewide task force set up by the California Environmental Protection Agency. Central California Wastepaper, Inc., owns the company and its offices are located in Fresno, California. Thrifty Best is one of the largest grease haulers in California and serves many businesses in different parts of the State. San Joaquin County District Attorney in collaboration with 12 other District Attorneys filed a civil lawsuit against Thrifty Best alleging illegal dumping of grease wastes to the sanitary sewer and the storm drain systems. Thrifty Best Service faces penalties under the complaint in excess of $3 million. Prosecutors also obtained a court order preventing Thrifty Best Service from illegally disposing of grease waste while the action is pending.

ARCO, Lake Ellsinore, Riverside County: Based on a report from Riverside County, Santa Ana Regional Board staff investigated the alleged pumping of diesel into the street from an underground storage tank excavation at the Arco station in Lake Ellsinore. The case was referred the US Attorney. The owner of the gas station was indicted, pled guilty and was placed put on probation.

Swager & Sons Dairy, Riverside County: Santa Ana Regional Board staff assisted the U. S. Attorney's office regarding the illegal discharge of wastewater from the Swager & Sons Dairy in Corona. Dean Swager pleaded guilty to a felony violation of discharging manure-contaminated water from the Swager & Sons Dairy to a tributary of the Santa Ana River. Dean Swager was issued a fine of $10,000 by the U. S. District Court in Santa Ana, and was sentenced to two years probation.

Rialto-Colton Perchlorate Pollution, San Bernardino County: Perchlorate in groundwater in the Rialto-Colton area has resulted in the closure or restricted use of 20 municipal water supply wells belonging to four water purveyors. This water supply loss threatens the ability of these water purveyors to provide an adequate supply of perchlorate free water to their customers. The Executive Officer issued ten Investigation Orders to suspected dischargers of perchlorate in northern Rialto. One of these Orders has been appealed to the SWRCB.

6. TRIBAL OUTREACH ACCOMPLISHMENTS

May 3, 2002 Inter-Tribal Water Conference. The Colorado River Basin Regional Board staff gave a presentation to various tribes explaining the role of the Regional Board in protecting water quality and discussed building a closer alliance with the tribes.

June 7, 2002 Quality Assurance Project Plans Training. The Colorado River Basin Regional Board staff facilitated training on writing QAPPs for interested parties (including tribes) for obtaining grant monies.

June 8, 2002 Citizens Water Quality Monitoring Sampling Event. Members of the Clean Water Team, (Colorado River Basin Regional Board and SWRCB staff), facilitated a water quality monitoring "snapshot" of San Andreas Creek in Palm Springs. Members from the Agua Caliente Band of Cahuilla Indians hosted and participated in the sampling event.

October 11-12, 2002 Citizens Water Quality Monitoring Workshop and Sampling Event. Members of the Clean Water Team facilitated a water quality monitoring training and "snapshot" of portions of Lake Havasu in Havasu Lake City. Members from the Chemehuevi Indian Tribe hosted and participated in the two-day event.

D. 2002 ENFORCEMENT RELATED LEGISLATION AND RULEMAKING

AB 1969 (Campbell). Orange County Sanitation District (OCSD). Requires all wastewater discharged into the Pacific Ocean by OCSD, after a date determined by the Santa Ana Regional Board, or 1/1/2013, whichever is earlier, to be subject to at least secondary treatment requirements of the federal CWA, or more stringent standards determined by the Regional Board or the SWRCB. This law also exempts the OCSD from the mandatory minimum penalties provisions during the period of transition to the secondary treatment process.

Assembly Bill 2267 (Kelley) Water Rights - Improves the SWRCB Division of Water Right's ability to require prompt corrective actions for violations that are not subject to an ACL complaint. This bill added authority that streamlined the cease and desist order process and will aid in achieving prompt corrective actions, thereby expediting the Division's ability to close ongoing cases.

AB 2351 (Canciamilla) Mandatory Minimum Penalties (MMP) – Exemptions Allows Regional Boards, with the concurrence of the discharger, to direct a portion, above the former $3,000 limit, of a MMP to be expended on a Supplemental Environmental Project, assures that a portion of the MMP is deposited into the SWRCB's Cleanup and Abatement Account, and eliminates the preparation of a pollution prevention plan as an alternative to an MMP. Violations of more than one pollutant parameter from a "single operational upset" of a biological treatment process would be treated as a single violation, even if the violations lasts for more than a day up to 30 days. Exempts from MMPs, under certain conditions, the operation of a new or reconstructed wastewater treatment plant unit or process, including a publicly owned treatment works in Orange County, as it upgrades to federal secondary treatment standards.

AB 2481 (Frommer). Underground Storage Tanks: (Sponsored by the SWRCB).

Red Tag Provision - provides that upon the discovery of a significant violation, a local agency may, under certain circumstances, affix a red tag to the fill pipe of the non-compliant underground storage tank (UST). Once a red tag has been affixed to a UST, delivery of petroleum product to the tank is prohibited until the violation is corrected and the red tag is removed by the local agency. AB 2481 also repeals obsolete "blue tag" requirements for tanks that were upgraded to meet a 1998 deadline.

Tank Testers' Reporting Requirements - added Section 25284.4(i) of the Health and Safety Code, which requires that tank testers sign tank test reports with an original signature under penalty of perjury.

Administrative Enforcement Order (AEO) process expanded - Previously, only violations of DTSC regulations could be handled through the AEO process. AB 2481 expands that authority to most of the CUPA programs.

The UST Enforcement Unit is developing regulations to implement the enforcement options of local implementing agencies, including "red tag" authority for facilities in significant violation of UST requirements.

AB 2486 (Keeley) Environmental Prosecution - Regional Boards may obtain services of the Environmental Circuit Prosecutor Project in prosecuting violations of water quality laws.

AB 2971 (Strom-Martin) Wastewater Treatment Plant Operator Certification. (sponsored by the SWRCB) Requires all privately-owned wastewater treatment plants that treat domestic wastewater and for which the Regional Boards have issued permits to employ certified operators. Closes a gap in the regulation of operator at approximately 200 private facilities. Authorizes the SWRCB to exempt for four years from this certificate requirement any Class I facility that could not, due to operator error, violate water quality objectives. The SWRCB may impose certain conditions in these exemptions.

SB 1372 (Machado) Agricultural Drainage – Solar Evaporators. Requires the SWRCB to establish, through emergency regulations, minimum requirements for the design, construction, operation and closure of solar evaporators and a fee system for enforcing these requirements. Exempts solar evaporators from the requirements of the Toxic Pits Cleanup Act of 1984. Regional Boards may revoke or modify authorization to operate solar evaporators if violations occur.

SB 1599 (Poochigian) Requests for Stays of Waste Discharge Requirements (WDRs). Authorizes the SWRCB, in ruling on a petition for review of a Regional Board action on WDRs, to grant a stay effective from the date of the

WDRs. Authorizes the Superior Court, in granting a stay pursuant to a petition for review of a SWRCB decision denying a request for a stay of WDRs, to make the stay effective as of the effective date of the WDRs.

SB 1628 (Sher) Representation of State Agencies by the Attorney General
Authorizes the SWRCB and CIWMB to request the AG represent them in actions where another state agency is a party, contract for the services of private counsel, or authorize their own legal counsel when the Attorney General is representing another state agency in litigation involving the SWRCB or the CIWMB.

E. ENFORCEMENT BUDGETS

The Governor's FY 2001-2002 budget provided $1.4 million to undertake a vigorous training program for the SWRCB and Regional Board inspectors and compliance staff. This training was used to improve the effectiveness of our personnel. The training also addressed the large number of new staff due to hiring and staff turnover that need technical training in order to perform their job function effectively. These funds were the initial investment in the SWRCB's Water Quality Academy that will be the ultimate vehicle for training our technical staff and the public.

The training program included some courses specifically related to compliance and enforcement activities as well as technical topics that allow staff to better perform their job functions. The following list is a sampling of the training topics that were developed:

- Applied technical training to meet Total Maximum Daily Load (TMDL) requirements,
- Basic inspection procedures,
- Industrial storm water inspections,
- Construction storm water inspections,
- Legal training on enforcement actions,
- Immediate spill response protocol for staff,
- Emergency spill response for senior and supervisory staff,
- Review of self monitoring reports and other technical reports,
- Sampling procedures,
- Environmental negotiations training, and
- Pollution prevention.

Continued training is critical to the SWRCB and the Regional Boards being able to effectively meet our mission and successfully service the regulated community. The training outlined above is a good first step in meeting our enforcement training needs.

In 2002, funding for development of a comprehensive information management system was cut as part of the statewide efforts to address the General Fund deficit. Travel budget cuts are also impacting the compliance and enforcement activities of the SWRCB and Regional Boards.

F. ENFORCEMENT DATA PROJECTS

The primary goal of the revised system remains development of a system for electronic submittal of discharger self-monitoring reports and automatic screening for compliance. This project is referred to as the E-SMR project. During 2001 and 2002, the SWRCB concentrated efforts on enhancements to the Compliance Module of the current system. The SWRCB remains committed to continuing its efforts to improve system functionality, provide user training, and address data quality concerns.

Data management is a priority for the SWRCB. The SWRCB is working closely with the Regional Boards to identify and prioritize enhancements to the current database. When the budget situation improves, SWRCB will pursue additional funding for data management.

G. ENFORCEMENT INITIATIVES

1. COMPLIANCE ASSURANCE AND ENFORCEMENT INITIATIVE

The SWRCB & Regional Boards are continuing efforts to implement the many short and long-term actions listed in the 1999 Enforcement Initiative. Many of the short-term items have been implemented such as deployment of a temporary data system, adoption of the revised Enforcement Policy, support to the Regional Boards for criminal investigations, and posting all enforcement orders on the Internet. Additional actions are being addressed through the initiatives discussed below. Many of the actions related to data management have been delayed due to budget cuts. Other long-term actions such as improved enforcement of Water Rights violations and enhanced compliance assistance have been impacted by the current budget cuts and will be delayed.

2. INSPECTION INITIATIVE

The current Inspection Administrative Procedures manual is considerably out-of-date and should be revised. The SWRCB and Regional Boards are working with USEPA and their consultant, TetraTech, to evaluate inspection procedures and develop recommendations for new standards and better tools for documenting and tracking the results of inspections. Following this review, the Inspection APM will be revised.

3. ENFORCEMENT TRAINING INITIATIVE

A Training Initiative is underway supported by a one-time, million dollar ($1.092M, FY01/02 budget) contract. Plans are to develop and deliver customized training to State and Regional Board staff, and in the process establish a comprehensive Training Academy. The primary objective of this training is to improve Water Board ability to assure compliance with requirements. One of the early products of this effort is a Water Leadership Program - a suite of courses, designed to enhance the leadership qualities of Water Board staff. Graduates of this program will be certified as skilled practitioners with leadership competencies, like communication, negotiation, facilitation, and stakeholder involvement. The Training Initiative will also include courses designed to make permits (and requirements) more enforceable and a comprehensive enforcement training program (including an inspection module that augments the Cal/EPA Basic Inspector Academy).

4. CLEAN BEACHES INITIATIVE

In support of cleaner waters, the voters of California have passed three bond measures (Proposition 13 in 2000, and Propositions 40 and 50 in 2002), to fund water quality and other resource-based projects. A major recipient will be projects that reduce bacteria and, therefore, health risks at California's beaches. Proposition 13 provides about $32 million to local agencies for Clean Beach projects. Proposition 40 provides another $46 million for Clean Beach projects and Proposition 50, which provides $80 million total for water projects, is also a potential source of funds for Clean Beach projects. The projects funded by these initiatives have focused on diversion of dry weather urban runoff to sewage treatment plants or renovation of sewage collection systems to prevent sewage spills. The initial focus is on improving beach conditions during dry weather because beaches have the highest use during this season. Reducing contamination of storm flows is a much larger problem and is an area that will receive more attention in the future as larger improvements in beach water quality are made.

H. TRAINING CONDUCTED/RECEIVED

The SWRCB supports the Cal/EPA Inspectors Academy by participating in course development and delivery. The Regional Boards consistently send the maximum number of students allowed. In addition, the CAEU offers customized Inspector training at the request of the Regional Boards. To date, the customized training has been presented three times. Presentations will continue until Regional Board's training needs are met.

I. ENVIRONMENTAL JUSTICE (EJ) ENFORCEMENT INITIATIVES

To speed up training of all staff on the fundamentals of EJ, the SWRCB is developing a web-based course for employees and the public. SWRCB is also revising the proposed EJ Policy to incorporate suggestions being made by the Cal/EPA EJ Public Advisory Committee and the Internal Working Group.

J. ENFORCEMENT GOALS AND INITIATIVES FOR 2003

1. IMPROVED DATA MANAGEMENT SYSTEMS

Improvement efforts to the SWRCB information management system will continue as resources permit regarding violation and enforcement information. The SWRCB will continue to explore and implement, as resources allow, electronic submittal of discharger monitoring reports with automatic compliance checking to identify reported violations. Such capability will significantly address current violation data entry lags, as well as accomplish significant other staff efficiencies.

2. IMPLEMENTATION OF THE STATE BOARD ENFORCEMENT POLICY

The enforcement policy includes both long-term and short-term objectives. Due to budgetary constraints, implementation of both will be delayed to various degrees.

Enforcement training is a high priority for the SWRCB and Regional Boards. As part of the SWRCB Training Initiative, comprehensive, customized enforcement training is planned in every Regional Board office during 2003.

Other short-term objectives that remain a high priority include:

- developing tools to help staff identify priority violations;
- listing proposed supplemental environmental projects (SEPs);
- tracking funded SEPs;
- developing a standard format for documenting the basis of assessed liabilities; and
- improving violation and enforcement reporting.

Developing templates for permits and other enforceable orders is a long-term objective because it is expected to improve efficiency, increase consistency and enhance the enforceability of issued orders.

3. COMPLIANCE REPORT CARD

The SWRCB is continuing efforts to compile and report information about compliance status in the water quality programs administered by the Water Boards. The first Compliance Report Card is scheduled for early spring 2003. After review and validation, the information will be posted on the State Board's Internet site, www.swrcb.ca.gov. This should be considered a work in progress as the data system matures and the analytical tools develop.

4. DETECTION OF DATA FRAUD

One possible effect of the fairly recent imposition of mandatory penalties for effluent limit violations is an increased incentive for a facility to falsify data. The SWRCB has considered doing a targeted evaluation of the situation, but limited resources have delayed such work. An SWRCB goal remains a targeted audit of facilities to determine the extent of false reporting to the State and recommendations to address false reporting.

5. TASK FORCE SUPPORT ACTIVITIES

The SWRCB and Regional Boards are active participants on numerous local environmental task forces. The following table identifies the various SWRCB and Regional Board Task Force Representatives.

6. TRIBAL OUTREACH ACTIVITIES FOR 2003

a. In Spring 2003, the Colorado River Basin Regional Board is planning a Citizens Water Quality Monitoring Workshop and Sampling Event for the Torres-Martinez Tribal members.

b. In Fall 2003, the Colorado River Basin Regional Board is planning a Citizens Water Quality Monitoring Workshop and Sampling Event for the Lower Colorado River Indian Tribes

c. The Colorado River Basin Regional Board is planning to attend the "Indian Nations, The Environment, and the State of California" conference (postponed, new date to-be-announced).

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III

AIR RESOURCES BOARD

A. ENFORCEMENT RESPONSIBILITIES OVERVIEW

The mission statement of Air Resources Board's (ARB) Enforcement Division is to protect public health and the environment by maximizing reductions in emissions of air contaminants and exposure to air contaminants through the fair, consistent and comprehensive enforcement of statutory and regulatory requirements for sources of air pollution under ARB jurisdiction. These sources include asbestos, consumer products, motor vehicle fuels, and mobile sources. Stationary sources (e.g. power plants, oil refineries, etc.) are regulated by the 35 local Air Pollution Control Districts and Air Quality Management Districts. For more information about ARB's mission, organization and detailed overview of the enforcement program, visit www.arb.ca.gov/aboutarb.

B. ENFORCEMENT ACCOMPLISHMENTS FOR 1999-2002

1. CREATION OF THE ENFORCEMENT DIVISION

In 2001, steps were taken to consolidate all enforcement activities within the ARB. In prior years, stationary source enforcement programs (i.e., fuels, consumer products, asbestos, and cargo tanks) were housed within the former Compliance Division, while mobile source enforcement activities were administered by the ARB's Mobile Source Operations Division. In April 2001, all enforcement activities consolidated within the newly established Enforcement Division.

The purpose of this consolidation was to improve the consistency in ARB's enforcement practices, and to provide for a more standardized method of reporting enforcement data. One of the Enforcement Division's primary goals is the creation of a unified, integrated case-tracking database for all of ARB's enforcement functions.

Current Enforcement Division initiatives include:

- Implementing section 27159 of the California Vehicle Code, which provides a method for the California Highway Patrol to place heavy duty vehicles and buses out of service at the request of the ARB, for failure of owners to clear violations of the ARB's Heavy Duty Vehicle Inspection Program (HDVIP).

- Working with the Attorney General's Office to secure a delegation that will enable staff to secure payment on civil judgments for delinquent citations of HDVIP and other violations.

- Continuing to implement a penalty payment program that allows payments for violations to be made with credit cards, personal checks, corporate checks, money orders, certified checks, and electronic transfer of funds.

- Continued implementation of the Cargo Tank Advisory Committee

- Developing civil cases against heavy duty vehicle fleets that fail to perform annual inspections in cooperation with local District Attorneys.

2. INITIAL STEPS IN DEVELOPMENT OF INTEGRATED ENFORCEMENT CASE TRACKING DATABASE

One of the more challenging issues encountered by Enforcement Division and Office of Legal Affairs staff is finding ways to keep current all the facts and actions relating to open enforcement cases. To date, each enforcement section has maintained a separate database of cases, and Office of Legal Affairs has kept its own, independent database. Work is underway to consolidate the Enforcement division and Office of Legal Affairs databases into one ARB enforcement program database called the Enforcement Division Information System.

3. MONTHLY CASE REVIEW MEETINGS

After the consolidation of all enforcement activities into the Enforcement Division the monthly case review meetings were expanded to include the stationary source enforcement programs for the fuels, consumer products, vapor recovery, cargo tanks, asbestos, and Strategic Environmental Investigations and Enforcement Section staff. These meetings provide an opportunity for the Division management and staff to keep abreast of new and continuing cases, difficulties that may have surfaced during case resolution, settlement practices, and communication issues with the legal office.

4. ENFORCEMENT ACTIVITIES REPORT

The Enforcement Division and Office of Legal Affairs staff publish annual enforcement status reports each calendar year. These reports are submitted to Cal/PA and other interested parties. The Enforcement Division staff also presents this report to the ARB Board each summer. Copies of these reports and presentations may be viewed on the ARB's Enforcement page located at www.arb.ca.gov/enf/enf.

5. ENFORCEMENT PROGRAM WEB PAGE

Information on the ARB's Enforcement Program is available at www.arb.ca.gov/enf. The contents include overviews of individual programs, enforcement settlement press releases, enforcement advisories, statutes, regulations and contacts. Also available are links to related enforcement areas, for example mobile source in-use compliance programs, and air district enforcement responsibilities. A matrix of case settlements with case summaries is being developed and will be added soon.

6. ENFORCEMENT RELATED LEGISLATIVE ACTIVITIES

Enforcement legislation and related budget actions for 1999-2002:

During 1999 through 2001, ARB implemented provisions of SB 270 (1998,), the "NAFTA Conformity Act". Budget augmentations added four (4) full time heavy duty vehicle inspectors and operating equipment at ARB's California-Mexico border inspection stations at Otay Mesa and Calexico. This increased the Heavy Duty Vehicle Inspection Program compliance rate from 50% to approximately 87% today.

SB 527 (2001), created authority for ARB to develop an administrative civil penalties program. Regulations governing this program were presented to the ARB's governing Board in December 2002, and are pending approval by the Office of Administrative Law. Violators of ARB's regulations may file for an administrative hearing in front of an Office of Administrative Hearings Administrative Law Judge.

C. ARB ENFORCEMENT ACTIVITIES

1. MOBILE SOURCE ENFORCEMENT

The Mobile Source Enforcement Section is responsible for enforcing laws and regulations regarding motor vehicles and engines, including small off road engines such as those in lawn and garden equipment. Examples of mobile source enforcement include detection of vehicles with non-California certified engines and/or emission control equipment and various illegal aftermarket parts. The section conducts inspections at vehicle and equipment manufacturers, new and used vehicle and equipment dealerships, commercial fleets, and retail outlets for other mobile source equipment (i.e. lawn mowers, chainsaws, etc.) to ensure that the vehicles and engines used or offered for sale are California certified and equipped with the required emissions control systems.

a. Increased Enforcement of Off-Highway Vehicles (OHV)

Beginning with model year 1998, off highway vehicles sold in California, such as off road motorcycles and all terrain vehicles, are required to have engines certified by ARB. In the beginning of 2001, ARB had twelve cases with manufacturers of non-certified engines and incorrectly coded Vehicle Identification Numbers (VINs) on OHVs and motorcycles.

Enforcement actions in 2001 and 2002 for OHV program include:

- $219,525 in penalties paid by 21 manufacturers and dealers entered for by over 1400 violations discovered at OHV retail stores (uncertified or incorrectly certified OHV engines and OHV's with miscoded VINs).

- Sam's Club Inc. for $10,200 for the sale of non-certified quads manufactured by Flexible-Flyer Wheel Goods (Yerf Dog). Action against Yerf Dog is still pending.

- Costco Wholesale Corporation for $5,200 for the sale of non-certified quads manufactured by Mosquito. Action against Mosquito is still pending.

b. Increased Enforcement of Small Off Road Engines

The small off road engine category consists of off road spark-ignition engines below 25 horsepower, including small utility equipment, lawn mowers and weed trimmers.

Enforcement actions for 2001 and 2002 in the small off road engine program include:

- $150,000 penalties from Home Depot and MTD Corporation for the sale of or offering for sale 1871 non-certified lawn and garden equipment engines.

- John Deere Consumer Products, Inc. for $100,000 for the sale in California of non-certified engines.

- Costco Wholesale Corporation for $25,000 for offering 240 non-certified Toro lawn mowers for sale, of which 90 were sold, and 150 were recalled.

- Snapper, Inc. for $2,300 for the sale of 14 non-certified mowers.

- Echo, Inc. for $45,000 for avoiding required audit tests.

- Patmont Motor Works, Inc. and Komatsu Zenoah Company for over $100,000 for selling gasoline-powered scooters with non-California certified engines. Corrective action in these matters includes using certified engines on all future California products.

- Riyobi Outdoor Products for $40,000 for selling non-certified products.

c. On-Board Diagnostics (OBD)

On board diagnostic devices are incorporated into the computer systems of new motor vehicles to monitor components that affect emissions of air pollutants. If a problem is detected, the system illuminates a warning light on the vehicle instrument panel. This warning light typically contains the phrase "Check Engine" or "Service Engine Soon". The system also stores important information about the detected malfunction so that a repair technician can accurately find and fix the problem. Currently, there are no legal aftermarket catalysts for OBD II applications. Enforcement division staff investigates auto repair shops that install illegal aftermarket catalysts.

Enforcement actions in 2001 and 2002 for the OBD program include:

- Chips Brake and Muffler for $1,700 for the installation of non-exempted catalytic converters.

- Toyota Motor Corporation for $7,900,000. ARB tests indicated that during the years 1996-1998, Toyota sold vehicles with diagnostic systems that were unable to routinely detect fuel system vapor leaks. ARB ordered a recall of approximately 330,000 cars. The case settled for $1.2 million contribution to the California Air Pollution Control Fund and $4.3 million to environmental improvement projects. In addition, Toyota extended the warranty coverage for defects in the evaporative emission control systems of the affected vehicles. Toyota also agreed to introduce some of their new models earlier than required to comply with ARB's near-zero evaporative emissions standards. The extended warranty and the early compliance efforts are together valued at $2.4 million.

d. Cases Involving Non-California Certified Vehicles

Staff continues to enforce California's requirement that all new vehicles sold in the state have ARB certified engines. The purpose of certification is to ensure compliance with California's air emission standards for vehicles.

Enforcement actions settled in 2001 and 2002 for violations related to sales of non-certified vehicles include:

- Bug Motors, Inc. (138 non-California certified VWs from Mexico) was referred to the Attorney General. Final judgment in the case was signed on December 12, 2001. Consent judgments for defendants Talebi and Fogel were signed in 2001. The judgment included $1,052,500 in penalties and an injunction against any similar future practice. Staff is pursuing collections on these judgments.

- Capps Van and Car Rental, Inc. for $50,000 for importing 27 new non-California certified Ford vehicles into California for use by Lowe's Hardware.

- North Sky Communication, Inc. for $13,000 for the purchase and use of 13 non-California certified vehicles.

- Shelby American, Inc. for $140,000 for the sale and/or the assistance of a sale in California of 28 vehicles that did not comply with state emissions certification regulations.

e. Improper Emission Labeling

Manufacturers are required to certify all engines for sale in California and use appropriate labels to assure engine compliance and maximize inspection efficiency. During the spring of 2001, ARB learned that John Deere sold nearly 25,000 trimmers and blowers outside of California that were incorrectly labeled: "complies with California 2000 regulations." ARB also discovered another set of engines that had emission labels with critical information misprinted. ARB and John Deere agreed to a settlement of $100,000.

f. Non-Certified Motorcycles

All new on road motorcycles sold or offered for sale in California with over 50 cc displacement are required to be certified to meet California emissions standards. Some custom motorcycle manufacturers have tried to circumvent the certification process, and the ARB has actively pursued enforcement actions to bring them into compliance.

Enforcement actions settled in 2001 and 2002 for violations related to non-certified motorcycles include:

- Indian Motorcycle Company, Inc. for $750,000 for offering for sale and/or the sale of 58 non-certified motorcycles.

- V-Twin City (Pomona V-Twin Motorcycle Co.) for $100,000 for offering for sale and/or the sale of 18 non-certified motorcycles.

- Santa Rosa V-Twin (Indian Motorcycle Santa Rosa) for $142,500 for offering for sale and/or the sale of non-certified motorcycles.

g. Coordination with the Department of Motor Vehicles

Both Enforcement Division and Office of Legal Affairs staff have worked very closely with the Department of Motor Vehicles to ensure that off-highway vehicles receive the correct registration sticker. Green and red stickers are issued by DMV for off road motorcycles. Off highway vehicles with green stickers may operate all year. Those with red stickers are restricted for use during prescribed periods based on high ozone conditions that vary by area and air basin. ARB has also formed a work group with DMV to improve communication and cooperation on enforcement issues, and development has started on a regional training program of ARB requirements for DMV field managers.

h. Other Cases Against Dealerships and Fleets

ARB routinely follows up on Certificates of Non-Compliance and initiate enforcement actions for new non-California vehicles. Typically, they require the vehicle(s) to be removed from California in addition to payment of a penalty. The Mobile Source Enforcement staff settles the majority of these cases with typical penalties ranging from $1,000 to $10,000 per vehicle. For 2002, they settled and closed 98 such cases with total penalties of $258,000.

2. HEAVY DUTY VEHICLE ENFORCEMENT

The particulate matter found in diesel exhaust is listed as a toxic air contaminant. The Heavy Duty Diesel Enforcement Sections administer a statewide program of roadside inspections on all heavy duty vehicles and buses licensed for on road use including those from Canada and Mexico to minimize the emissions discharged from these vehicles. These inspections include a scientific test to measure opacity of the emissions from vehicles, and to enforce opacity limits of 55% for pre-1991 engines and 40% for 1991 and later engines. The owners of those vehicles that exceed the limits are issued a citation and are required to repair the engine to bring it into compliance. This section also supports the work of the Mobile Source Operations Division's fleet inspection program by performing enforcement audits when fleets do not comply with the provisions of that regulation.

a. Heavy Duty Vehicle Inspection Program North American Free Trade Agreement/Border Accomplishments

1) Border Inspections

ARB maintains full-time inspectors at the California Highway Patrol Inspection Facilities located at Otay Mesa, and implemented full-time inspections at the Calexico Mexican-American border crossing to test heavy duty vehicles for excessive smoke emissions. The compliance rate at these border crossing has improved dramatically over the past ten years. The failure rate for vehicles crossing the border in the early 1990s was over 50%. At the close of 2002, the failure rate was down to 13%.

2) Outreach

In an effort to educate vehicle drivers and owners in the border area about regulatory requirements, the ARB staff produced public outreach materials including brochures, regulatory booklets, and videos on the ARB's Heavy Duty Vehicle Inspection Program in both English and Spanish.

3) The Tijuana Project

This project is an agreement of cooperation between the State of Baja California, Mexico and the State of California. Its purpose is to carry out a pilot heavy duty vehicle inspection program. Training materials have been translated into Spanish and training has been completed. Three classes have been offered to drivers from Mexico, college instructors, city technicians, and other interested parties.

4) Industry Days

These joint efforts between the Air Resources Board and the California Highway Patrol, held quarterly at each of the Calexico and Otay Mesa inspection sites, provide information on safety, registration, and exhaust emission reduction to independent and fleet owners and operators who cross the border.

5) Tri-National Conference

ARB has been participating with representatives from the Northeast States for Coordinated Air Use Management and other representatives from Canada, the US, and Mexico to work on heavy duty vehicle inspection program coordination issues that arise with the implementation of the North American Free Trade Agreement. A conference was held in March 2002 in San Diego. The attendees discussed Heavy Duty vehicle inspection coordination issues and agreed on various protocols.

b. <u>Heavy Duty Vehicle Inspection Program Accomplishments</u>

1) Inspections

Heavy duty vehicles and buses comprise only 2% of the on road vehicle fleet in California, while disproportionately contributing 30% of the on road fleet's contribution of smog forming oxides of nitrogen and 65% of its particulate matter emissions. ARB aggressively pursues its mandate to prevent heavy duty trucks from being a disproportionate impact to California's clean air. Inspection frequency forms the backbone of the HDVIP. There are approximately 250,000 vehicles subject to the HDVIP program in California.

In 2000, the HDVIP performed 17,372 inspections, which resulted in 906 violations (citations and Notices of Violation) indicating a compliance rate of 92.8%.

In 2001, there were 15,691 inspections performed and 1,016 violations noted (Citations and Notices of Violation) indicating a compliance rate of 93%. Penalties in the amount of $237,400 were assessed, and $155,250 was collected.

In 2002, there were 16,039 inspections performed and 1011 violations noted (citations and Notices of Violation.) Penalties in the amount of $250,200 were assessed, and $185,170 was collected. The compliance rate has remained at 93% for 2002.

2) Delinquent Citations

ARB has instituted a collections program to process delinquent citations from the current roadside emission inspection program. This sends a strong message to the regulated community that violations must be cleared or the violators will be pursued and assessed higher penalties until they are cleared (i.e. the fines have been paid and the engines brought into compliance).

- In 2000, 377 delinquent citations were cleared resulting in $137,576 in total penalties.

- In 2001, 332 delinquent citations were cleared resulting in $63,000 in total penalties.

- In 2002, 237 delinquent citations were cleared resulting in $60,029 in total penalties.

3) Guidance Documents for Heavy Duty Enforcement Programs

ARB contributed to the U.S. EPA's publication of guidance relating to the administration of heavy duty vehicle inspection programs throughout the United States. Work on this project continues through the Tri-National

conference working group and U.S.EPA working group. The objective of these working groups is to unify testing procedures and enforcement protocols throughout North America.

4) Opacity Meter Certification

ARB staff participated in a working group with the Society of Automotive Engineers (SAE) to develop a test procedure to be used to certify the smoke opacity meters used in the heavy duty vehicle inspection program with SAE's specifications (SAE J1667). This work is continuing with the Tri-National and U.S.EPA working groups discussed above.

5) Internet Related Outreach

ARB staff improved program outreach and public information accessibility by developing a Heavy Duty Vehicle Inspection Program web site. Included on this site are all of the program's informational brochures, resources for obtaining a required inspection, the regulations governing the program and other pertinent documents. Staff also obtained a license from the SAE so that their testing procedure, SAE J1667, could be obtained from this web site www.arb.ca.gov/msprog/hdvip/hdvip.

6) California Council on Diesel Education and Technology (CCDET)

The CCDET is a joint effort among industry, California community colleges with diesel technology program, and the ARB where diesel instructors teach the Heavy Duty Vehicle Inspection Program and the Periodic Smoke Inspection Program. The ARB supports the colleges' CCDET Program with staff resources at the classes, training materials, and the school website development.

3. FUELS AND CONSUMER PRODUCTS ENFORCEMENT

a. Fuels Enforcement

The Fuels Enforcement section enforces motor vehicle fuels laws. The Fuels Enforcement Section's duties is made up of several components which broadly fall into two categories: (1) adopting and enforcing fuel specifications, and (2) monitoring the marketing and distributing of fuels in California to ensure they are done so in a way that complies with the California fuels regulations.

Fuels Enforcement Accomplishments for 2002

- Conducted 10 weeks of fuels (gasoline and diesel) inspections at all points of the fuel distribution network to ensure compliance with the fuels regulations.

- Continued a contract with the Internal Revenue Service, Federal Highway Administration, and the State Board of Equalization (BOE) to participate in a project to sample diesel fuel in the tanks of on road vehicles in order to determine whether the vehicles were being fueled with non-taxed (red-dyed) diesel.

- As part of the contract noted above, ARB inspectors took diesel fuel samples at service stations and refineries. These samples were analyzed at ARB's fuel laboratory and "fingerprinted" (i.e. baseline characteristics were established) in order to determine if future fuel samples have been adulterated with illegal substances (e.g. jet fuel, kerosene, or waste material known generically as "transmix").

- Work with BOE to ensure that taxes from imported diesel and gasoline are collected by monitoring and reporting diesel and gasoline imports to the BOE.

- Worked with refiners to help and ensure that their change from MTBE to ethanol oxygenate blending was done in an efficient and compliant manner.

- New Mobile Fuels Laboratory was completed and used during the fuels inspections in 2002.

- Reformulated Gasoline (RFG) – Refinery Electronic Reporting Program – Since the California Reformulated Gasoline regulation went into effect in March 1996, California gasoline producers have complied with the reporting part of the regulation by submitting fax transmissions and later by e-mail. ARB standardized the notification form so that the RFG data can be listed in a standardized format on the notification page. This makes it more efficient to add the data into ARB's tracking system when the data is e-mailed by the refiner to ARB for downloading into ARB's tracking system. During 2002, the ARB fuels staff worked with gasoline refiners and producers to standardize the notification reports.

- Added additional RFG tracking software to the existing software program to track the refiners and producers that had started producing RFG3 gasoline during 2002.

b. Cargo Tank Enforcement Program Accomplishments for 2002

Conducted inspections of 1426 cargo tanks at terminals throughout the state. Emissions leak tests were performed on 738 tanks resulting in 120 violations.

110 of these violations resulting in a collection of $55,000 in penalties.

Staff implemented a more stringent survey of cargo tank test companies to observe procedures and provide assistance to personnel conducting cargo tank vapor recovery testing.

c. Consumer Products Enforcement Program Accomplishments for 2002

Consumer Products enforcement verifies that products available for sale to household and institutional consumers in California comply with the statewide regulations adopted by ARB. Samples are purchased from retail and commercial establishments and analyzed to determine compliance with the volatile organic compound (VOC) limits and other administrative requirements.

ARB staff settled a case with Aerosol Services Company for $400,000 in penalties and supplemental environmental projects for the manufacture of over 883,000 containers of aerosol hair mousse that exceeded the VOC limits.

Consumer Products enforcement staff released an advisory and worked with hairspray manufacturers, distributors and retailers to ensure that only complying 55% VOC hairspray was available after the end of the sell-through period as required by ARB regulations.

Staff focused on several new categories of consumer products including aerosol adhesives, undercoatings, degreasers, and coatings to ensure compliance with new VOC and reactivity limits.

d. Portable Fuel Container & Spouts Program Accomplishments for 2002

While the Portable Fuel Container & Spouts or “gas can” regulation became effective in January 2001, it was not until this year that companies were able to successfully manufacture “spill proof” systems and spouts that complied with all of the performance standards in the regulation. ARB enforcement staff focused on making sure that retailers had removed “non spill-proof’ products from retails stores and worked with manufacturers to determine compliance of their containers and spouts, investigate non-complying products, ensure corrective actions, and settle cases where violations were found.

e. Fuel and Consumer Products Enforcement Accomplishment for 1999-2001

1) Fiscal Year 1999-2000

Under the ARB's Consumer Products Enforcement Program, staff conducted inspections and took samples at 148 locations that sell, distribute or manufacture consumer products subject to air quality regulations. Samples were analyzed for compliance with applicable regulations. During FY 1999-2000, 313 samples were analyzed, 13 reports of violation were issued and 9 new enforcement cases were referred to ARB's legal office for litigation or settlement. Three cases were settled: American Auto Accessories (air freshener) for $500, Soft Sheen (hair care products) for $15,500, and MEDO Manufacturing (air freshener) for $8,000.

2) Fiscal Year 2000-2001

Fuel and Consumer Products Enforcement accomplishments include:

- Worked with Tosco to ensure that their change from MTBE (methyl tertiary butyl ether) to ethanol oxygenate blending was done in an efficient and compliant manner.

- Conducted 20 inspection-weeks at all points of the fuel distribution network to ensure compliance with the fuels regulations.

- Conducted 18 consumer products inspection-weeks to ensure compliance with the entire consumer products regulations.

- Implemented an enhanced cargo tank enforcement program, particularly in the area of cargo tank testers, and more closely coordinated with the staff who certify cargo tanks to ensure better compliance rates.

- Successfully completed a contract to build and equip a new mobile fuels laboratory.

- Ordered new testing equipment to enable the testing and enforcement of Compressed Natural Gas and Liquefied Petroleum Gas alternate fuels regulations.

- Changing reporting formats for California gasoline producers from fax transmissions that required the data to be manually transcribed, to a standardized electronic format. Through the use of the e-mail, the data transmitted can be loaded into the ARB's tracking system.

4. STATIONARY SOURCE ENFORCEMENT

The control of stationary sources of air pollution, such as fixed equipment and industrial sites, falls under the jurisdiction of California's 35 air pollution control districts.

a. Stationary Source enforcement activities for calendar year 2002:

1) Variance Program Audits

Shasta APCD audit was finalized and forwarded to the ARB's Stationary Source Division.

2) Variance Hearings

The three San Joaquin Valley Unified Hearing Boards and the Monterey Bay Unified Hearing Board hearing procedures were evaluated for compliance with Health & Safety Code requirements.

3) Variance Orders

Staff evaluated 556 orders to determine compliance with Health & Safety Code requirements. Staff also processed 478 variance notices and hundreds of district-generated data updates.

4) Variance Order Issues/Rejection of Variances

Twenty-eight variances were "flagged," requiring follow-up with district staff. After follow-up, one variance was returned to the district as an unacceptable variance order that did not meet HSC requirements.

5) Special Projects – Administrative Penalty Board Item

Public workshops were held in Sacramento and El Monte during June of 2002. The Air Resources board heard the administrative penalty item in December 12, 2002. The board adopted the regulations in December 2002. The legislation is effective January 1, 2003,

6) Complaint Hotline

A total of 547 complaints were received on the statewide Complaint Hotline, 280 of which were referred to the local air districts; included were 169 vapor recovery or gasoline nozzle complaints. The other calls received included 182 smoking vehicles and 80 miscellaneous questions. Seventy-three calls were referred to other divisions or agencies, and Enforcement staff responded to six complaints.

7) Complaint Investigations

Staff worked closely with the respective local air pollution control districts where the air quality problems were occurring. Staff also responded to twenty requests for assistance from various air districts and other regulatory agencies by assisting with inspections and investigations. Staff completed seven inspection reports and six special projects.

8) District Rule Review

Staff received 261 local air district rules to review; 255 of these were reviewed for enforceability. Staff responded with 26 written and verbal comments for the air districts submitting the rules in question.

9) Asbestos NESHAP Program

Staff received and processed 239 asbestos NESHAP (National Emissions Standards for Hazardous Air Pollutants) demolition/renovation notifications. Seven asbestos complaints were received and investigated, resulting in the issuance of seven Notices of Violation. Penalties assessed totaled $750. Staff also conducted 26 asbestos inspections, and collected 35 samples for analysis. Staff responded to over 470 phone calls and emails from the public, government agencies, and others, and submitted 4 quarterly National Asbestos Registry reports to the U.S. EPA.

5. SPECIAL ENVIRONMENTAL INVESTIGATIONS (SEI)

a. Participation in Numerous Cross Media Investigations

Working under a Memorandum of Understanding between ARB and Cal/EPA, the SEI unit has participated in a number of cross media investigations (i.e., cases where the nature of violations crosses program/department boundaries).

b. ARCO Underground Storage Tanks

At the request of Cal/EPA, the ARB provided investigative support to the SWRCB on the ARCO case. In 2002, the Attorney General's Office settled the case for a record $45.8 million. The settlement required ARCO to pay $25 million in penalties to the State of California and an additional $20.8 in improvements to its service stations above what is required by law. The settlement was the largest for this type of case ever recorded.

c. Asbestos Cases

ARB assists smaller air quality districts in investigating and pursuing cases involving illegal asbestos removal ("rip and tear"). A number of cases were

closed during 2001 and 2002. The cases were referred to local district attorneys. Settlements resulted in misdemeanor convictions or civil penalties.

d. Focused Environmental Inspections

Over a period of 15 days in April 2002, ARB staff participated in "Operation El Portal" in the Long Beach/San Pedro Harbor area. Operation El Portal was a multi-agency hazardous material transportation compliance inspection coordinated by the Department of Transportation's Office of Hazardous Material Enforcement. Over a dozen different law enforcement agencies participated. The purpose of the operation was to verify compliance with Hazardous Material Regulations (HMR) and to determine if undeclared hazardous material (contraband) was being transported through the port.

Additional inspections were conducted concurrently at local hazardous materials shippers and freight forwarders. Of the approximately 490,000 containers shipped through the harbor area during the two-week period, 98,550 contained hazardous materials, of those, 684 were inspected. These inspections resulted in the discovery of 386 hazardous materials violations, a 56.4% violation rate. Staff completed over 25 other "Focused Environmental Inspections" days in mixed industrial-residential areas statewide for a total of over 40 inspections in 2002. 27 were conducted in 2001.

e. La Montaña Dumping Site

Subsequent to the 1994 Northridge earthquake, rubble was removed from fallen freeways and stored at the La Montaña dumping site next to a residential area in Huntington Park, California. The rubble was stored for many years as the site owner sought, unsuccessfully, to dispose of the material in a constructive way (i.e., to be used as fill material for new freeway construction.) Concerns of potential permit violations and particulate matter emissions brought this matter to the attention of the ARB. To date, the pile of rubble has been crushed with particulate control measures enacted, and the ARB is assisting in the process of identifying a use for the material.

f. TXI

Production of lightweight aggregate material for the building industry can result in significant air and water pollution. Sulfur from the raw material and organic compounds from the fuel oil are the primary sources of pollution. Control devices must be properly maintained and used to minimize emission of those pollutants. A case involving TXI, a large company in Southern California alleging violations of emission standards, permit conditions, and reporting requirements has been referred to the Attorney General's Office and a civil complaint was filed. The matter is still pending

D. QUANTITATIVE SUMMARY OF VIOLATION AND PENALTY STATISTICS

1. ENFORCEMENT DATA FOR AIR RESOURCES BOARD

a. Enforcement Accomplishments for 2002[10]

Program	Pending	Settled/Closed	Penalties
Mobile Sources[11]	3005	1382	$9,137,086
Fuels	31	18	$ 640,550
Consumer Products	18	13	$ 455,088
Portable Fuel Containers	8	5	$ 31,300
Cargo Tanks	49	81	$ 49,000
Stationary Source/Other[12]	24	7	$ 974,149
Totals	3140	1504	$11,359,173

b. Enforcement Accomplishments for 2001

Program	Pending	Settled/Closed	Penalties
Mobile Sources	2684	921	$2,275,925
Fuels	23	18	$ 99,750
Consumer Products	25	2	$ 54,500
Portable Fuel Containers	6	1	$ 800
Cargo Tanks	25	27	$ 15,000
Stationary Source/Other	33	8	$ 118,750
Totals	2796	977	$2,564,725

c. Enforcement Accomplishments for FY 1999-2000

Program	Pending	Settled/Closed	Penalties
Mobile Sources	170	70	$ 511,150
Fuels	44	11	$1,655,550
Consumer Product	20	8	$ 325,550
Cargo Tanks	10	32	$ 16,000
Stationary Source/Other	42	7	$ 267,600
Totals	286	128	$2,775,850

[10] 2002 Cases dispositions were civil/or administrative.
[11] Includes HDVIP.
[12] Includes Cal/EPA Multi Environmental Media Cases, Joint ARB/APCD air violation cases, and asbestos cases.

2. ENFORCEMENT DATA FOR CALIFORNIA'S 35 AIR QUALITY MANAGEMENT DISTRICTS

The 35 Air Quality Management Districts/Air Pollution Control Districts in California are the local component to California's Air Resources Board. Local districts have jurisdiction over stationary sources of air pollution. These districts may take administrative enforcement action, civil enforcement through use of in house counsel or refer cases to local city district attorneys.

a. Enforcement Data for 2002[13]

Civil & Criminal referrals ……..28
NOVs (Notice of Violation) Issued…….....5,813
NTCs (Notice to Comply) Issued ……...8,049
Penalties Assessed: ……..$16,807,062

b. Enforcement Data for 2001[14]

Civil & Criminal Prosecutions ……...Not Available
NOVs (Notice of Violation) Issued……..……4,368
NTCs (Notice to Comply) Issued ……...6,118
Penalties Assessed: ……..…$22,904,360

c. Enforcement Data for FY 1999-2000

Civil & Criminal Prosecutions ……..182
Fines Assessed ……...$432,527
NOVs (Notice of Violation) Issued……..8,964
NTCs (Notice to Comply) Issued ……..…9072
Penalties Assessed: ……..$14,382,804

E. ARB ENFORCEMENT GOALS FOR 2003

- Continue inspections at points of distribution and retail outlets.
- Continue enforcement audits of heavy duty diesel vehicle fleets and refer cases for litigation or settlement where violations are found.

[13] Data incomplete at time of publication as some AQMDs/APCDs were still tabulating their data. However, ARB received data from five of the larger air districts, South Coast AQMD, San Joaquin Valley APCD, Sacramento AQMD, Ventura APCD, and Bay Area AQMD.
[14] As the local districts are not required to submit this information to the state, ARB was unable to collect complete local information such as that shown for FY 1999-2000. However, ARB received data from two of the larger air districts, South Coast AQMD and San Joaquin Valley APCD.

- Continue multi-media inspection events in mixed-use (industrial/residential) neighborhoods for the Environmental Justice Program.

- Continue improvement of environmental quality at the California-Mexican border through enhanced enforcement and compliance assistance. Specific goals include increased heavy duty diesel vehicle inspections due to increased traffic under the North America Free Trade Agreement, and participation in the Tri-National Heavy Duty Vehicle Inspection and Maintenance Working Group.

- Continue aggressive enforcement of ARB's Off-Highway Vehicle regulations.

- Continue aggressive enforcement of ARB's Large Spark-Ignited Engine and Non road regulations.

- Implementation of a program to enforce ARB's marine pleasure craft regulations.

- Work with the California Highway Patrol to implement a program to impound vehicles of repeat offenders of the Heavy Duty Vehicle Inspection Program, as provided in statute under the California Vehicle Code section 27159.

- Continue enforcement of the 49-state vehicle program.

- Continue work with the California Department of Motor Vehicles toward improving compliance with ARB's regulations (49-state vehicles, gray market vehicles, off road motorcycles, etc).

- Continue aftermarket parts enforcement and peace officer training to discourage emission control system tampering and street racing.

- Implement a program to prevent the sale of illegal engines and vehicles through mail order and Internet venues.

- Continue to improve and enhance the ARB enforcement program web page www.arb.ca.gov/enf/enf.

- In light of current budget constraints, ARB will maintain the frequency of inspections at retail and commercial points of distribution of consumer products while focusing on the VOC limits that became effective on January 1, 2003.

- Implement an effective enforcement program for the new reactivity based limits in the Aerosol Coating regulation.

- Continue to implement an enforcement program for portable fuel containers.

- Continue enforcement of the Asbestos NESHAP.

- Continue aggressive investigation of citizen complaints.

- Conduct at least two Aerometric Information Retrieval System (AIRS) audits of non-grantee districts.

- Improve the quality of input from districts into ARB's AIRS and Continuous Emissions Monitoring (CEM) databases.

- Conduct at least two Hearing Board workshops related to stationary sources of air pollution to help improve the issuing of variances in the state.

- Update the stationary source variance database to improve ARB's management of reviewing and monitoring variances for the 35 air districts.

- Include the status of stationary source complaints on ARB intranet.

- Add an additional fuels inspector and increase inspections at points of distribution.

- Continue working with refiners, producers, importers, and SSD to resolve severe problems that continue to come up with the MTBE ethanol transition and to plan for future potential problems.

- Continue coordination with the IRS and BOE on the red dye diesel program, and with BOE on imported diesel and gasoline fuels.

- Maximize reformulated gasoline reporting efficiency by requiring all refiners to use new ARB standardized reporting forms.

- Install two additional fume hoods in the New Mobile Fuels Laboratory to increase testing capability and as an additional safety measure.

- Continue the Cargo Tank Advisory Committee.

- Implement the School Bus Idling Air Toxic Control Measure during the fall of 2003, and commence enforcement of this program soon thereafter.

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IV

DEPARTMENT OF PESTICIDE REGULATION

A. DEPARTMENT OF PESTICIDE REGULATION ENFORCEMENT RESPONSIBILITIES OVERVIEW

The year 2001 was the 100th anniversary of California's first pesticide laws. California's pesticide regulatory program is the most comprehensive and effective in the world. By combining statewide guidance and oversight, provided by DPR, with local permitting and enforcement, provided by the county agricultural commissioners (CACs), the pesticide regulatory system in California is robust and responsive. California's program covers every corner of the state with experienced and capable personnel.

The State and county programs encompass not only agricultural considerations, but also urban pesticide use issues, environmental contamination, worker safety, endangered species protection, environmental justice and community relations. Between DPR and the CACs, we have the largest licensed and credentialed staff devoted to pesticide use enforcement in the nation.

The key to improving DPR's program is strong enforcement of our laws and regulations. If farmers, businesses, and homeowners do not comply with the restrictions placed on pesticide use, these toxic chemicals can and will cause problems. As we review the data on the health and environmental impacts of pesticides, we continue to find risks that need to be mitigated. Consequently, it is incumbent upon us at DPR and on our partners, the CACs, to ensure that pesticide users understand and comply with the laws and regulations we have established, and that violators are prosecuted.

B. DPR ENFORCEMENT ACCOMPLISHMENTS FOR 1999-2002

1. 2000-2001 BUDGET AUGMENTATION

When the Cal/EPA Comprehensive Enforcement Budget Plan was approved in the 2000-2001 budget, CDPR gained 5 new positions and $421,000 to further its ability to address the goals of Cal/EPA's Enforcement Initiative, and to strengthen the Pesticide Enforcement Program. CDPR then added, added a Staff Services Manager I, two Research Analyst II, and two Senior Special Investigators positions to the Enforcement Program. The Staff Services Manager and Research Analyst positions were added to provide continuous program evaluation through statistical and systems analysis using current data; recommendations for data quality and enforcement program improvements;

and mechanisms to measure the effectiveness of recommended performance improvement(s).

The Senior Special Investigators positions were added to improve the quality and consistency of investigation and case files for commissioner administrative civil actions and state licensing and enforcement actions. Three of the Branch's four Senior Special Investigators positions were reclassified as Senior Pesticide Use Specialist positions and assigned to the Enforcement Branch's regional offices. Currently, a lead Senior Pesticide Use Specialist "investigator" is assigned to each of the Branch's three regional offices.

2. ENFORCEMENT TRACKING SYSTEM IMPROVEMENT

In 2000, CDPR obtained $400,000 from the legislature to create an enforcement tracking system. Although CDPR has had information tracking capabilities for years, this new system will allow CDPR to track all pesticide violations recoded by the county agricultural commissioners. The system will allow CDPR to identify cases where state rather than local action would be more appropriate to deal with serious violations that cross county lines. This initiative will improve CDPR's ability to identify and analyze trends and issues relative to compliance with pesticide laws in several ways.

CDPR is undertaking a one-year pilot program to assess costs, benefits, and issues associated with collection and analysis of compliance information generated by counties at the local level.

Because local county agricultural commissioners (CAC) conduct inspections on a broader scope and number than relative to compliance assessment surveys by CDPR, CAC inspections represent an untapped source of statewide compliance information on a greater range of industry sectors and pesticide-related activities. The information compiled will provide a more accurate picture of the agricultural industry's compliance with federal, state and local pesticide regulatory requirements.

3. ENHANCED ENFORCEMENT POWERS

Effective January 2001, the legislature gave CDPR the authority to impose civil penalties of up to $5000 per violation for serious pesticide incidents or those that involve multiple jurisdictions. The same legislation gave County Agricultural Commissioners new authority to suspend or revoke the permits of agricultural pesticide users and businesses that disregard county pesticide fines or other lawful orders (see legislation update below).

4. INTERNET SALES TASK FORCE

In January 2000, CDPR launched the Internet Mail Order Pesticide Sales Task Force to investigate and prosecute unlawful pesticide sales in California. The Internet has created new venues for the sales of many goods and services, among them the sales of pesticides that are unregistered and, therefore, illegal for use in California. The task force is developing recommendations for amending existing laws and regulations and for educating the regulated community about the problem.

One case has been established against a catalog sales firm "Gardens Alive." The Gardens Alive case involved a mail order business that was offering for sale and selling unregistered pesticide products into California. Gardens Alive is based out of Indiana, and they sold a significant amount of unregistered pesticides into California during 1996, 1997, 1998 and 1999. The case settled in June 2001, and included a fine of $35,000.

5. PREVENTING PESTICIDE ILLNESS

2000 Pesticide Related Illness and Injury Report: During 2000, DPR received reports of 1,144 people whose health may have been affected by pesticide exposure. After investigation, DPR scientists found that pesticide exposure had been at least a possible contributing factor in 893 of the cases. The 1,144 total cases investigated in the year 2000 represent a decrease of 485 (30 percent) from 1999, when 1,629 cases were investigated. There was a decrease of 308 (26 percent) pesticide related cases in 2000 (893 cases) compared to 1999 (1,201 cases). A distinct downward trend over the past decade is apparent for all pesticide categories, all areas of the state, all activities, in both agricultural and non-agricultural use scenarios. This trend is limited, however, to occupational exposures and corresponds to a drop in retrievals of doctor's reports forwarded to the Department of Industrial Relations by workers' compensation claims payers. The decrease in "Doctor's First Report of Occupational Injury or Illness" has been partially compensated by reporting through poison control centers, and for agricultural exposures only, by an increase in the number of cases identified independently of formal notification systems.

6. COMPLIANCE IMPROVEMENT

DPR developed new standardized procedures and began performing oversight inspections of the CAC's pesticide evaluation inspections in July 2002. The new oversight program is part of DPR's statewide effort to improve the quality of its Enforcement Program. The program is designed to:

- Develop compliance measurement standards that accurately reflect compliance by pesticide users with applicable provisions of the Food

and Agricultural Code and Title 3 of the California Code of Regulations (3CCR).

- Use a predetermined set of criteria to collect data on pesticide user compliance through field observations by DPR staff.

- Develop compliance improvement strategies for implementation at the state and county levels. Aid county and state managers in making decisions on policy and regulatory changes, priority setting, and program planning.

Fifty oversight inspections will be conducted by each of the four selected "focus" counties (Merced, Tulare, San Joaquin, and Sutter). DPR developed three outreach documents designed to address areas of low compliance as determined by the four-year Worker Protection Standard Compliance Assessment Project. The three documents address handler protection, fieldworker notification, and employers liability to civil penalties respectively.

7. RESIDUE

DPR administers the state mandated Pesticide Residue Surveillance Program, which involves produce sampling and data collection activities. Further, California is one of ten states that participate in the U.S. Department of Agriculture's Pesticide Data Program (PDP). This program provides data on pesticide dietary exposure, food consumption, and pesticide use. PDP data is used by the U.S. Environmental Protection Agency (U.S. EPA) to make realistic assessments of dietary pesticide risk and for the ongoing review of pesticide tolerances. PDP data are statistically representative of the overall residue situation for a particular pesticide, commodity, or place of origin. DPR's residue program has focused primarily on DPR's mandate to prevent public dietary exposure to illegal pesticide residues and, therefore, has been specifically directed toward enforcement of U.S. EPA tolerances rather than data collection. Through the evaluation of the two programs, DPR hopes to identify a means to harmonize data collection efforts, while at the same time retaining an effective residue enforcement program.

<u>Residue Programs Business Process Evaluation</u>. DPR's Enforcement Branch has developed a Residue Enhancement Core Team to begin the first phase of the residue programs business process. This group is chartered to enhance the current residue database. The group is in the development phase of creating Web based residue queries and a new updated data entry form. In December 2001, the *Pesticide Residues in Fresh Produce Summary Report* for years 1998-2000, was placed on the new Residue Data Web page. The residue data is available to the public on DPR's Web site at www.cdpr.ca.gov/docs/pstrsmon/rsmonmnu.

Residue Reduction Project. In April 2002, DPR provided presentations to the Bio-control and Pesticide Issues Workshop in Ensenada, Mexico, co-hosted by the Departments of Agriculture of both California and Baja California Norte. DPR staff discussed information with growers in Mexico about illegal pesticide residues found by DPR on produce grown in Mexico. DPR staff also provided instruction to the growers about pest control practices to avoid illegal pesticide residues on crops. The goal of this project is to reduce the number of produce shipments from Mexico that contain illegal pesticide residues from entering the marketplace.

8. RESIDUES ON FRESH PRODUCE DATA WEB PAGE

In December 2001 the Pesticide Residues in Fresh Produce Summary Report for years 1998-2000 was placed on the Web page. The 2001 summary report was expected to be posted the end of December 2002. The residue data will also be made available to the public on DPR's Web site at: www.cdpr.ca.gov/docs/pstrsmon/rsmonmnu.

9. PESTICIDE DRIFT TARGETING INITIATIVE

CDPR's Enforcement Initiative of 1999, made pesticide drift a high priority, since drift may injure people contaminate the environment and damage crops and property. In 2000, CDPR worked with the county agricultural commissioners to revise a drift policy to assure that all incidents or suspected incidents will be investigated. CDPR is currently working with concerned stakeholders to improve drift regulations.

10. EFFECTIVENESS EVALUATION

The "Director's Essential Program Elements," with accompanying "Expectation and Analysis" worksheets (evaluation templates), were completed in October 2002. They were reviewed with the CACs in November and distributed in December as Executive Office Letter 02-03. DPR evaluation staff has begun conducting evaluations utilizing these guidelines.

11. REGULATORY TOOLBOX

The Regulatory Toolbox is a laminated, quick reference tool of enforcement and compliance options for inspectors, biologist and regional office staff. The Regulatory Toolbox went to a contract printer in December 2002. It will be available for distribution to CAC and Enforcement staff. In addition, a "spin-off" of the Regulatory Toolbox, the Enforcement and Compliance Options Table, will be made available for distribution to permit applicants.

12. COMPLIANCE ASSESSMENT REPORT

DPR administers a statewide enforcement Compliance Assessment Program and oversees local enforcement programs administered by county agricultural commissioners. This program is part of a statewide effort to improve the quality of State and county enforcement programs. In 2001, the DPR integrated compliance data into a Compliance Assessment Report providing a general overview that examines factors relative to the improvements of State and county programs. The Compliance Assessment Report, subtitled "Pesticide Handler and Field Worker Safety Survey, June 1997-March 2001, includes assessment of compliance with laws and regulations pertaining to pesticide handlers, field workers, and closed systems used for mixing and loading operations. The report is available on DPR's website at www.cdpr.ca.gov.

The Compliance Assessment Report found that growers had a significantly lower rate of compliance than that of professional agricultural pest control businesses. However, there were shortcomings in how professional handlers complied with requirements for use of personal protective equipment (for example, respirators and protective clothing). There were also lower rates of compliance in professional handler use of closed pesticide mixing, loading and, handling systems, designed to protect the worker against exposure to highly hazardous liquid pesticides.

Recommendations in this report included:

1. Improve statewide compliance with personal protective equipment (PPE) requirements on pesticide labels and regulatory requirements by:

    - Creation of an outreach program which will determine the causes/types of PPE violations and provide a coordinated outreach effort to target the source of those problems.
    - Assist CACs in developing outreach programs.
    - Distribute outreach programs developed by CACs through focused activities.

2. Improve statewide compliance with "field-worker safety" regulations and related pesticide label requirements such as hazard communication and display of application-specific information by:

    - Focus on grower/industry groups and employee organizations.
    - Collaborate with public entities such as the University of California, CACs and, local Health Departments.

3. Improve inspection procedures review (Enforcement Initiative) by:

- Survey commissioners for input prior to review
- Review/revise Inspection Procedures
- Focus CDPR overview inspections on field worker safety inspections.
- Utilize the Compliance Workgroup to review and analyze Overview inspections

4. Improve statewide compliance with closed system requirements. Increase CDPR and CAC understanding of the sources of closed system compliance problems by:

- Survey commissioners for input prior to development of closed system-training module.
- Review Pesticide Safety Information Series.
- Request documentation of engineering problems from the commissioners. Use this information to pursue the closed system engineering and pesticide labeling problems at the state and national levels.

5. Improve statewide compliance program by:

- Revise CDPR's enforcement guidelines to ACPs levied by CACs.
- Revising CDPR's Procedural Guidance Manual
- Amend the Civil Penalty Guideline regulations to support CACs taking appropriate enforcement action.

Several program improvements were implemented as a result of findings identified in the Compliance Assessment Report, including:

- After the Compliance Assessment was conducted in each county, the “compliance evaluators” reviewed specific recommendations to improve those areas which where found to be in low compliance.

- Incorporating the above recommendations into the 2001/2002 Prioritization Plan.

- Based on the Prioritization, Plan, Senior Pesticide Use Specialists, re-negotiated County Negotiated Work plans (NWPs) to increase focus on PPE, display of application specific information and, closed system requirements.

- DPR Developed three outreach documents (booklets):

  It's as Simple as PPE (Personal Protective Equipment (PPE) for field workers.)
  Pesticide Safety: It's The Law (Pesticide laws and regulations for fieldworkers and pesticide handlers.)

  What to Say Before You Spray (Notification, posting and, display requirements.)

C. OVERVIEW OF ENFORCEMENT DIVISION

1. DIVISION OF ENVIRONMENTAL MONITORING, PEST MANAGEMENT, LICENSING, AND ENFORCEMENT

a. Enforcement Branch

The Enforcement Branch's primary responsibility is to enforce state and federal laws and regulations pertaining to the proper and safe use of pesticides. The Branch has overall responsibility for pesticide incident investigations and enforcement actions. It administers the nation's largest state pesticide residue monitoring program and conducts outreach and compliance activities.

The Branch also inspects and samples pesticide products to determine whether a product is registered, the labeling requirements are met, and the product formulation meets the quality guaranteed by the registrant. Pesticide use enforcement activities in the field are largely carried out by the CACs and their staff (approximately 400 biologists) in California's 58 counties. Branch staff provides training, coordination, supervision, and technical support to the CACs.

b. Environmental Monitoring Branch

The Environmental Monitoring Branch monitors the environment to determine the fate of pesticides, protecting the public and the environment from pesticide contamination through analyzing hazards and developing pollution prevention strategies. The Branch's Environmental Hazards Assessment Program (EHAP) provides environmental contamination assessments, pesticide registration, pesticide use enforcement, and human exposure evaluations. EHAP takes the lead in implementing many of the Department's environmental protection programs.

c. Pest Management and Licensing Branch

DPR's newest branch, the Pest Management and Licensing Branch, has four major programs. The Pest Management Analysis and Planning program

evaluates pesticide and pest management problems and provides information and grants to develop new strategies that reduce adverse environmental impacts and hazards from pesticide use. The Branch also oversees licensing and certification of dealers, pesticide brokers, agricultural pest control advisers, pest control businesses, and applicators; manages the Endangered Species program; and collects, reviews, corrects, and analyzes pesticide use reporting data.

D. DPR QUANTITATIVE ENFORCEMENT RELATED DATA 1997-2002

DPR has an in depth information tracking system and can provide enforcement related information going back over a decade. This information is used by DPR to calculate the mill assessment disbursements provided the counties every year and, therefore, is relatively accurate. DPR imposes a mill assessment on pesticide sales to support the state pesticide regulatory program. The enforcement data referenced below includes fiscal years 1999 to 2002.

1. DPR ENFORCEMENT STATISTICS:

a. 1997-1998 County Agricultural Commissioners:

- Conducted approximately 57,000 pesticide use inspections,
- Conducted 8,000 records inspections,
- Conducted 2000 investigations,
- Issued 48,000 permits,
- Evaluated 200,000 Notices of Intent to apply restricted use pesticides,
- Certified and licensed 19,500 private applicators,
- Identified 5,300 non-compliances,
- Took 6,700 compliance and enforcement actions, and
- Provided training and outreach to almost 34,000 people.

b. 1998-1999 County Agricultural Commissioners:

- Conducted approximately 40,554 pesticide use inspections
- Conducted 11,036 records inspections,
- Conducted 2,091 investigations,
- Issued 46,620 permits,
- Evaluated 213,330 Notices of Intent to apply restricted use pesticide,
- Certified and licensed 16,145 private applicators, and denied 360 certification,
- Identified 9,817 non-compliances,
- Took 5,565 Compliance and Enforcement Actions, and
- Provided training and outreach to 35,823 persons.

c. 1999-2000 County Agricultural Commissioners:

- Conducted approximately 39,849 pesticide use inspections
- Conducted 18,770 records inspections,
- Conducted 1812 investigations
- Issued 40,782 permits, and denied 661 permit applications
- Evaluated 194,398 Notices of Intent to apply restricted use pesticide
- Certified and licensed 10,215 private applicators, and denied 408 certification,
- Identified 10,072 non-compliances,
- Took 5,937 Compliance Enforcement Actions, and
- Provided training and outreach to 32,611 persons.

d. For Fiscal year 2000-2001 County Agricultural Commissioners:

- Conducted 33,796 pesticide use inspections
- Conducted 5,765 records inspections
- Conducted 1,639 investigations
- Issued 4,296 Warning Letters or Notices of Violation
- Issued 162 Cease and Desist Orders
- Issued 45,977 Restricted Materials Permits
- Evaluated 178,698 Notices of Intent to apply restricted-use pesticides
- Certified and licensed 10,520 private applicators
- Identified 9,503 non-compliances
- Provided training to 32,404 people
- Structural Civil Penalties (Business and Professions Code, section 8617): 250
- Agricultural Civil Penalties (Food and Agricultural Code, section 12999.5): 514

e. 2001-2002 County Agricultural Commissioners:

- Conducted 33,227 pesticide use inspections
- Conducted 5,418 records inspections
- Conducted 1,502 investigations
- Issued 5,351 Warning Letters or Notices of Violation
- Issued 148 Cease and Desist Orders
- Issued 39,625 permits
- Evaluated 167,310 Notices of Intent to apply restricted-use pesticides
- Certified and licensed 6,544 private applicators
- Identified 9,783 non-compliances
- Provided training to 40,456 people
- Issued 366 Structural Civil Penalties
- Issued 582 Agricultural Civil Penalties

2. DPR CASE FINAL SETTLEMENTS

a. Administrative Enforcement Information

Administrative penalties are divided into four subject areas

Audit: ……$229,833
Mill assessment violations: ……$ 85,518
NOV/Marketplace Surveillance Inspections: ……..$432,654
Self-reported: …….. $ 1,232
Installment payment from earlier settlement: ……$ 17,000
Total of fines and penalties recovered: …… $978,245

b. Administrative Case Information

Sales of unregistered pesticide products
Reflected in these figures are six significant cases ($50,000 or more recovered). These cases were based on sales of unregistered pesticide products; (FAC §12993)

Bath & Body Works, Inc. $91,483
Dubois Chemicals $85,108
Scott's Company $78,000
Hartz Mountain $70,000:
Reckitt Benkiser $63,000
Diversey Corporation $59,000
Professional Disposables, Inc. $50,000

Pesticide Misuse
Vignolo Farms hired Wilbur-Ellis Company in November 1999 to fumigate a 75-acre field in Earlimart with the highly volatile chemical metam-sodium. Fumes drifted into an adjacent residential area, forcing about 180 residents to evacuate their homes. Some 46 residents sought medical attention, and about 28 have reported ongoing medical problems. DPR alleged that 1) Vignolo Farms, Inc. failed to report immediately any change in the restricted materials permit issued by the Tulare County Agricultural Commissioner; 2) pesticide use in conflict with registered label by failing to conduct post-application monitoring: 3) failure to post the treated field every 600 feet when the treated field is adjacent to an unfenced public right-of-way, and: 4) for unlawful or unfair business acts or practices. The case was settled for $10,000.

CAC administrative actions

The total Administrative Civil Penalty actions for 1999, 2000, and 2001 are summarized below. Records for 2002 were unable at the time this report went to print.

Year	1999	2000	2001
Penalty	$268,932	$267,951	$138,785

E. LEGISLATION AND REGULATION AFFECTING PESTICIDE ENFORCEMENT

1. LEGISLATION

1999-2000: AB 2260 (Shelly)- the Healthy Schools Act of 2000. This legislation requires various state agencies, including CDPR, to take specified actions to ensure the environmental safety of children.

1999-2000: SB 1970 (Costa)- Economic Poisons**.** This legislation covers several areas:

The bill provides for the refusal, revocation, or suspension of a permit regarding the use of pesticides, for the failure to pay a civil penalty or comply with a final, lawful order from the agricultural commissioner,

The bill provides that it is unlawful to refuse or neglect to pay a civil penalty levied for specified violations involving pesticides.

The bill also authorizes the director of CDPR to initiate and maintain enforcement actions for violations committed in multiple jurisdictions or in other specified cases, and to refer those cases to the local district attorney or the Attorney General.

2001-2002: AB 947 (Jackson) – Pesticides: School sites**.** This legislation covers several areas:

Provide discretion to the governing board of the school district to include in the comprehensive school safety plan, the procedures for responding to the release of a pesticide or other toxic substance from properties located within one-quarter mile of a school.

Allows CACs to adopt local regulations regarding the use of any pesticide for agricultural production within one-quarter mile of a school with respect to the timing, notification and method of application.

Increases civil penalty to not more than $5,000 for each serious violation of pesticide drift in a school area.

Requires the CAC to collect a fee of not more than $50 to process and monitor pesticide applications within one-quarter mile of a school by any person who has a previous violation of pesticide drift in a school area. The CAC must continue to impose the fee for each subsequent application that may pose a risk of drift, until the person has completed 24 months without another serious violation.

2001-2002: AB 2356 (Keeley) – Solid Waste: Compost Contamination. This act is intended to prevent the contamination of compost, by restricting the sale and use of herbicides with the active ingredient chlorpyralid. It requires DPR to make further determinations and restrictions by a specified date.

2001-2002: SB 1463 (Machado) – Structural Pest Control. This act amends Section 8617 of the Business and Professions Code, relating to pest control. It allows CACs to levy a $1,000 fine and/or attendance and passage of a Structural Pest Control Board-approved course for specified structural pest control violations.

2. REGULATORY CHANGES

Pesticide Use Reporting; *Operator Identification Numbers*: (Effective 1/2/03): Amends 3CCR section 6622 to allow CACs discretion to issue operator identification numbers up to a three-year period.

CAC *Effectiveness Evaluation*: (Effective 7/1/02): Amends 3CCR section 6394; mandates annual review by the Director of the pesticide use enforcement program of each county.

F. ENFORCEMENT DATA PROJECTS

DPR completed development and full implementation of the Enforcement and Compliance Action Tracking system in June/July 2001. It is considered one of DPR's core information technology systems. It has provided historical profiles relative to case development and issues surrounding several pesticide incidents over the last two to three years. As DPR and the counties continue to focus on quality program improvements, increased use of this system is anticipated.

This project also allowed DPR to pursue and leverage its participation in the e-Government pilot project, "On-Line County Registration of Pest Control Licensees," under the Governor's "My California Portal's Government to Business Center." This project provides pest control businesses with their most current compliance history and other information that was previously

unavailable to them. CACs have access to the same data for those businesses and individuals performing pest control work in their counties. These Web-based services enhance DPR's ability to provide timely and ready access to enforcement and compliance data.

The project creates programmatic links between enforcement and compliance actions and licensing activities as required by the Legislature. The public can easily obtain information via the DPR Web site on all final closed enforcement and compliance actions. Individual queries and reports can be generated on an as needed basis.

The project also provides additional benefits to DPR's enforcement program by creating a network infrastructure that can be used to streamline additional pesticide-related activities carried out by field staff and counties (e.g., pesticide residue monitoring, cooperative federal programs, episode investigations, county administrative reporting, etc.).

Minor system enhancements completed in September 2002, provide DPR with capabilities to capture state/county oversight inspections and compliance assessment results by county as requested in the Supplemental Report of the 2002 Budget Act, 2002/03 Fiscal Year.

G. ENFORCEMENT GRANTS RECEIVED/ALLOCATED

Monies received from U.S. EPA under the Consolidated Pesticide Co-operative Agreement totaled: $707,499. Of this total, $15,000 was carried over from the previous year, and $60,000 was allocated to California Department of Food and Agriculture (CDFA) testing laboratories for a national program testing for anti-microbials. $135,00 was directed to CDFA laboratories for anti-microbial testing in California.

H. CALIFORNIA/MEXICO BORDER PROJECT

1. U.S./MEXICO PESTICIDE INFORMATION EXCHANGE

The goal of the program is to exchange information between the United States and Mexico, at the state and federal level, on the regulation of pesticides. This process allows for personal and professional contacts to facilitate the discussion and resolution of pesticide issues along the border and to provide training and instruction, when appropriate, on specific areas of pesticide regulation.

On October 21, 2001, DPR Regional Office Enforcement Branch staff met with two agricultural inspectors from Mexico and provided them with an overview of DPR. The Mexican inspectors were taken to Yolo, Kern, and Ventura counties where they were provided with information on restricted materials permit

issuance, investigation procedures, sampling techniques, and inspection procedures. They were provided with inspection forms and DPR literature that has been printed in Spanish.

2. EFFORT TO REDUCE ILLEGAL PESTICIDES ON IMPORTED PRODUCE

The goal is to maintain a database and improve tracking procedures for shipments of produce from Mexico found to contain illegal pesticide residues, provide training sessions to border region agricultural officials and the grower community on drift reduction strategies, and techniques to reduce the contamination of produce with illegal pesticide residues.

On April 25, 2002, DPR's Border Liaison attended a workshop co-hosted by the departments of agriculture of California and Baja California Norte in Ensenada, Mexico. The forum for DPR staff and Mexican growers was to discuss illegal residues found by DPR on produce imported from Mexico. There were approximately 40 persons attending the workshop that included representatives of governmental agencies, pesticide dealers, pest control advisors, and growers. DPR's Border Liaison made a presentation entitled "Residuous de Plaguicidas" that provided information regarding the most commonly found pesticides on Mexican produce. A discussion regarding tolerances followed as well as instruction on "best application practices" to avoid illegal residues on crops.

During the workshop, DPR staff met with officials from the Secretaria del Medio Ambiente y Recursos Naturales ("SEMARNAT", the umbrella agency in Mexico for Resources and Environment) and the Secretaria de Agricultura, Ganaderia, Desarrollo Rural, Pesca y Alimentacion ("SAGARPA" the Mexican agency for Agriculture) to discuss notification of illegal pesticide residues on produce grown in Mexico. SAGARPA indicated that they would like to be notified of any illegal residues found on Mexican produce and would assist DPR in determining the grower.

I. ENFORCEMENT GOALS AND INITIATIVES FOR 2003

1. ENFORCEMENT GUIDELINES

The enforcement guidelines are a cooperative project developed by DPR and the California Agricultural Commissioners and Sealers Association. The intent of the enforcement guidelines is to provide uniform, predictable, and fair enforcement responses that are understandable to the regulated community and the public.

DPR is responsible for administration, development and oversight of California's unique pesticide regulatory program. Pesticide use enforcement is

primarily performed and administered by the CAC and staff of California's 58 counties. Local program administration naturally results in variable enforcement decisions and responses. The enforcement guidelines take into consideration diverse geographical and agricultural regions, and local resources, while attempting to provide some uniformity in the responses.

2. EFFECTIVENESS EVALUATION

In order to improve facilitation of the Compliance Assessment Project, DPR created the County Regulatory Oversight Workgroup (CROW) to implement and administer future Effectiveness Evaluation activities. CROW has begun work on a resource manual to aid DPR during annual Effectiveness Evaluations.

3. PROPANIL RULEMAKING

DPR plans to file with the Office of Administrative Law rulemaking amendments to the propanil regulations in 2003. The proposed amendments provide for increased buffer zones to sensitive crops.

4. ADMINISTRATIVE HEARING IMPROVEMENT PROGRAM PROJECT

The project objective is to research, analyze, and develop responses pertinent to civil penalty hearings and investigative issues, which were raised during CAC/Hearing Officer Roundtable discussions, and to provide a response and guidance document that will be incorporated into a revised Hearing Officer Sourcebook.

5. RESIDUE PROGRAMS BUSINESS PROCESS EVALUATION

DPR's Enforcement Branch has completed an evaluation of the feasibility of integrating some of the produce sampling and data collection activities of the state-mandated Pesticide Residue Surveillance Program and the U.S. Department of Agriculture's Pesticide Data Program. The business process evaluation has been completed with recommendations submitted in four areas: adopt electronic clipboard technology; automate and integrate the programs' site selection; enhance the residue database; and move the integrated programs to shared intranet Web pages. An integration pilot project is being prioritized as part of the Enforcement Branch operational plan for fiscal year 02/03.

6. PESTICIDE EPISODE RESPONSE PLAN (PERP)

PERP is a U.S. EPA special project grant that identifies individuals and agencies responsible for the initial emergency response and the investigation

of pesticide incidents along the California/Mexico border. In 1999, DPR signed a Memorandum of Understanding with Imperial and San Diego CACs. DPR staff is working with Imperial and San Diego County pesticide enforcement staff in developing, conducting, and evaluating a demonstration exercise border episode in coordination with all relevant U.S. and Mexican agencies. The development and implementation of PERP will be completed by December 2003.

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V

INTEGRATED WASTE MANAGEMENT BOARD

A. ENFORCEMENT RESPONSIBILITIES OVERVIEW

The Integrated Waste Management Board (IWMB) ensures that non-hazardous solid waste and waste-derived materials are stored, processed and/or disposed of in a safe and environmentally sound manner. Their mission is to reduce the generation and improve the management of solid waste in California in order to conserve resources, develop sustainable recycling markets, and protect public health and safety, and the environment.

This IWMB enforcement mandate is accomplished through the development and enforcement of environmental and health regulations at solid waste facilities, including landfills, transfer stations, composting operations, material recovery and transformation facilities. Oversight is accomplished in partnership with Local Enforcement Agencies (LEA's), which are designated by the governing body of a county or city and, upon certification by the Board, are empowered to implement delegated Board programs and locally designated activities. The Board acts as the enforcement agency where no LEA is designated, or where the LEA is not fulfilling its obligations.

The enforcement process encompasses the following activities:

1. PERMITTING

After Board concurrence, LEAs prepare and issue solid waste facility permits. Board review ensures that applicable laws, regulations and procedures have been followed, that financial assurance is available for operating liability and for closure/post closure maintenance, and that operating conditions are delineated. The Board also reviews permits for consistency with local plans and California Environmental Quality Act (CEQA) documents. Permits are required to be revised upon changes in design, ownership, or operation that affect the permit conditions and are reviewed every five years and, if deemed necessary by the LEA, they are revised.

2. OPERATIONS

LEAs (or Board personnel when designated as enforcement agency) perform monthly facility inspections (less frequent inspections for some operations), prepare inspection reports and issue any resultant corrective action orders, cease and desist orders and/or penalties. Board personnel review LEA inspection reports, may recommend enforcement actions, review LEA orders, inspect all active landfills every 18 months and inspect other facilities as

needed to evaluate LEA performance. Board staff also maintains an inventory of solid waste facilities that violate State minimum standards.

3. CLOSURE AND POST CLOSURE FOR LANDFILLS

The Board reviews and approves facility closure plans submitted by owners or operators, including assurance that adequate technical and financial resources are available for facility closure and post closure. The Board reviews the technical, engineering and financial aspects of solid waste landfill post closure maintenance plans and disposal site post closure land use proposals. Board personnel support the LEA in taking action against closed sites, may inspect those sites and take action to initiate clean up pursuant to the provisions of the Public Resources Code, sections 48020 et seq.

4. LOCAL ENFORCEMENT AGENCY PERFORMANCE

The Board certifies each LEA program, monitors the quality of their routine performance and of the documents they submit to the Board and conducts an overall evaluation of their performance every three years. The Board may decertify an LEA if found to be not adequately performing one of the delegated functions which are:

- Write, condition, issue, suspend, and revoke permits.
- Conduct required inspections of solid waste facilities.
- Take appropriate enforcement action, including writing notice and orders.
- Assess administrative and civil penalties.
- Propose facilities for the inventory of sites that violate State minimum standards.
- Write and enforce compliance plans for sites listed in the inventory.
- Take action to clean up illegal sites.

5. CLOSED, ILLEGAL AND ABANDONED (CIA) WASTE DISPOSAL SITES

This program provides integral assistance to Local Enforcement Agencies (LEA's) in their enforcement of state minimum standards at CIA sites. This assistance includes prioritization of sites with respect to threats of public health and safety and the environment. Priority 'A' sites constitute conditions of confirmed pollution and/or nuisance and are the highest priority for cleanup. Priority 'B' sites constitute site conditions with threat of pollution and/or nuisance and either warrant addition site investigation to confirm a condition of pollution or nuisance, or are a lower priority for cleanup.

There are currently over 2,500 closed, illegal, and abandoned sites on the Board's Solid Waste Information System database. These sites have the potential to present a variety of hazards to the health and safety of the public as well as adverse impacts to the environment. LEAs are responsible for the investigation and assessment of CIA sites. The IWMB staff assists LEAs in the investigation of these sites. About 1,300 CIA sites have been assessed and classified according to potential threat to human health and the environment.

Currently, 12 CIA sites are under investigation and enforcement action by LEAs. Clean up is by the current property owner or other potentially responsible parties.

B. IWMB ENFORCEMENT ACCOMPLISHMENTS FOR 1999-2002

1. ENFORCEMENT AND COMPLIANCE PROCEDURES RULEMAKINGS COMPLETED

New regulations clarify and improve enforcement tools available to the Board and local enforcement agencies (LEAs) for ensuring compliance with State and federal waste management law. Changes in regulation include:

- Revision of regulations concerning closure and post closure maintenance;
- Regulations to establish the process for inclusion on inventory of solid waste facilities that violate state minimum standards;
- Establishment of a process for facility operators to request approval to operate outside of the limits and terms and conditions of the solid waste facilities permit in the event of an unforeseeable situation;
- Regulations establishing a procedure for local governing body withdrawal of LEA designation, Board withdrawal of LEA designation approval, partial or full decertification, or temporary suspension of certification;
- Regulations outlining manifesting criteria and enforcement procedures for waste and used tire haulers;
- Updated regulations concerning waste tire facility enforcement and permitting.

2. FINANCIAL ASSURANCES PROGRAM

This program implements and enforces the statutory and regulatory financial

assurance requirements for solid waste landfills. The Board has authority to assess administrative civil penalties of up to $10,000 per day against violators, landfill operators, based on criteria established in regulation. Because compliance is the ultimate goal, the regulations allow for several compliance options other than assessment of civil penalties. These options include Notice of Violation (NOV), Notice and Order, Stipulated Notice and Order, placing restrictions on financial assurance mechanisms currently being used by the operator, and requiring establishment of alternative mechanisms. This enforcement program is relatively new and no penalties have yet been assessed. However, several actions have been taken over the past three years as noted below:

Year	**NOVs Issued**	**Notice & Order Issued**	**AG Referral**
1999	3	0	1
2000	0	7	0
2001	3	1	0
2002	4	1	0

3. RIGID PLASTIC PACKAGING CONTAINER (RPPC) PROGRAM

The statute for this program directs the Board to require self-certification by product manufacturers of their compliance with one or more of the allowed compliance options if the all-container RPPC recycling rate adopted by the Board for that compliance year does not meet or exceed the 25% statutory threshold. Among other things, the Board has authority to request administrative penalties of up to $50,000 per violation, after notice and hearing with an Administrative Law Judge present. The total amount of penalties allowed per year is $100,000.

The Board has initiated certification cycles for compliance year 1996, for the combined compliance years of 1997-1998-1999, and compliance year 2000. A certification cycle for compliance year 2001 will be initiated in the near future. The 1996 compliance certification is complete; the 1997 through 1999 compliance certification is in the latter stages. The 2000 compliance certification is in the early stages, and the 2001 and 2002 will be initiated in the near future, therefore no data is yet available.

1999	2 Stipulated Compliance Agreements - 1996 compliance year
2000	5 Stipulated Compliance Agreements - 1996 compliance year 1 Admin. Penalty hearing - 1996 compliance year, $20,000 penalty
2001	144 Stipulated Compliance Agreements - 1997-1999 compliance year.

2002/2003 Beginning with the September 2002 Board meeting staff began reporting back to the Board on the completion of the Compliance Agreements. Following is a summary of the progress to date:

33 - Completed Compliance Agreements as required.
12 - Achieved compliance prior to executing the Compliance Agreement
4 - Compliance Agreements extended
11 - Not regulated
4 - De minimums impact on California waste stream
3 - Included in the small company/small volume item

4. ENFORCEMENT FOR PLANNING AND LOCAL ASSISTANCE PROGRAM

In 1998 and 1999, the Board issued 65 Compliance Orders to jurisdictions for failing to adequately implement their Source Reduction and Recycling Elements and/or Household Hazardous Waste Elements as a result of the 1995/1996 biennial review cycle. To date, three of these Compliance Orders are still in force and documentation submitted by the jurisdictions in response to those Orders is being reviewed. This review includes on-site audits to verify documentation. After staff have completed review of each jurisdiction's submittals, the Board will determine if the jurisdiction has successfully completed the Compliance Order or if it should be subject to a fine of up to $10,000 a day.

During 2002, the Board issued four new Compliance Orders as a result of the 1999/2000 biennial review cycle. Since that review cycle will not be completed until April 2003, it is possible that a few more jurisdictions could still be placed on compliance as a result of their 1999/2000 biennial review.

5. TRASH BAG PROGRAM

In 1989 the California Legislature passed SB 2092 (Hart) that was designed to encourage the use of recycled post consumer content in trash bags as established in the Recycled Content Plastic Trash Bag Program. This law became effective in 1993. Currently the law regulates trash bags that are .70 mil and greater in thickness and sold into California. Sellers of these bags can either certify with the Board that they have complied with the law by (1) including 10% recycled content in bags, or (2) including 30% recycled content in all plastic products, or (3) certify to the Board that they could not find sufficient amounts of post consumer material because it was either not available or it did not meet quality standards.

The IWMB sent a report to the Legislature in October 2001 with an overview of the Plastic Trash Bag Survey. This report summarized the trash bag program results since inception of the program. Overall, the Plastic Trash Bag Law has been good for California business and good for the environment. The use of recycled plastic in California trash bags has increased sevenfold over the last decade, while creating business opportunities for California Manufacturers. The use of recycled post consumer resin was reported in 1993 as 2,000 tons and grew to more than 14,000 tons used in new trash bags sold in California in 2000. This, in turn, has reduced the amount of plastic disposed of in California's landfills.

6. TIRE PROGRAM

California is faced with the challenge of diverting or safely managing more than 33 million reusable and waste tires generated in the state each year. Another 2.4 million are imported from other states annually. Despite the fact that the state nearly doubled the number of waste tires recycled in California between 1991 and 2001, the number of waste tires generated each year continues to exceed the number of tires diverted from landfill disposal and stockpiling.

As a comprehensive measure to extend and expand California's regulatory program related to the management of waste and used tires, Senate Bill (SB) 876 (Escutia, Statutes of 2000, Chapter 838) was enacted. The measure's key provisions include the following:

- Increasing the tire fee from $0.25 to $1.00 per tire (bringing California in line with other large states) until December 31, 2006, and reducing it to $0.75 thereafter.

- Extending the California tire fee to tires on new motor vehicles.

- Revising the definition of "waste tire" and adding other definitions designed to provide regulatory relief for several thousand used tire dealers and waste tire recyclers.

- Expanding the tire manifest system.

- Increasing funding for recycling and recovery efforts.

- Strengthening enforcement by making changes to the Waste Tire Hauler and Waste Tire Facility Permit Programs.

- Developing a five-year plan to implement the provisions of SB 876.

- Six major goals have been established for the implementation of SB 876 and for guidance in the development of this plan and IWMB's waste tire management program:

- To eliminate all known illegal piles of waste tires in California.

- To identify and track the used and waste tire flow in California.
- To reduce the legal and illegal disposal of waste tires in California by increasing the reuse, recycling, and energy recovery of, or from, waste tires while protecting public health and safety and the environment.

- To the greatest extent possible, this plan will enhance alternatives to the disposal of only waste tires originating in California.

- To provide excellent customer service in a responsible and cost effective manner.

- To implement this plan in a manner that ensures that people of all races, cultures, and incomes are treated fairly and have equitable access to environmental benefits, and that no segment of the population bears a higher share of the risks and consequences of cumulative exposures or impacts of environmental pollution.

Since the inception of IWMB's Waste Tire Enforcement Program in 1994, 894 illegal waste tire sites have been investigated. Of these sites, 656 now comply with IWMB storage requirements or have had the waste tires removed. Enforcement efforts by IWMB have resulted in the cleanup of approximately 6.1 million waste tires since 1994. The operator or property owner removed these tires as a direct result of the IWMB enforcement action.

Using historical cost data from State-funded tire cleanups, staff estimates that IWMB's enforcement program has saved $8.9 million in potential State costs to remove waste tires from illegal sites. Since 1994, IWMB issued 382 Cleanup and Abatement Orders, 164 Administrative Complaints, and 34 criminal complaints. Additionally, IWMB has imposed $1,757,733 in fines against those owners and operators who have failed to comply with tire program requirements. To date, IWMB has collected over $85,450 of the imposed fines. Additionally, IWMB has placed liens against property totaling $532,201. New legislation allows the Board to place a lien on property without the necessity of first obtaining a civil judgment in Court.

In 2002, the Legal Division issued 14 Administrative Complaints and 19 Cleanup and Abatement Orders. Additionally, they reached five stipulated agreements leading to the clean up of unpermitted tire facilities, and held hearings in another five cases before the Office of Administrative Hearings. In addition there was a Board-sponsored remediation of a major unpermitted

waste tire facility in Riverside County. This facility illegally housed over 90,000 tires and took over three weeks to clean up.

Because of new regulation in the area of tire hauling, the Board is expecting an increase in enforcement efforts with respect to illegal hauling and dumping of tires, as well as violations of the new manifest procedures, during 2003.

In FY 98/99, the scope of an Interagency Agreement with the California Highway Patrol (CHP) in the Waste Tire Hauler Program was expanded to include aerial surveillance to identify possible illegal disposal of tires. The aerial surveillance program continued during FY 99/00, and is expected to continue during 2003/2004. The aerial photos provided by CHP enabled staff to identify 319 sites suspected of storing waste tires. Of these sites, IWMB staff has investigated 161 sites, resulting in various enforcement actions, including letters of violation, cleanup and abatement orders, and administrative complaints. [It is important to note that the 161 investigated sites identified by CHP are included in the 576 sites brought into compliance.]

C. IWMB ENFORCEMENT GOALS FOR 2003

1. ENFORCEMENT ASSISTANCE GRANT PROGRAM

In FY 2001/2002, the Enforcement Grant program provided a total of $765,000 in annual grants to local enforcement agencies to assist with enforcement program implementation. The Board hopes to increase this number, through increased local participation, during FY 2002/2003.

2. CLOSED, ILLEGAL, AND ABANDONED SITES

IWMB's Closed, Illegal, and Abandoned (CIA) Sites Unit have begun conducting Phase I investigations of approximately 500 known and suspected burn dumps in the state. The Cal/EPA Burn Dump Work Group will use information gathered through these investigations to better facilitate the regulation and remediation of burn dumps. During 2001/2002, 32 illegal sites were closed and cleaned up.

A primary goal of the Program in 2003 is to coordinate with LEA's across the State in identifying and implementing enforcement at Priority 'A' sites.

3. TIRE PROGRAM

Pursuant to the requirements of the Public Resources Code, section 42885.5, the IWMB developed a Five-year Plan for the Waste Tire Recycling Management Program (Plan), which was submitted to the Legislature on July 1, 2001. Currently the Plan is undergoing revision, as required by SB 876. The

Plan includes the following elements, with funding allocations, and performance criteria for each:

- Enforcement and regulations relating to waste and used tires storage.
- Cleanup, abatement, or other remedial actions related to tire stockpiles.
- Research that develops and promotes alternatives to the landfill
- Disposal of tires.
- Market development and new technology activities for used tires and waste tires.
- The waste and used tires hauler program and manifest system.

One of the major steps in the process of implementing the Plan is the development and implementation of the Waste Tire Manifest Tracking/Monitoring System. The new manifest regulations have been approved by the Board and are scheduled for implementation later in 2003. New manifest forms have been developed and successfully tested in the regulated community. The new manifest tracking system is scheduled to be implemented in the Spring of 2003.

4. USED OIL GRANTS

Board members awarded $16 million in July 2002 for the FY 2002/03 used oil block grant cycle. In April 2002, the Board awarded $5 million for the FY 2001/02 Used Oil Opportunity grant – competitive grant program.

IWMB Used Oil Program Staff will evaluate grant application packets submitted in 2002/03 for competitive grant awards, including used oil non-profit and RTD grant programs.

Used Oil Certified Centers – The Board operates the used oil certified collection center program under PRC §48660, which also specifies compliance requirements. A lack of compliance can result in a certified collection center losing its' certification status. Approximately 2,600 used oil collection centers are certified by the Board.

5. HOUSEHOLD HAZARDOUS WASTE GRANTS

Board members awarded $3 million in HHW Grants for fiscal year 2002/2003 in August 2002. IWMB will continue with the grant program in 2004. IWMB will continue to work on budgetary, legislative, and programmatic efforts to improve its environmental enforcement capability.

6. LEA ENFORCEMENT ACTIONS

Some 53 Local Enforcement Agencies (LEAs) take enforcement action by issuing Notices and Orders to cease and desist an unauthorized activity, or to clean up and abate a pollution, hazard or nuisance. The following counts of Notices and Order were issued by LEAs since 1999:

1999 40 Notices and Orders
2000 33 Notices and Orders
2001 35 Notices and Orders
2002 29 Notices and Orders

7. WASTE TIRE ENFORCEMENT

a. Bring all permitted facilities into compliance with permit conditions by 2006.

The enforcement program proposes to enhance its efforts to bring facilities into compliance by performing more frequent inspections of permitted facilities and by completing enforcement actions in an expeditious manner, inspecting a greater number of facilities each year, and proceeding through the levels of enforcement actions in an expeditious manner.

b. Bring known illegal sites into compliance by 2006.

The enforcement program proposes to enhance its efforts to bring illegal sites into compliance by conducting more inspections of reported sites. The program will seek to enhance its ability to identify illegal sites by extending the Interagency Agreement with the CHP for aerial surveillance to detect sites and researching the feasibility of establishing a bounty program to report illegal dumping.

c. Increase local government participation in the enforcement of permit conditions.

The enforcement program proposes to expand the role of local government in the detection, inspection, and enforcement at waste tire sites through an increase in scope and funding of its Local Government Enforcement Grant Program. During the base year 2001/02, eight local jurisdictions (five counties and three cities) participated in the grant program. As a result of changes in procedures and funding approved by the Board in the summer of 2002 and an aggressive marketing program conducted by Board staff, the number of participating local jurisdictions in subsequent years will increase dramatically.

There are 25 applicants for the current grant cycle, representing a three-fold increase over last year.

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VI

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

A. DTSC ENFORCEMENT RESPONSIBILITIES OVERVIEW

The Department of Toxic Substances Control (DTSC) is responsible for regulating hazardous waste facilities and overseeing the cleanup of hazardous waste sites in California. DTSC's Enforcement Program monitors hazardous waste generators, transporters, and hazardous waste management facilities to promote compliance with State and federal laws.

Through its inspection, compliance and corrective action programs, DTSC requires that State and federal standards for managing hazardous wastes be implemented. Nearly 200 major commercial facilities have authorization to treat, store and/or dispose of hazardous wastes in California. Businesses that conduct lower-risk treatment activities are regulated through a streamlined tiered permitting process, and associated programs that provide an appropriate level of oversight.

DTSC conducts a statewide inspection program and responds to nearly 1,000 citizen complaints regarding hazardous waste handling per year. Technical and investigative support is provided to federal prosecutors and local district attorneys prosecuting environmental crimes.

DTSC has concurrent jurisdiction with local agencies (Unified Program Agencies) to conduct inspections and enforce hazardous waste laws. The UPAs are the primary enforcement agencies for hazardous waste generators and certain on-site waste treatment activities.

DTSC pursues criminal investigations regarding alleged violations of the California hazardous waste control laws through the Criminal Investigations Branch within the Office of Legal Counsel and Criminal Investigations. This branch consists of peace officers and is the only organization within Cal/EPA that is staffed with peace officers.

B. DTSC ENFORCEMENT ACCOMPLISHMENTS 1999-2002

The program monitors hazardous waste transfer, storage, treatment and disposal facilities for illegal activity, using tools such as electronic manifest surveillance to monitor registered hazardous waste haulers, for example. Appropriate action is taken against hazardous waste handlers that violate hazardous waste requirements found through routine inspection, complaints investigations, and focused enforcement initiatives. The program also provides

technical investigation assistance and expert testimony for civil and criminal investigations. Accomplishments over the past four years include:

1. THE COMPREHENSIVE ENFORCEMENT INITIATIVE

In the early 1990's, DTSC's enforcement positions numbered 184, but due to significant cutbacks it was down to only 100 positions by 1998. As a result, by 1999, less than a total of five positions combined were devoted to the Circuit Prosecutor's Program, the Environmental Crimes Task Force Support Program and the Mexico Border Project. In 1999, DTSC identified the 46% reduction in resources for its basic regulatory enforcement program as one of the greatest impacts to its ability to effectively implement its enforcement mandate. In the Cal/EPA Comprehensive Enforcement Budget Plan for Fiscal Year (FY) 2000-2001, DTSC requested and received approval to restore part of the 46% of enforcement resources lost due to budget cuts during the six years prior to 1999. DTSC received 25 positions that included Task Force Support and criminal investigator positions, and $549,000 to upgrade lab equipment. In 2002 however, DTSC's enforcement resources remain below what they were in the mid-1990s.

2. DEVELOPMENT OF THE TASK FORCE SUPPORT AND SPECIAL INVESTIGATIONS UNIT

DTSC strengthened the enforcement component of its regulatory program through the establishment of the Task Force Support and Special Investigations Branch. This branch was established with 21 positions located in regional offices throughout the state. Its primary responsibilities are to reduce enforcement backlogs, work with environmental taskforces and support multi-media, multi-agency initiatives being developed by Cal/EPA.

3. BUDGETS

A Cal/EPA Comprehensive Enforcement Budget Plan to establish approximately 26 new enforcement positions within DTSC for the 1999-2001 fiscal year was approved effective July 1, 2000. These positions were established in the Statewide Compliance Division and State Regulatory Program Division within the Hazardous Waste Management Program and Criminal Investigations Branch, Task Force Support and Special Investigations Branch, and the Office of Legal Counsel within the Office of Legal Counsel and Criminal Investigations. These positions were created to assign priority to both criminal and regulatory enforcement of the Hazardous Waste Control Law, develop needed infrastructure for success, and address hazardous waste issues.

With these resources DTSC has investigated more environmental crimes, conducted more frequent facility inspections, aggressively pursued

enforcement actions, provided additional laboratory resources to facilitate the collection of analytical evidence in support of enforcement actions, and provided inspectors and investigators with improved technological capabilities to enhance their enforcement efforts.

In the last several years DTSC has:

- Established and maintained a toll free complaint hotline with bilingual capability.
- Conducted investigations of suspicious shipments.
- Developed a manifest tracking system that will identify problem manifests.
- Conducted inspections as California treatment, storage, and disposal facilities that receive waste from Mexico.
- Performed focused inspections on wastes being imported or exported for recycling, and implemented pollution prevention pilot projects.

During the 2002 calendar year, the various programs that had received positions from the implementation of the budget augmentation experienced some reduction in staffing due to the economic downturn and the reduction in revenues. The following positions were lost:

Statewide Compliance Division: 7 staff positions and 2 clerical positions
State Regulatory Program Division: 3 staff positions
Task Force Support & Special Investigations Branch: 1 senior staff and 1 clerical position
Criminal Investigations Branch: 2 investigator positions and a 0.3 clerical position
Office of Legal Counsel: 1 staff counsel position

4. LOS ANGELES JEWELRY MART DISTRICT

The Los Angeles Jewelry Mart District is a collection of over 45 buildings in downtown Los Angeles that have jewelry manufacturers and retailers. These companies have unique waste streams and the regulatory agencies in Los Angeles are working with the industry to help bring them into regulatory compliance.

DTSC developed 12 fact sheets for the jewelry manufacturing industry and made them available in Spanish, Armenian, and Vietnamese in hard copy and on its Web site as part of continuing outreach and education to the jewelry manufacturing industry. These fact sheets address safe management practices, recommended alternatives to chemicals used in jewelry manufacturing, and risks posed by jewelry manufacturing waste streams.

DTSC conducted a workshop on May 17, 2002, for the building owners of the Los Angeles Jewelry Mart on hazardous waste generator requirements and offsite treatment, storage, and disposal facility permitting requirements. DTSC is working with building owners to encourage them to develop performance measures to monitor tenant hazardous waste activity, as a means of demonstrating that the hazardous waste permit requirements are not triggered. Those measures would prevent hazardous waste disposal and minimize a building owner's exposure to enforcement by DTSC or alleged illegal discharge to drains and air vents committed by tenants.

DTSC's Hazardous Waste Management and Science, Pollution Prevention and Technology Programs, in conjunction with the California Compliance School, produced a short film, "The Jewelry Makers' Guide to Hazardous Waste Management." DTSC developed the film script and supervised filming at representative manufacturers who employ pollution prevention practices in their operations. One of the subjects presented addressed replacement technologies for cyanide, which eliminates the source of cyanide discharges to the basement treatment systems found in many buildings throughout the Jewelry Mart.

5. BACKLOG REDUCTION

DTSC initiated formal enforcement action on the three remaining backlogged cases for which action had not been initiated at the time of the last Accomplishments & Priorities Report. To minimize new backlogs, DTSC adopted the U.S. EPA enforcement policy that encourages initiation of formal enforcement action within 180 days following the discovery of a violation.

6. OIL EXPLORATION AND PRODUCTION WASTES

In FY 2001/2002 the Statewide Compliance Division published a report summarizing the findings of the Oil Exploration and Production Wastes grant initiative. The goal of the initiative was to characterize oil exploration and production (E&P) wastes, and based on the findings, determine if the wastes are being managed properly in California. The initiative concluded that some E&P wastes might exhibit California hazardous waste characteristics not covered under the federal exemption, and should be managed as hazardous wastes under State law. The report includes guidance for the proper characterization and disposal of E&P wastes and has been distributed to U.S. EPA, the regulated community, and other interested parties.

7. AUTOMOTIVE WRECKING/SALVAGE YARDS AND APPLIANCE RECYCLERS

DTSC's Automobile Shredder Waste Initiative report conducted in FY 2000/2001 presents several recommendations for the future regulation of California's automobile shredder industry and is undergoing review prior to publication. Recent enforcement actions and data gathered from the auto shredder waste initiative conducted by DTSC in FY 2000/2001 have suggested that facilities providing automobile bodies to shredders (i.e. automotive wrecking/salvage yards), and facilities providing "white goods" to shredders (i.e., appliance recyclers) may, in general, be mismanaging hazardous waste in the form of used oil, fuels, etc., removed from vehicles and white goods sent to shredding facilities.

During FY 2001/2002 DTSC, in coordination with local agencies in Kern County, initiated an investigation of appliance recyclers who shred old appliances. White goods, also known as "metallic discards" are refrigerators, air conditioners, washers and dryers, stoves, and similar goods that are no longer in use and will not be resold. They typically contain small amounts of hazardous chemicals in their machinery. The refrigerators and air conditioners are to be drained of hazardous wastes prior to being recycled. Task Force Support and Special Investigations Branch and Statewide Compliance Division staffs are in the process of conducting investigations of several metal recyclers selected for inspection to determine if the white goods they are receiving have, in fact, been drained of hazardous waste and to determine if violations exist. The preliminary assessment methodology was developed in FY 2001/2002. Appliance recycler inspections are underway at this time with results to be reported in FY 2002/2003.

8. HAZARDOUS WASTE IMPORT AND EXPORT

The Hazardous Waste Import and Export Program monitors hazardous wastes being exported out of the United States through California and hazardous wastes coming into California from foreign countries. All of the notifications are recorded in database for tracking import/export notifications. The database tracks generators, types of wastes, transporters and transportation, storage and disposal facilities (TSDs) for imported wastes. The database also tracks generators, types of waste, brokers and the foreign entities identified for receiving the exported wastes.

From July 1, 2001 to June 30, 2002, DTSC received 444 import/export notifications. There were 278 notifications for wastes being imported and 166 for exported wastes. Data from the tracking system were used to prioritize inspections completed during the fiscal year. Check lists providing information on the regulatory requirements for importing and exporting wastes were developed. Facilities were selected for inspection based on quantity of waste,

frequency of shipments and types of waste. Three generators, eight transporters and four TSDs were inspected as a result of the targeting effort.

9. USED OIL PROGRAM

DTSC, under contract with the California Integrated Waste Management Board, inspects the used oil recycling facilities, transfer facilities and transporters. The inspections are conducted in accordance with statutory requirements calling for certification of all used oil recyclers and compliance with hazardous waste permitting and regulatory requirements. Enforcement actions are taken against these entities in compliance with the Enforcement Response Policy.

10. CRIMINAL INVESTIGATIONS BRANCH

The Criminal Investigations Branch (CIB) performs a vital role in the accomplishment of DTSC's mission to protect the environment and ensure public health by regulating hazardous substances. By employing specially trained, armed peace officers, with the powers of arrest, search and seizure to investigate criminal violations of the Hazardous Waste Control Law, DTSC has an unparalleled ability to both deter and respond to the most serious threats to public and environmental health posed by the unlawful transportation, treatment, storage or disposal of hazardous waste. In the course of their investigations, CIB investigators often discover contaminated sites that might otherwise go undetected, which can then be remediated to protect the public and environment from further adverse effects. Finally, through the process of criminal investigation and prosecution of hazardous waste violations, DTSC continuously improves its application of science and technology to detect violations, collect evidence, withstand evolving defense challenges, and prove its cases beyond a reasonable doubt.

For calendar year 2002, CIB completed 98 investigations. This number includes 56 enforcement investigations, 17 prosecutor assists, 18 toxic assists and 7 internal investigations.[15] CIB has 123 cases currently under investigation. Of the 56 enforcement investigations, 19 were referred to a District Attorney (DA), United States Attorney (U.S. Attorney), the Attorney General (AG) or to DTSC's Office of Legal Counsel for administrative enforcement. Of the remaining 37, 6 were referred to regulatory entities and 31 were closed as unfounded. In 2002, CIB referred a total of 14 cases to either the DA or the Office of the U.S. Attorney for criminal action. One case was referred to the Office of the Attorney General for civil action. Three cases were referred to DTSC's Office of Legal Counsel. CIB also executed ten search warrants and made one arrest.

[15] "Prosecutor Assists" involve investigative assistance to a prosecuting entity. "Toxic Assists" involve investigative assistance to a regulatory or law enforcement entity. "Internal investigations" involve allegations of misconduct by DTSC employees.

C. QUANTITATIVE ENFORCEMENT INFORMATION

1. DTSC CRIMINAL, CIVIL, AND ADMINISTRATIVE ACTIONS

Type of Action	Calendar Year			
	1999	2000	2001	2002
Criminal Referrals	22	26	22	14
Civil Referrals *	3	13	6	17
Administrative Orders**	68	81	150	46

* Note: DTSC refers its civil cases to the Attorney General's Office.

** Note: Data on administrative enforcement orders for 2002 includes 16 orders of various kinds issued by the Site Mitigation Program.

2. SEPS, CLEANUPS, AND SETTLEMENT AGREEMENTS

Enforcement Related Activity	Calendar Year			
	1999	2000	2001	2002
Supplemental Environmental Projects *	8	3	6	14
Cleanups	0	0	0	2
Settlement Agreements **	79	87	157	73

* Note: Includes credits for California Compliance School.

** Note: Settlement Agreements includes administrative orders settled and settlements of DTSC cases handled by the Office of the Attorney General, Corrective Action Consent Agreements and settlements entered into by the Site Mitigation Program.

3. FINES, PENALTIES, AND RESTITUTION

Type of Action	Calendar Year			
	1999	2000	2001	2002
Criminal Fines *	$86,000	$13,000	$48,925	$862,440
Civil /Admin. Penalties**	$2,321,669	$4,763,495	$2,622,669	$2,308,610
Restitution ***	$99,644	$82,469	$121,572	$4,154,656

* Note: The 2002 calendar year totals reflect $207,940 in fines from cases where the TFS&SIB assisted in the investigation. TFS&SIB numbers are not included in years prior to 2002.

** Note: Penalty amounts listed are the settlement amounts from civil and administrative cases. The 2002 calendar year totals reflect $485,000 where TFS&SIB assisted in the investigation. TFS&SIB numbers are not included in years prior to 2002.

*** Note: Restitution includes cost reimbursement to DTSC for investigation of cases and, for calendar year 2002, the cost reimbursement for Site Mitigation Orders issued that year totaling $3,494,860. Site Mitigation numbers are not included for years prior to 2002.

4. INFORMAL ENFORCEMENT ACTIONS

Informal enforcement actions are those actions, which do not proceed to formal litigation, either in court or before an administrative law judge. Informal actions do not result in the imposition of penalties. The informal actions are primarily notices of violations sent to a facility and are comprised of the summary of violations, and the notice to comply.

Type of Action	Calendar Year			
	1999	2000	2001	2002
Summary of Violations/Notice to comply	126	257	221	151

5. SIGNIFICANT CASES

Administrative:

AERC.COM, INC. (Formerly Mercury Technologies International). In November 2002, DTSC and the Attorney General's Office settled with

AERC.Com for violations found in November 1999, including receiving and storing PCB ballasts without a permit. The company will pay $84,000 ($76,500 penalty and $7,500 reimbursement for DTSC's costs). DTSC will apply a credit of up to $25,500 for the site manager's completion of California Compliance School ($5,000) and a Supplemental Environmental Project ($20,500). To receive the Supplemental Environmental Project credit, AERC.Com must provide services free of charge to regulated household hazardous waste collection facilities operated by Alameda County, Contra Costa County, Santa Clara County, San Mateo County, Marin County, the City and County of San Francisco, and any city within these counties. AERC.Com has a series "A Standardized Permit" to reclaim mercury from spent fluorescent and high intensity discharge lamps.

METALCLAD INSULATIONS CORPORATION. On September 24, 2002, DTSC issued a Consent Order to Metalclad Insulations Corporation. This case involved illegal storage of hazardous waste and making false statements on a manifest. The defendant paid a total of $64,660; ($50,000 penalty and $14,660 reimbursement of DTSC's costs).

Kearney-National, Incorporated. On April 22, 2002, SCD finalized a settlement with Kearney-National (Kearney) for $35,000. Of this amount, $28,200 is a penalty, and $6,800 is reimbursement for DTSC's costs. Kearney operated a landfill at their manufacturing facility in Stockton. The landfill has been closed for many years, and is currently under a post-closure permit. The violations included failure to maintain wells, failure to conduct required analyses, and failure to follow their approved sampling and analysis plan. Kearney did not admit any violations.

UNION PACIFIC RAILROAD AND D.W. RUSSELL COMPANY: In July 2001, DTSC inspectors and Cal-OSHA inspectors conducted a joint inspection at the Union Pacific Railroad construction site in Montebello. Union Pacific contractors removed a bridge installed in the 1920's from the Los Angeles River Channel. They placed the deteriorating bridge on land adjacent to the Channel. The area is identified as a groundwater recharge basin for the Los Angeles area. The contractors then dismantled part of the bridge, causing lead-based paint fragments to contaminate the construction area. A worker involved in the dismantling was seriously injured when a metal beam from the bridge fell on his legs. Due to lead contamination that could injure construction site workers, Cal-OSHA "red-tagged" the site. Statewide Compliance Division inspectors took samples of the soil and paint debris. Lead was present in the soil samples at hazardous levels and was present in the paint debris at 13%.

In August 2001, Statewide Compliance Division (SCD) issued an Enforcement Order to Union Pacific Railroad and to its contractor, D.W. Russell Company for illegally disposing of hazardous waste. SCD required Union Pacific Railroad and/or D.W. Russell to submit a clean-up plan for review. The plan was

approved by SCD and the hazardous wastes were removed from the site. The clean up was completed in October 2001. Union Pacific and its contractors, D.W. Russell Company and Kiewit, paid a combined penalty of $62,500 for the violations.

United States Naval Air Weapons Station

China Lake Naval Air Weapons Station (Navy) is a permitted storage facility which is authorized to handle waste oil, explosive contaminated wastes and wastewater, waste jet fuel, contaminated soils, PCB wastes, photo processing wastes, paints, solvents and laboratory chemicals. The Navy also operates a unit under the Resource Conservation and Recovery Act interim status for treatment of reactive wastes by open burn/open detonation (OB/OD). Reactive wastes treated at the OB/OD unit include munitions that are no longer needed for their intended purpose of testing and evaluation, and/or items that are considered obsolete or expired. In addition to hazardous waste munitions, the OB/OD unit treats laboratory wastes generated during the development of new explosives and propellants.

During inspections in April 1998 and May 2000, violations of hazardous waste laws and regulations were found which included storage of hazardous wastes in unauthorized storage areas, failure to make a hazardous waste determination, failure to transfer hazardous wastes from leaking and deteriorated container to a container in good condition, and failure to notify and obtain approval from DTSC prior to modification of a permitted storage area. In August 1998, additional violations of storage in excess of 90 days in unpermitted areas were discovered via a self-disclosure notification sent to SCD by the Navy. The case was settled on September 26, 2002 for $40,000.

Valero (EXXON Benicia). Valero is a generator of hazardous wastes. The violations involved the disposal of waste onto the ground, treatment of wastes without a permit, storage of hazardous waste without a permit, failure to transfer wastes from a leaking bin, failure to carry out the provisions of its contingency plan, failure to provide secondary containment and failure to determine if a waste was hazardous. Valero paid $115,000 ($40,056 is reimbursement for DTSC's costs). The facility was given environmental credits for $18,736.

Civil

AMERICAN RECOVERY, INC. / A-AMERICAN RECOVER, INC. The American Recovery, Inc. facility operated under interim status until its permit application was denied and its interim status was revoked in November 2001. The facility was authorized for treatment and storage of hazardous wastes. Recent compliance problems at the facility began in 1997. From late 1997 until early 1999, the company was found to be seriously out of compliance due to the

continuing practice of storing wastes over its authorized capacity. The new company (A-American Environmental) began to have compliance problems again in the summer of 2001. Inspectors found operational violations and the company was storing over capacity. Due to the seriousness of the violations and the facility's poor compliance record, the company was placed on enhanced surveillance in July 2001.

The case was referred to the Attorney General on August 9, 2000. A civil case was filed against A-American Environmental and American Recovery, Inc. on March 14, 2001. At that time the most serious violations involved operation of the facility by an unauthorized company. When serious compliance problems were observed at the facility on July 10, 2001, a Stipulated Preliminary Injunction and Order was filed in Los Angeles Superior Court. The order restrained and enjoined American Recovery, Inc. from accepting offsite wastes, required American Recovery, Inc. to remove hazardous wastes stored at the unpermitted property adjacent to the facility, and reduce wastes stored at the facility to the authorized capacity. The inspectors subsequently observed that the wastes stored at the adjacent site had been removed. However, the facility was still storing waste over capacity.

In July 2001, Statewide Compliance Division staff conducted an inspection at American Recovery, Inc. and observed that most of the American Recovery, Inc. employees were dismissed and it continued to store and handle waste in excess of its authorized capacity.

In October 2001, a preliminary injunction was issued that ordered American Recovery, Inc. to submit copies of all inventory logs to DTSC, to permit inspections of the facility, and to commence the proper removal of all the hazardous wastes at the facility to an authorized TSD. By December 2001 approximately 400 drums of hazardous wastes had been removed from the facility. U.S. EPA emergency response contractors were asked to step in and complete the removal action in January 2002.

<u>CENCO REFINING COMPANY/POWERINE OIL COMPANY</u>. Cenco/Powerine is an inactive petroleum refinery that ceased operations in 1995 and, in doing so, placed large quantities of hazardous wastes in several petroleum storage tanks without authorization from DTSC. DTSC referred the case to the Attorney General in April 2000. In May 2000, a civil complaint was filed. In May 2002, a stipulation for settlement and entry of judgment was filed. As part of the settlement,

Cenco/Powerine paid $900,000 in penalties, reimbursed the DTSC's investigative costs of $100,000 and shipped the illegally stored hazardous waste to an approved facility.

Morrow Equipment Company. On March 8, 2002, a Final Judgment Pursuant to Stipulation was entered into by Morrow Equipment Company and the Napa County DA's office. The defendant was ordered to pay a total of $95,000 in penalties and $72,000 in costs.

Venus Laboratories, Inc. On March 5, 2002, a Final Judgment Pursuant to Stipulation was entered into by Venus Laboratories, Inc. and the Orange County DA's office. The defendant was ordered to pay a civil penalty of $60,000 and $5,000 investigative costs to the Orange County Department of Environmental Health.

Criminal

AAD Distribution and Dry Cleaning Services, Inc. (AAD) et al.

In February 2000, DTSC began its participation in a joint criminal investigation of AAD involving the Colorado Attorney General's office and the U.S. EPA. Search warrants were executed in July 2000 at various AAD affiliated entities in California and Colorado. In March 2001, AAD and several officers and managers were indicted by a Colorado Grand Jury on various hazardous waste and/or racketeering charges.

On February 8, 2002, Aaron Rios, former facility manager at AAD, Lakewood, Colorado, pled guilty to illegal transportation of hazardous waste and was placed on two years probation. Later in 2002, Patricia Hajduch, former facility manager at AAD, Lakewood, Colorado, was found guilty of two counts of illegal storage of hazardous waste, fined $80,000 and placed on four years probation. On April 2, 2002, Robert Hearsch, former facility manager, AAD, Lakewood, Colorado, pled guilty to Colorado hazardous waste violations and was placed on two years probation. On July 3, 2003, Hormoz Pourat, brother of AAD president Homayoun (Harry) Pourat, pled guilty to one count of racketeering and was subsequently sentenced to 17 years in Colorado state prison. Harry Pourat fled the United States to avoid prosecution. Behzad Kahoolyzadeh aka Behzad Cohen, aka David Cohen former AAD consultant, pled guilty to an unclassified felony in Colorado and is awaiting sentencing.

In October 2002, a federal Grand Jury in Los Angeles, California, returned a nineteen count indictment against AAD, Harry and Hormoz Pourat, and Behzad Kahoolyzadeh, aka Behzad Cohen, aka David Cohen, on various hazardous waste and conspiracy charges.

Dominic DelCarlo (DelCarlo Radiator). On January 8, 2002, Dominic DelCarlo (DelCarlo's Radiator), pled guilty to two misdemeanor counts of violating Health and Safety Code section 25189.5. The defendant was ordered to pay a total of $55,000; $37,500 in fines and penalty assessments which will be suspended

upon successful completion of probation and $17,500 in restitution to DTSC. The defendant was placed on three years probation.

Zackery "Zack" Andrew Jones (Stan's Automotive Machine Shop). On January 14, 2002, Zackery "Zack" Andrew Jones (Stan's Automotive Machine Shop) pled nolo contendere to one misdemeanor count of violating Health and Safety Code section 25189.5(b). The defendant was sentenced to 90 days in the county jail and ordered to pay a total of $5955; $5,000 fine, $100 restitution fee and $855 in restitution to El Dorado County Environmental Management and placed on 3 years summary court probation.

Christensen Processing and Marketing, Inc. On May 9, 2002, Christensen Processing and Marketing, Inc. pled nolo contendere to two felony counts of violating Health and Safety Code section 25189.5 and one felony count of violating Health and Safety Code section 25189.6. The defendant was ordered to pay a total of $75,000; $50,000 fine and $25,000 in costs ($20,000 to DTSC and $5,000 to Stanislaus County). The defendant was also placed on five years felony probation and was ordered to clean up the property within 180 days.

Thomas Christensen III (Christensen Processing and Marketing, Inc.). On May 9, 2002, Thomas Christensen III (Christensen Processing and Marketing, Inc.), pled nolo contendere to three misdemeanor counts of violating Health and Safety Code section 25189.5. The defendant was placed on three years probation, ordered to perform 100 days of community service and is required to clean up the property within 180 days.

David Hurshel Milburn (Stan's Automotive Machine Shop). On June 17, 2002, a jury found David Hurshel Milburn (Stan's Automotive Machine Shop) guilty of one felony count of violating Health and Safety Code section 25189.5(b). The defendant was fined a total of $13,500, ordered to pay $500 in restitution, sentenced to one year in jail and placed on 3 years probation.

Stanley Dean Flower (Stan's Automotive Machine Shop). On September 18, 2002, Stanley Dean Flower (Stan's Automotive Machine Shop) pled nolo contendere to one felony count of violating Health and Safety Code section 25189.5. The defendant was sentenced to 90 days in county jail, ordered to pay a total of $19,200; $13,500 fine, $5,500 in restitution to DTSC and an additional $200.00 in restitution. The defendant was placed on five years felony probation.

Tony Shade (Peninsula Auto Wreckers). On October 30, 2002, Tony Shade (Peninsula Auto Wreckers) pled guilty to one felony count of Health and Safety Code section 25189.5(b).

Sylvester Herring. On November 8, 2002, Sylvester Herring pled guilty to three misdemeanor counts of violating Health and Safety Code sections 25189.5(b) and 25189.5(d), one misdemeanor count of water pollution, and one misdemeanor count of the County Code by unlawfully disposing of solid waste. The defendant was ordered to pay a total of $200,000; $50,000 fine (suspended), $150,000 restitution payment to be used for site clean up, and to perform 240 hours of community service. In addition, the defendant was ordered to pay $500 in restitution to the San Benito County Superior Court. The defendant was placed on three years probation.

Anthony John Gaffke. On November 15, 2002, Anthony John Gaffke, pled guilty to one misdemeanor count of violating Health and Safety Code section 25189.5(c). The defendant was fined $10,000, with $5,000 credited to the cost of mitigation measures already taken. Of the remaining $5,000, $4,000 was suspended.

New Age Metal Finishing. On December 17, 2002, New Age Metal Finishing pled guilty in federal court to one felony count of violating Title 33, United States Code sections 1311(a), 1319(c)(2)(A) and 1342, intentional violation of a permit. The defendant was ordered to pay a fine totaling $350,000 of which $255,000 was stayed pending successful completion of probation and was sentenced to five years probation. In addition, the defendant was ordered to pay a special assessment fee of $400.

Michael Joseph Zalenski. On December 17, 2002, Michael Joseph Zalenski, pled guilty in federal court to one felony count of violating Title 33, United States Code sections 1311(a), 1319(c)(2)(A) and 1342; intentional violation of a permit. The defendant was sentenced to 12 months; 5 months imprisonment and 7 months home detention and 19 months supervised release. The defendant was ordered to pay a fine of $50,000, of which $45,000 was stayed pending successful completion of supervised release. The defendant was also ordered to pay a special assessment of $100.

D. REGULATORY INITIATIVES

Administrative Penalty Assessment Regulations. DTSC adopted regulations that govern the assessment of penalties in administrative enforcement actions.

RCRA-Equivalent Financial Assurance Regulations. DTSC adopted regulations that allow California to maintain its Resource Conservation Recovery Act (RCRA) authorization for financial responsibility.

E. DATA MANAGEMENT PROJECT

Planning and development for a data management project was completed by June 2002. The permitting and inspection, complaint, and enforcement modules were implemented on July 1, 2002. The newly designed data system is an Internet browser based system housed on DTSC's Intranet. It is accessible statewide by DTSC staff for inputting data or obtaining reports regarding various aspects of inspections, complaints, enforcement, and permit status. The newly developed system is currently undergoing minor refinements to further improve its capabilities. Inspections, complaints, and enforcement data that were converted from older database programs are being cleaned up and data errors are being corrected. DTSC plans to begin providing data electronically from this system to U.S. EPA's data system during 2003. Additional improvements for this system are planned to be designed and implemented during the next year.

F. CALIFORNIA-MEXICO BORDER

DTSC is working with Cal/EPA, U.S. EPA, County of San Diego, and other agencies to develop a collaborative U.S./Mexico plan that addresses environmental issues in and near communities along the border, including the monitoring of the import and export of hazardous waste along California's southern border. DTSC opened an office in San Diego in 2001 and charged it with overseeing border related issues. This unit's personnel routinely conduct border truck stops at the Calexico and San Diego border crossings to monitor import and export of hazardous wastes.

A high priority proposal to augment DTSC's Border Program funding for FY 2000-01 was approved which allowed for increased activity in existing tasks and the implementation of new activities. Based on past years of program experience, a need was recognized to make the program more effective by providing additional training to representatives of industry and government, establishing bilingual capability for the complaint Hotline, developing more enforcement actions, and focusing efforts on pollution prevention projects. All of these activities help to enhance compliance with California's hazardous waste laws and regulations in the border region.

During calendar year 2002, DTSC provided compliance assistance to brokers, maquiladoras (engineers), and environmental consultants managing hazardous wastes in the U.S./Mexico border region. In collaboration with U.S. EPA, Cal/EPA, local agencies, and government authorities in Mexico, DTSC developed training courses for businesses and agencies in California and Mexico, covering pollution prevention methods in selected industries, emergency response procedures, and techniques for sampling and analyzing

wastes. DTSC participated in various coordination meetings with federal, State, and local agencies both in California and in Baja California.

G. DTSC ENFORCEMENT GOALS FOR 2003

1. FINANCIAL RESPONSIBILITY

Since the beginning of the fiscal year (July 1, 2002), the financial responsibility analysts have conducted approximately 46 reviews for closure, post closure and liability. The program is currently redistributing the workload among the analysts to allow for annual reviews of the mechanisms used to guarantee financial assurance for closure and post closure. The financial responsibility program continues to track bankruptcy announcements, corporate sales and transfers, as well as other economic developments to look for possible weaknesses or trends in financial and insurance markets as well as the hazardous waste industry.

2. INFORMATION TECHNOLOGY ENHANCEMENTS

DTSC continues to modernize its enforcement data management systems so that accurate and “real-time” reports of enforcement activity can be produced on demand by staff working in the regional offices and at headquarters. Additional modifications to the recently implemented permitting and inspections, complaints, and enforcement data system will be developed and implemented. These modifications are intended to allow any program within DTSC to enter data within an area of the data system set aside for that program. These modifications will allow separate programs to generate program specific reports while allowing the development of reports that reflect the work done throughout the program.

3. INTERNAL GUIDANCE REVISIONS

DTSC will complete the remaining three policies and procedures documents and distribute those documents to all staff that have already been issued a compendium of current guidance. Outstanding work includes the nearly completed Inspections Policy and Procedure, slated to be signed in February, and both the Financial Responsibility and the Procedures for Preparing Enforcement Orders Policy and Procedures.

4. ADOPTION OF MANIFEST DISCREPANCY REGULATIONS

This rulemaking will strengthen reporting requirements for manifest discrepancies that will provide for stricter control of hazardous wastes that hold potential for uses as weapons of terror. These regulations are anticipated to be adopted during the 2003 calendar year.

5. JEWELRY MART

DTSC will remain active in the Jewelry Mart task force and coordinate activities with the City and County of Los Angeles. DTSC will continue compliance assistance outreach to better educate property owners and the jewelry industry. In spring 2003, DTSC will propose regulations to add aqueous waste cyanide to the Permit-by-Rule tier of self-implementing authorization. The proposed regulations will limit the concentration of cyanide that can be treated without additional safety analysis.

6. IDENTIFYING NON-COMPLIANCE

DTSC will use its new Internet browser-based Hazardous Waste Tracking System and other sources of information to systematically identify persons operating out of compliance with hazardous waste laws and regulations. DTSC will focus its efforts on entities managing universal wastes, taking enforcement action when appropriate, and providing compliance assistance.

7. OVERLOADED TRUCKS

DTSC intends to adopt regulations governing the transfer of contaminated soil from overloaded dump trucks to other vehicles before arrival at their final destinations. These regulations will clarify that an existing regulatory exemption applies to the transfer of contaminated soil from an "overloaded truck" and will require, as conditions of the exemption, that the transporter take specified measures to prevent releasing hazardous waste during the bulk transfer.

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VII

OFFICE OF HEALTH HAZARD ASSESSMENT

The Office of Health Hazard Assessment (OEHHA) is responsible for developing and providing state and local government agencies with toxicological and medical information relevant to decisions involving public health. Their mission is to protect and enhance public health and the environment by objective scientific evaluation of risks posed by hazardous substances.

In November 1986, California voters approved an initiative to address growing concerns about exposures to toxic chemicals. That initiative became The Safe Drinking Water and Toxic Enforcement Act of 1986, better known by its initiative number on the ballot, Proposition 65 (Prop. 65). This initiative addresses citizen concerns about exposure to substances, which cause cancer, birth defects or reproductive harm, and informs citizens about exposures to such chemicals. OEHHA is the lead agency for Prop. 65 implementation.

Prop. 65 requires the Governor to publish at least annually a list of chemicals known to the State to cause cancer or reproductive toxicity. The requirements imposed by Prop. 65 on persons doing business in California apply to chemicals that appear on the published list and prohibits businesses from knowingly discharging a chemical known to the State to cause cancer or reproductive toxicity into any source of drinking water. It also requires that no person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual.

OEHHA does not possess enforcement authority. Enforcement actions under Prop. 65 may be brought by the Attorney General, district attorney, city attorney or city prosecutor, and by any person in the public interest. OEHHA does attempt to track filings of Prop. 65 enforcement matters in the major California jurisdictions (San Francisco, Los Angeles), and other courts.

In October 2001, Governor Gray Davis signed SB 471 (2001, Sher). This bill amended Health and Safety Code section 25249.7 and requires the court, in assessing the amount of a civil penalty for a violation of the Act, to consider specified factors including, among others, the economic effect of the penalty on the violator, whether the violator took good-faith measures to comply with the Act, the willfulness of the violator's misconduct, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community. The bill also made numerous procedural changes applicable to

private persons acting in the public interest who file enforcement actions under Prop. 65. A copy of the legislation is at www.oehha.ca.gov/prop65/law/p65.

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VIII

CONCLUSION

This Cal/EPA Environmental Enforcement Progress Report outlines the goals that have been set by the agency and the accomplishments that have been achieved. As this report demonstrates, the goals have been ambitious and the accomplishments many. Cal/EPA continues to carryout its enforcement mandate and to respond to the new enforcement challenges of the 21st Century.

Cal/EPA recognizes that the majority of entities it regulates take the initiative to voluntarily comply with environmental laws and regulations. However, there are those who are not in compliance due to lack of information, neglect or deliberate intent. Enforcement is one of many tools we have for achieving compliance, along with compliance assistance and education outreach efforts. All these tools should be utilized in a successful regulatory program. Cal/EPA and all of its Boards and Departments are dedicated to ensuring a level playing field for all, and the protection public health and our environment.

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APPENDIX A

LIST OF ACRONYMS

AB	Assembly Bill
ACL	Administrative Civil Liability (SWRCB and Regional Boards)
AEO	Administrative Enforcement Order
AIRS	Aerometric Information Retrieval System Compliance and High Priority Violator Program (ARB)
APCD	Air Pollution Control District
ARB	Air Resources Board
BDO	Boards, Departments and Office in Cal/EPA
CAC	County Agricultural C ommissioners
CalARP	California Accidental Release Prevention
Cal/EPA	California Environmental Protection Agency
CalTrans	California Department of Transportation
CAO	Cleanup and Abatement Order
CARBOB	California Reformulated Gasoline Blendstock for Oxygenate Blending
CaRFG	California Reformulated Gasoline
CDAA	California District Attorneys Association
CDO	Cease and Desist Order
CDPR	California Department of Pesticide Regulation
CEM	Continuous Emissions Monitoring Program (ARB)
CHP	California Highway Patrol
CIA	Closed, Illegal and Abandoned dump sites
CIB	Criminal Investigations Branch (DTSC)
CIWMB	California Integrated Waste Management Board
CNG	Compressed Natural Gas
CPO	Chief Plant Operator
CUPA	Certified Unified Program Agency
CWAG	Conference of Western Attorneys General
DMV	Department of Motor Vehicles
DTSC	Department of Toxic Substances Control
ED	Enforcement Division (ARB)
EJ	Environmental Justice
eSMR	Electronic Self Monitoring Reporting
FBI	Federal Bureau of Investigation
FSR	Feasibility Study Report
FY	Fiscal Year
H/W PBR	Hazardous Waste Program – Permit By Rule
H/W	Hazardous Waste Program
HDVIP	Heavy Duty Vehicle Inspection Program
HHWE	Household Hazardous Waste Elements
HMRR	Hazardous Materials Release Response Plan and Inventories

LIST OF ACRONYMS (Continued)

IMS	Information Management Strategy
LEA	Local Enforcement Agency (solid waste)
LPG	Liquefied Petroleum Gas
MMP	Mandatory Minimum Penalty
MSOD	Mobile Source Operations Division (ARB)
MOU	Memorandum of Understanding
MSA	Mutual Settlement Agreement
MTBE	Methyl Tertiary Butyl Ether an oxygenate for fuels
NAFTA	North American Free Trade Agreement
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NOV	Notice of Violations
NPDES	National Pollutant Discharge Elimination System
NTC	Notice to Comply
NWP	Negotiated Work Plans
OBD	On-Board Diagnostic (vehicle emission control indicator equipment)
OEM	Original Equipment Manufacturer
OHV	Off Highway Vehicles
OLA	Office of Legal Affairs
PPE	Personal Protective Equipment
PROFEPA	Procuraduria Federal de Proteccion al Medio Ambiente (Mexican EPA)
RCRA	Resource Conservation Recovery Act
RFG	Reformulated Gasoline
RPPC	Rigid Plastic Packaging Container Program (CIWMB)
RWQCB	Regional Water Quality Control Board
SAE	Society of Automotive Engineers
SB	Senate Bill
SCD	Statewide Compliance Division (DTSC)
SEI	Strategic Environmental Investigations and Enforcement Section (ARB)
SEMA	Specialty Equipment Market Association
SEP	Supplemental Environmental Projects
SORE	Small Off Road Engines
SRPD	State Regulatory Programs Division (DTSC)
SRRE	Source Reduction and Recycling Elements
SWIS	Solid Waste Information System
SWRCB	State Water Resources Control Board
TFS&SIB	Task Force Support and Special Investigations Branch (DTSC)
TMDL	Total Maximum Daily Load
U.S. EPA	United States Environmental Protection Agency
VIN	Vehicle Identification Number

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