



## Partnership 2000

### Partnership 2000

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Legislation has established joint responsibility between the Department of Resources Recycling and Recovery (CalRecycle) and the local enforcement agencies (LEA) for the effective management of solid waste in California.

In April 1996, the CIWMB (now CalRecycle) and the California Conference of Directors of Environmental Health (CCDEH), representing the majority of LEAs, [agreed to work in partnership](#) to identify issues to improve mutual effectiveness in meeting solid waste management legislative mandates. Additional information is available on original Partnership [commitments and accomplishments](#). In August 2003, the [Partnership 2000 Work Group](#) formed subcommittees to tackle mutual issues revolving around the topics of compliance and the processes of the California Environmental Quality Act (CEQA) as related to solid waste regulatory oversight. The efforts resulted in the completion of several issue papers and the creation of the CEQA Toolbox. [These joint efforts](#) were called "Partnership 2000," a name which has carried forward to the present.

One of the commitments of Partnership 2000 was to hold an annual solid waste conference (now the annual technical training series) for CalRecycle staff and LEAs to provide more opportunity for interaction and information exchange. Successful conferences have been held since 1997.

Partnership 2000 established the [technical training series steering committees](#) which are made up of LEAs and CalRecycle staff who volunteer to organize each upcoming technical training series. The Partnership 2000 steering committee was also established:

- To ensure that P2000 commitments/projects are advancing satisfactorily, and
- To initiate new P2000 projects

Partnership is integrated into every facet of CalRecycle's work with the LEAs. Specific efforts are continually taken to fine tune and augment the local/state/industry Partnership, whether through CalRecycle's internal restructuring to better serve stakeholders or through the [LEA Roundtables](#), [Enforcement Advisory Council \(EAC\)](#), [CCDEH](#) and the annual [technical training conference](#).



## Partnership 2000

# History of Partnership 2000

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## I. Introduction

State laws, including AB 939, AB 1220, and AB 59 established joint responsibility between the California Integrated Waste Management Board (now CalRecycle) and the local enforcement agencies (LEA) for the effective management of solid waste in California. The relationship between CalRecycle and the LEAs, on occasion, has been strained due to differences in interpretation of laws, regulations, or duties and responsibilities. Both CalRecycle and the LEAs have recognized the need for State and local governments to work cooperatively to accomplish the goals of the Integrated Waste Management Act of 1989.

In April 1996, the CIWMB and the California Conference of Directors of Environmental Health (CCDEH), representing the majority of LEAs, agreed to work in partnership to identify and resolve issues and to better promote their mutual effectiveness in meeting solid waste management legislative mandates. This joint effort was named "**Partnership 2000.**" The project was conducted under the oversight and direction of the joint steering committee which was made up of representatives of the executive management of the CIWMB and CCDEH. It was agreed and understood that neither party could speak for their entire organization, and that any agreements reached among the committee would have to go through the normal considerations by each organization before they could be fully implemented.

## II. Vision

The vision of Partnership 2000 was that CalRecycle and the LEAs (through the CCDEH) can work in partnership to collaborate in the identification and resolution of issues with the goal of improving their mutual effectiveness in meeting solid waste management legislative mandates.

## III. Mission

The mission of Partnership 2000 was and still is to develop a positive working relationship whereby CalRecycle and the CCDEH strive to clarify State and local roles and responsibilities, to facilitate communication and collaboration, and to secure a commitment from all levels so that mutual program and policy objectives can be met.

## IV. Objectives

- Clarify roles and responsibilities of CalRecycle staff and the LEAs;
- Examine implementation issues as they relate to program and policy areas;
- Streamline inter-organizational processes and lines of communication to enhance program effectiveness, and
- Establish performance measures to determine success in process and policy objectives.

## V. Interest-Based Conflict Resolution Process

The process used by the original Partnership 2000 joint steering committee was to apply interest-based negotiation/conflict resolution methods to identify procedural, policy, perceptual, or political issues facing CalRecycle and the CCDEH and to resolve or make recommendations that effectively address such issues.

This method of resolving conflict to the satisfaction of all involved parties is described in the Harvard Negotiation Project's best-selling book, **Getting to Yes**. This method teaches how to:

1. Treat conflict between parties as a natural resource for solving problems and improving relationships.
2. Attack problems while respecting one another.
3. Raise issues in a way that invites cooperation.
4. Explore issues to discover respective underlying interests.
5. Generate options for mutual gain.

6. Develop any needed agreements based on objective standards.

## **A. Issue Identification**

The original Partnership 2000 formation committee met in April 1996 and discussed several issues of conflict and identified two major issues to use in learning the process for interest-based conflict resolution. The key issues initially identified were "conflict of interest" and "appropriate enforcement action."

The issues were identified through a process where the CIWMB and CCDEH representatives brought forward their respective thoughts as to the primary areas of conflict between the two groups. CIWMB identified "conflict of interest" as their primary area of concern, while the CCDEH representatives brought forward "appropriate enforcement action". Both issues reflected a number of inter-related factors and perceptions. CIWMB perceptions centered on whether an inherent conflict of interest (i.e., county LEAs regulating facilities at the county level, either county owned/operated or privately owned/operated) was an impediment to LEAs taking appropriate enforcement action. CCDEH perceptions centered on the failure of CIWMB to acknowledge the inherent differences amongst LEA jurisdictions and the need for flexibility and use of LEA professional judgment in determining what an appropriate enforcement action might be.

Following considerable discussion of the perceptions and factors which led the committee to identify these issues, the following issue statements were initially developed:

### **Conflict of Interest**

The perception of Conflict of Interest stems from whether an appropriate level of enforcement action was taken.

### **Appropriate Enforcement Action**

The CIWMB's drive for consistency is in conflict with the LEAs' need for flexibility in achieving compliance, which has created the perception of a widespread enforcement problem.

## **B. Interests**

The original 1996 joint steering committee discussed the interests and concerns surrounding these two issues at great length. Though use of the interest-based conflict resolution process, both groups identified their underlying "interests" in raising the issues of conflict of interest and appropriate enforcement action. (In this process, "interests" are defined as underlying needs, concerns, hopes, fears, and motivations.)

The development and cataloging of interests around these two issues facilitated the committee's mutual understanding that the primary concern for both groups was whether facility compliance was achieved. In other words, the underlying interest of both LEAs and CIWMB representatives around these two issues was not whether or not a conflict of interest exists, but rather whether the ultimate goal of protecting public health and safety and the environment through facility compliance with standards has been achieved. This mutual understanding of how the two seemingly different issues stemmed from strongly shared interests and convictions, enabled the committee to agree to focus on just the one issue of appropriate enforcement action, as it most directly addressed the shared interest (and goal of state and local programs) of facility compliance.

It was also agreed that debating the perceptions surrounding the "conflict of interest" issue would not further the goal of improving facility compliance. Further, perceptions of "conflict of interest" exist at all political levels and are perceived to impact decision-making at all levels of government. The acknowledgement that both groups are strongly committed to the common goal of protecting public health and safety and the environment, was a significant step in enabling the participants to move into problem-solving discussions, including the identification of options and the development of agreements to address the "appropriate enforcement" issue.

## **C. Brainstormed Options 1 through 4**

In the interest-based conflict resolution process, options are "brainstormed possibilities" for resolving conflicting interests to the satisfaction of both parties. Options are **not** agreements. The original Partnership 2000 joint steering committee identified four options to develop draft agreements for addressing the issue of appropriate enforcement actions. Those options were:

1. Have a collaborative opportunity to identify the appropriate level of facility-based performance and then make the appropriate changes to reflect that outcome.
  - Build in tools to provide exceptions to the regulatory/statutory standard
  - Make the commitment toward achieving the options through the "collaborative opportunity."
  - Make a commitment to come up with a joint proposal for achieving facility-based performance.
2. Redefine how the Enforcement Advisory Council's (EAC) role, function, and membership will include deliberation on statewide issues in collaboration with CalRecycle staff to make advisory recommendations to CalRecycle and LEA management for resolution of these issues.

3. Formalize an LEA assistance function separate from the LEA evaluation function at CalRecycle to address and assist with questions, etc., and to provide training and technical assistance.
4. Continue Partnership 2000.

Subgroups of the joint steering committee were formed to develop draft agreements to the above options.

**Option 1: Have a collaborative opportunity to identify the appropriate level of facility-based performance and then make the appropriate changes to reflect that outcome.**

Six issues were identified in 1996 to address Option 1 as follows:

1. Bring facility permits into compliance.  
*Major Tasks on a Site by Site Basis:*
  - Determination of threats to public health and safety and the environment vs. administrative issues.
  - Collaborative approach.
  - Separation of enforcement and permits.
2. Improve quality of permits submitted to the CIWMB by LEAs so that the CIWMB can process permits within 60 days.  
*Major Tasks:*
  - CIWMB development of strong technical consultation capability to assist LEAs day to day.
  - LEAs and CIWMB collaborate on permit preparation training programs for LEAs and CIWMB staff.
  - Focus pre-permit inspections on conditions in permit and determine if an enforcement order is needed on any outstanding violations.
3. In the determination of "appropriate enforcement actions" allow LEA judgment with appropriate level of oversight by the CIWMB.  
*Major Task:*
  - Completing an advisory on appropriate enforcement options for "imminent threats".
4. Frequency of inspections should be commensurate with the degree of risk to public health and safety and the environment.  
*Major Task:*
  - Collaboratively develop statutory language to the effect that inspections will be conducted monthly or as prescribed in CIWMB regulations.
5. Provide an administrative appeal process with less legalistic protocol than prescribed in AB 59.  
*Major Task:*
  - Collaborate with LEA attorneys group, CIWMB legal staff, and LEAs to develop an AB 59 clean up bill for the 1996-97 session.
6. Develop a process for resolving dispute over "significant change".  
*Major Tasks:*
  - Collaboratively develop criteria for determining what should be in the Report of Site Information (RSI) and what should be in the permit. Include only "show stopper" issues in the permit, rely on the RSI for detailed descriptions.
  - Train LEAs and CIWMB staff.
  - Collaborate on the development of a model permit.

**1996 Draft Agreement**

The agreement reached in 1996 was to adopt the above six issues. An enforcement policy framework was developed using a collaborative work group of CIWMB and LEA staff with the shared goal of improved facility compliance. A number of documents were developed to support and clarify the overall enforcement policy; these additional documents were also developed using a collaborative process. Issues like these will continue to be raised through Partnership 2000, CCDEH, EAC, and other forums.

**Option 2. Redefine how the EAC's role, function, and membership will include deliberation on statewide issues in collaboration with CIWMB staff to make advisory recommendations to the CIWMB and LEA management for resolving these issues.**

To improve the EAC's ability to resolve issues raised, and to facilitate collaboration and foster consensus, the following issues were identified in 1996 to address Option 2:

1. The EAC's Structure and Procedures document should include a statement that all resolutions shall be directed to the Deputy

Director of the CIWMB's Permitting and Enforcement Division.

2. The Deputy Director of the Permitting and Enforcement Division and the Chairman of the EAC shall make reports to the CCDEH Solid Waste Policy Committee as necessary. The Deputy Director will propose what EAC resolutions he/she will follow up on and which ones he/she proposes to forward to CCDEH Solid Waste Policy Committee and the CIWMB for follow up or any needed decision making.

#### **1996 Draft Agreement**

The above suggestions were discussed with the EAC during their August 29, 1996 meeting. Consensus with Option 2 was reached through the EAC's passage of a resolution stating they would change their Structure and Procedures document to include a statement that all resolutions shall be directed to the Deputy Director of the CIWMB's Permitting and Enforcement Division.

#### **Option 3. Formalize an LEA assistance function separate from the LEA evaluation function at the CIWMB to address and assist with questions, etc., and provide training and technical assistance.**

The following 1996 issues were identified to address Option 3:

1. The LEAs need to provide information as to what technical assistance and training is needed.
2. CIWMB staff need to provide information as to what are their own training needs.
3. The CIWMB should put together an LEA assistance function separate from the LEA evaluation function.

#### **1996 Draft Agreement**

Again in 1996, the CCDEH and the CIWMB agreed to identify their technical assistance and training needs (this identification has occurred and is now being implemented and coordinated). The CIWMB has also formalized an LEA assistance function separate from the LEA evaluation function. In addition, the CIWMB (in collaboration and with assistance from CCDEH and other interest groups) has formalized its training commitment. The CIWMB has taken the lead for developing the training delivery sequence and for implementing training.

#### **Option 4. Continue Partnership 2000.**

##### **1996 Draft Agreement**

1. Offer three pilot classes of Interest-Based Conflict Resolution based upon Partnership 2000 on a volunteer basis to LEAs and CIWMB staff, with one session each in Northern, Central, and Southern California. The CIWMB would take the lead on this.
2. Concurrently, conduct a joint training need assessment for both technical and related training. The CIWMB and the CCDEH would collaborate on implementing this.
3. Review the need assessment results to identify which needs relate to technical issues, and which technical issues might also benefit from conflict management training. The CIWMB and the CCDEH would collaborate on implementing this aspect.
4. Establish a training delivery sequence and implement training. The CIWMB would take the lead on this.
5. Hold a solid waste conference for CIWMB staff and LEAs to provide more opportunity for interaction and information exchange.

## **VI. Conclusion**

The CIWMB and CCDEH are committed to resolving conflicts promptly and informally at the source. Partnership 2000 has affected an approach to conflict management that has enabled both to reach the following goals:

- To promote the effective management of conflict in the work environment.
- To increase participants' awareness of their conflict management style.
- To develop participants' knowledge of and skills in interest-based conflict management.
- To enhance participants' ability to deal with conflicts effectively and constructively.

Partnership 2000 continues to provide the opportunity to collaboratively identify conflicts and draft agreements to resolve some outstanding issues between the CIWMB and the LEAs.

All who experienced the Partnership 2000 in its early days felt very positive in the enhanced communication and conflict resolution

skills they had learned. This process provides an opportunity for each to "walk in the other's shoes" and it has been genuinely expressed by everyone that it is a positive experience that needs to be shared with each organization and all the LEAs. This same spirit carries forward in the present Partnership 2000.

**Original 1996 Partnership 2000 Participants**

Ralph Chandler  
Don Koepp  
Dennis Ferrier  
Patty Henshaw  
Steve McCalley  
Don Holm  
Justin Malan  
Dorothy Rice  
Susan Pedersen  
Clint Whitney  
Don Dier  
Mary Coyle  
Brian Larimore  
Bob Anderson

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California Department of Resources Recycling and Recovery (CalRecycle)



## Partnership 2000

# Partnership 2000 Commitments and Accomplishments

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## Original Partnership 2000 Commitments (1997)

1. Identify the appropriate level of facility-based performance and make the appropriate changes to reflect the outcome. Then build in tools to provide for exceptions to the regulatory/statutory standard and come up with a joint proposal for how to achieve facility based performance.

**Accomplishments: Board Permitting and Enforcement Division (P&E) advisories, local enforcement agency (LEA) training program.**

2. Redefine how the Enforcement Advisory Committee's (EAC) role, function and membership will include deliberation on statewide issues in collaboration with Board (now CalRecycle) staff to make advisory recommendations to the Board and local enforcement agency (LEA) management for resolution of these issues.

**Accomplishments: Redefine the Enforcement Advisory Council's (EAC) role, function and membership.**

3. Formalize an LEA assistance function separate from the LEA evaluation function at the Board to address and assist with questions, etc., and provide training and technical assistance.

**Accomplishments: This is a work in progress that is continuing to develop and be implemented. Examples include the Board training program, the technical assistance survey, and the P&E Division reorganization to address the issues of how to more effectively provide an LEA assistance function that is clear and distinct from the evaluation function.**

4. Continue Partnership 2000

- Offer three pilot classes of Interest-Based Conflict Resolution on a volunteer basis to LEAs and California Integrated Waste Management Board (CIWMB) staff, with one session each in Northern, Central and Southern California. CIWMB would take the lead on this.
- Concurrently, conduct a joint training needs assessment for both technical and related training. The CIWMB and the California Conference of Directors of Environmental Health (CCDEH) would collaborate on implementation.
- Review the needs assessment results to identify which needs relate to technical issues and which technical issues might also benefit from conflict management training. The CIWMB and CCDEH would collaborate on implementation.
- Establish a training delivery sequence and implement training. CIWMB would take the lead.
- Hold a solid waste conference for CIWMB staff and LEAs to provide more opportunity for interaction and information exchange.

**Accomplishments: The Partnership 2000 conference in Asilomar in November of 1997 is a shining achievement with 120 LEA and Board staff participating. This Partnership 2000 web site, regular steering committee meetings and Partnership 2000 work groups are accomplishments towards meeting this commitment. Three Interest Based Conflict Management courses are scheduled for: April 21-23 in Sacramento, May 5-7 in Santa Ana and May 11-13 in Visalia.**

## 1998 Partnership 2000 Commitments

1. Clarification and focusing of the role of the EAC and other LEA/CIWMB communication/problem solving forums.
  - A work group called the EAC Scoping Committee has been recently formed. Its purpose is to look at the role of the EAC, Roundtables, CCDEH and its technical advisory committees (TAC) and how they work together. The first meeting was on February 26, 1998.
2. Exploration and focus on the connections between LEA program responsibilities and the achievement of 50% diversion from landfill disposal.
  - The Board has formed priority teams which will fully explore this issue within the next three months.

3. Identify Asilomar Conference feedback issues for new Partnership 2000 commitments.
  - All feedback issues are being addressed either through existing CIWMB/LEA work groups or through branch assignments within the Permitting and Enforcement Division.
4. Provide direction for the permit change partnership effort.
  - The Permit Change Partnership Work Group has been formed to address problems with the current permitting process and define the roles of the LEAs and the Board. The projected completion date is May 1998.
5. Initiate a Partnership 2000 web site.
  - This web site was initiated in March 1998.





## **Partnership 2000**

### **Partnership Work Group**

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The Partnership 2000 Work Group was formed in August of 2003 to complete a commitment started at the 6th Annual LEA/CIWMB Conference (now the annual technical training series). The workgroup members [met on August 27, 2003 regarding permitting, enforcement, and regulation topics](#).

The workgroup was divided into two subgroups:

- CEQA and
- Gaining Compliance

These subgroups attended additional meetings early in 2004 as well as two at the 7th Annual LEA/CIWMB Conference.

The work group included members representing the (now CalRecycle), local enforcement agencies (LEA), and the [California Conference of Directors of Environmental Health](#) (CCDEH).

### **Partnership 2000 Work Group Members**

#### **Representing the CIWMB**

- Howard Levenson
- Sharon Anderson
- Mark de Bie
- Bob Holmes
- Willie Jenkins
- Mary Madison-Johnson
- Sue Markie
- Erica Weber
- Mike Wochnick

#### **Representing LEAs**

- Dan Avera
- Tammy Derby
- Ernie Genter
- Leonard Grossberg
- Patti Henshaw
- Robert McClellon
- Greg Pirie
- Karen Schkolnick

#### **Representing CCDEH**

- Justin Malan

### **Subgroups**

## **CEQA**

For its tasks, in 2006, the CEQA subgroup developed a [paper to depict how the Board, Board staff, and the LEA applied the CEQA process relative to solid waste facilities permits](#). The goal of the paper was to show the perspectives on the CEQA process, as they were at the time the paper was completed. In addition to development of the issue paper, the subgroup also spurred the development of the CEQA Toolbox.

### **May 2006**

- [CEQA Paper](#)

### **May 2005**

- CEQA Toolbox

### **March 11, 2004 Meeting**

- [Minutes](#)

### **February 5, 2004 Meeting**

- [Agenda](#)

### **August 27, 2003 Workgroup Meeting**

- [Agenda](#)
- [Meeting Record](#)

## **Members**

- Dan Avera
- Mark de Bie
- Michael Bledsoe
- Elliot Block
- Gary Erbeck
- Ernie Genter
- Leonard Grossberg
- Howard Levenson
- Greg Pirie
- Erica Weber

## **Gaining Compliance**

The gaining compliance subgroup completed its responsibilities by developing an [issue paper to chronicle the current state of how compliance is achieved at solid waste facilities](#), identify problems or barriers to achieving compliance or taking enforcement, and present ideas for solutions that would solve these problems. This issue paper was used during a presentation to the Permitting and Enforcement Committee in February 2006 on the discussion of statutory issues related to permitting and enforcement processes.

### **May 2005**

- [Gaining Compliance Issue Paper](#)

### **March 11, 2004 Meeting**

- [Minutes](#)

### **February 5, 2004 Meeting**

- [Agenda](#)

## Members

- Doug Ames
- Sharon Anderson
- Michael Bledsoe
- Suzanne Hambleton
- Patti Henshaw
- Howard Levenson
- Robert McClellon
- Dean Peterson
- Karen Schkolnick
- Bernie Vlach
- Tammy Derby

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California Department of Resources Recycling and Recovery (CalRecycle)



## **Partnership 2000**

### **Maintaining and Enhancing Partnership**

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Partnership is integrated into every facet of CalRecycle's work with the LEAs. Specific efforts are continually taken to fine tune and augment the local/state/industry Partnership, whether through CalRecycle's internal restructuring to better serve stakeholders or through the LEA Roundtables, Enforcement Advisory Council (EAC), [CCDEH](#) and the annual Technical Training Series (formerly LEA Conference).

In April 1996, the CIWMB (now CalRecycle) and CCDEH, representing the majority of LEAs, agreed to work in partnership to identify and resolve issues to better promote mutual interests for meeting solid waste management legislative mandates. In August 2003, the new Partnership 2000 Work Group formed subcommittees to tackle mutual issues revolving around the topics of compliance and the processes of the California Environmental Quality Act (CEQA) as related to solid waste regulatory oversight. The efforts resulted in the completion of several issue papers and the creation of the CEQA Toolbox. These subcommittees attended additional meetings early in 2004 as well as two in 2009 at the Annual LEA/CIWMB Conferences for those years.

Initiatives that were periodically identified by the Partnership 2000 Steering Committee and work groups to flesh out the issues and propose solutions are currently identified by and resolved through EAC, LEA Roundtables and CCDEH.

The EAC Resolutions and CalRecycle's Responses document the many Partnership issues that have been and continue to be resolved.



## **Partnership 2000**

### **Steering Committees**

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This page contains information on CIWMB (now CalRecycle) steering committees which include:

- Partnership 2000 Steering Committee
- Annual Conference Steering Committee

#### **Partnership 2000 Steering Committee**

The role of this steering committee was:

1. To ensure that P2000 commitments/projects are advancing satisfactorily, and
2. To initiate new P2000 projects.

#### **2003 Members**

- Howard Levenson
- Dan Avera
- Greg Pirie
- Justin Malan
- Sharon Anderson
- Mark de Bie

#### **1997-98 Members**

- Pamella Bennett, San Bernardino County
- Dennis Ferrier, City of San Jose
- Patricia Henshaw, Orange County
- Don Koepp, Ventura County
- Justin Malan, California Conference of Directors of Environmental Health
- Ralph Chandler, California Integrated Waste Management Board (CIWMB)
- Dorothy Rice, CIWMB
- John Bell, CIWMB
- Sue Pedersen, CIWMB

#### **July 1, 1998 Meeting**

- [Agenda](#)
- [Notes](#)

#### **February 4, 1998 Meeting**

- [Agenda](#)
- [Notes](#)

## September 10, 1997 Meeting

- [Agenda](#)
- [Notes](#)

## Annual Conference (now Technical Training Series) Steering Committee

The conference steering committee is comprised of LEAs and CalRecycle staff who volunteer to organize each upcoming annual LEA/CalRecycle partnership conference (now the technical training series). Their tasks include gathering all input from conference evaluations, Roundtables, EAC, CCDEH and individual LEAs; synthesizing that input; and creating a comprehensive and exciting conference agenda. Steering committee members may also serve as moderators, speakers, or session leads at the event. The steering committee members offer insight, vision, and needs analysis with the result being the best product possible.

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California Department of Resources Recycling and Recovery (CalRecycle)



## **Partnership 2000**

### **Maintaining and Enhancing Partnership**

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**CEQA**  
**Partnership Issue Paper**

**Prepared In Partnership by**

**California Integrated Waste Management Board Staff**

**Local Enforcement Agency Representatives**



# Contents

## **Introduction**

## **History**

## **Next Steps**

## **LEA as Lead Agency**

*Am I Lead Agency?*

*What is my role and what are my tasks?*

## **LEA as Responsible Agency**

## **CIWMB as Responsible Agency When LEA is Lead Agency**

## **Other Issues**

*If LEA as Responsible Agency isn't performing as expected, would the CIWMB assume the lead?*

*Environmental Justice*

*Age of CEQA Document*

*Inconsistency*

*Future issues*

## **Additional Issues from Work Group Meeting not explored**

*Thresholds*

## **Introduction**

This paper is part of a joint effort between LEA and CIWMB staff to clarify how the current CEQA process is conducted relative to solid waste facilities permits. The goal of this paper is to show the two differing perspectives on the CEQA process, as they were at the time the paper was completed, from both the LEA and CIWMB view. This paper will show where the viewpoints agree as well as where opinions differ. The paper is intended to provide clarity on the current practices.

## **History**

In August 2003 the Partnership 2000 workgroup met to prioritize CEQA issues. The top three issues included:

- CIWMB application of the CEQA process beyond Board's scope, role, responsibility and authority
- Need for increased consistency in application of permit process
- Need for communication/coordination between LEAs and CIWMB in the permit process

During the 2004 LEA/CIWMB Conference the CEQA workgroup decided to supplement existing CEQA guidance previously provided in Board sponsored trainings and in the Permit Toolbox and fill in additional information. It was agreed that the supplements should be some hard and fast rules that LEAs and Board staff could use to make decisions regarding the CEQA process as well as to describe the role of the LEA when acting as a lead agency and the Board as a responsible agency. There was also a decision to examine the possibility of drafting thresholds to be used when reviewing solid waste facility projects.

The work group met in September 2004 to continue the draft outline on rules, roles and thresholds associated with CEQA.

In addition to the partnership work group additional efforts focusing on CEQA are in place. These include:

- Additions to the Permit Toolbox
- CEQA Training offered by the CIWMB in the Spring of 2005
- Comprehensive examination of the Board's CEQA responsibilities in all areas

## CEQA Information

The following information was captured during several CIWMB/LEA Partnership meetings on CEQA. This document focuses on three main topics:

1. LEA as Lead Agency
  - Am I Lead Agency?
  - What is my role and what are my tasks?
2. CIWMB as Responsible Agency When LEA is Lead Agency
3. Other Issues
  - If LEA as Responsible Agency isn't performing as required by law, would the CIWMB assume the lead?
  - Environmental Justice
  - Age of CEQA Document
  - Inconsistency
  - Future issues

### 1. LEA Deciding if it needs to be Lead Agency

*Am I Lead Agency? Scenarios where an LEA might be Lead Agency. [CEQA Guidelines section 15051 describes how to identify the Lead Agency.]*

1. The permit is the first approval for the activity.
2. No other public agency or decision-making body (Board of Supervisors, City Council) is carrying out the project or making an approval that requires CEQA review.
3. Per CEQA Guideline Section 15162, if the LEA is presented with information in the context of a, b, and c, below, and the LEA finds that additional documentation is required there has been a substantial change in the project, or which results in new significant effects or severity of effects the LEA may determine to become lead agency.
  - a. There has been a change in circumstances under which the project is being undertaken which results in new significant effects or severity of effects
  - b. New information is made available which shows the following
    - i. One or more significant effect identified that were not previously discussed (including or not limited to regional and cumulative impacts)
    - ii. Mitigation measures are not feasible
    - iii. Mitigation measures or alternatives were not discussed that would reduce significant impactsThe LEA should consult with the previous lead agency to determine if based on the issues presented in any new information provided have or have not already been addressed in the existing documentation developed by the previous lead agency
3. Per CEQA Guideline Section 15052(a) the LEA shall become Lead Agency if the following have occurred:
  - a. The lead agency did not prepare any environmental documentation for the project, and the statute of limitations for challenging the lead agency's action has expired

- b. The lead agency prepared environmental documents for the project, but the following conditions occur:
  - i. A subsequent EIR is required per Guidelines section 15162
  - ii. The lead agency granted final approval of the project, and
  - iii. The statute of limitations for challenging the lead agency's action under CEQA has expired
- c. The lead agency prepared inadequate documentation without consulting with the responsible agency and the statute of limitations for challenging the lead agency's action has elapsed.

*So Now I'm Lead Agency. What is my role and what are my tasks?*

1. If the LEA as a lead agency prepares a draft EIR or ND, it should be noticed and circulated (locally and statewide) for review and comment. All comments should be considered. A final document should be developed and adopted or certified, and all required findings should be made.
  - a. When an LEA, as the lead agency, prepares an EIR for a proposed project, the EIR must analyze all potentially significant environmental impacts. The EIR cannot have unsupported conclusions. Every conclusion must be supported by sufficient analysis. If the LEA needs information from a responsible agency, but the responsible agency is not cooperating, the LEA can request help from CIWMB staff and/or the State Clearing House. In addition, the LEA can hire consultants that have the expertise the LEA needs to prepare the EIR. The LEA can charge the project applicant a reasonable fee to pay for the LEA's cost to prepare the EIR.
2. In some cases, an LEA may wish to notice and circulate a document prepared by another agency prior to utilizing it for the permit. Occasionally, an LEA may choose to complete or correct the CEQA process carried out by another public agency when it considered a project. (for example, if the environmental document was not noticed or circulated adequately). New noticing and circulation of a document is a way to determine if there may be ~~is~~ new information that may require additional documentation to be developed pursuant to Section 15162. This may be an alternative to preparing a new CEQA document or an alternative to litigation against the original lead agency. If the LEA does not correct the flaws in the notice and circulation process, Board staff will consider whether it needs to do so or whether another action is necessary.
3. The LEA can take the time required to complete the CEQA process pursuant to Guidelines 15111.
4. When considering issuing a permit the LEA must keep in mind PRC 44012. When issuing or revising any solid waste facilities permit, the enforcement agency shall ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and that the long-term protection of the environment is the guiding criterion, and that any terms and conditions of the solid waste facilities permit are consistent with subdivision (e) of Section 43209 and this division. Any Lead Agency must review all aspects of potential environmental impact.

5. A complete project description should be developed that takes into account as appropriate growth and predictable future changes. The whole of the project should be considered.
6. Consult early and often. Consultation should be with local and state agencies as well as other interested parties. It can be done through meetings or through requests for review of documents, draft or otherwise. The Permit Toolbox has information on topics that should be thought through relative to environmental review checklists, permit, and operating and design elements.  
<http://www.ciwmb.ca.gov/PermitToolbox/CheckItems/CEQA/default.htm#Guidelines>
7. If after consultation the LEA determines that the contemplated project is adequately considered in a previously adopted environmental document, or an Exemption is appropriate, then the LEA will complete the Exemption “process” and include in the finding as stated in T27, 21650f(7) or find that the proposed permit is consistent and supported by the existing CEQA analysis when the permit is sent to the Board. The LEA should consider filing a Notice of Exemption or Notice of Determination with Governor’s Office of Planning and Research (OPR, State Clearinghouse) and the County Recorder when they forward the proposed permit to the Board.
  - a. In all cases the CIWMB, as a Responsible Agency must make its own determination whether the project is supported by existing documentation or exempt. If the CIWMB staff disagrees with the LEA on the finding, the following steps will be taken.
    - i. CIWMB will initiate discussion with the LEA to resolve differences within the time constraints of the permit process. This would include technical and legal assistance on how the Board could comply with CEQA requirements.
    - ii. If the issues cannot be resolved, CIWMB staff may take appropriate actions, including taking the permit to the Board with a recommendation on how the Board should comply with the CEQA requirements or taking legal action where necessary to preserve the Board’s entitlements as a responsible agency.
    - iii. CIWMB’s recommendation alternative actions that CIWMB staff might recommend could include assisting the LEA to comply with CEQA, suing the Lead Agency, completing a CEQA document, or taking no additional steps.
8. When the LEA is the lead agency they need to fully comply with all the CEQA requirements prior to sending a proposed permit to the Board for concurrence. The LEAs should consult with their legal counsel to determine how all the requirements (CEQA and permit process requirement) can be best achieved.

## **2. LEA as Responsible Agency [Also applicable to CIWMB as Responsible Agency]**

### *Consultation*

When acting as a Responsible Agency, the LEA will utilize environmental analyses and documentation prepared by the Lead Agency in its decision making process. To ensure adequacy of these documents under CEQA, the LEA is given the opportunity to affect the

scope and contents of the analysis by providing consultation to the Lead Agency. *CEQA Guidelines Section 15096(b)*

The LEA should designate representatives to attend scoping meetings. § 15096(c)

When consultation is requested by the Lead Agency, the LEA should review the Notice of Early Consultation (NOEC) or NOP for the proposed project and provide the Lead Agency with specific detail about the scope and content of the environmental information. Comments should be related to the LEA's area of statutory authority and expertise relative to the design and operation of the solid waste facility or operation. Comments also should be made in order to disclose information necessary for the LEA to make their approval over the portion of the project related to the permitting and enforcement of the proposed project. If an EIR is to be prepared and consultation is not requested, the LEA can ask for a consultation meeting. The LEA must respond to an NOP within 30 days. §§ 15063(g), 15082(b) and 15082(c)

### *Providing Comments*

As a Responsible Agency, the LEA has an additional opportunity to affect the quality of the analysis provided in an environmental document by reviewing and commenting on proposed or draft documents.

When a Mitigated Negative Declaration (MND) or Negative Declaration (ND) is being prepared, the LEA can comment on the proposed document. Comments need to be returned to the Lead Agency within the indicated review period. MNDs and NDs do not provide an opportunity for a response to comments. Therefore, if the LEA disagrees with the level of detail necessary for the processing of a SWFP, the LEA must indicate where the document is deficient and offer inclusions to be incorporated/amended into the final document. If the LEA disagrees with the proposal to prepare a MND or ND, the significant effects which would result from the project must be identified and a recommendation made to modify the project, incorporate mitigation measures, or prepare an EIR.

If an Environmental Impact Report (EIR) is being prepared, the LEA should respond within the indicated review period. Comments should speak to the scope and content of the EIR germane to the LEA's responsibilities. Comments on a draft EIR should focus on the completeness of the project description and proposed project alternatives, as well as the completeness, inconsistencies and/or correctness of the environmental analysis and technical appendices in the EIR. The comments should offer additional information, mitigation measures or alternatives that should be included. The LEA may determine that they have the broad expertise relative to solid waste management and may choose to provide comments based on their expertise.

### *Use of a Lead Agency's Document*

The LEA shall consider the Lead Agency's EIR, MND or ND prior to acting upon or issuing the SWFP. The Responsible Agency shall certify that it reviewed and considered the information contained in the EIR, MND or ND. §§ 15050(b) and 15096(a)

If the LEA finds the document prepared by the Lead Agency is inadequate for its use as a Responsible Agency, the LEA must either:

- Be deemed to have waived any objection to the adequacy of the EIR, MND, or ND;
- Prepare a subsequent EIR, ND, MND if permitted under § 15162; or
- Assume the Lead Agency role as provided by § 15052(a) (3). *§ 15096(e) This, of course, also applies to CIWMB as a Responsible Agency and should be noted above where this report talks about the Board completing the CEQA documentation a Lead Agency prepared.*
- Take the issue to court if the statute of limitations has not run (typically, 30 days from the filing of a Notice of Determination);

If the document is deemed to be adequate, the LEA must consider the environmental effects of the project as shown in the EIR, ND or MND prior to making a decision on the project. *§ 15096(f)*

If an EIR was developed, the LEA shall not issue a Permit to a project as proposed if any feasible alternative or feasible mitigation measures within its powers would substantially lessen or avoid any significant effect. *§ 15096(g)*

The LEA needs to make the written findings required by §§ 15091 and 15093. *§ 15096(h)*

After the LEA approves the project (issues the permit) a Notice of Determination may be filed with the County Clerk and the State Clearinghouse. *§15096(i)*

### **3. Additional Points relative to CIWMB as Responsible Agency**

1. CIWMB staff wants to be at the table early with the Lead Agency, formally or informally, in scoping meetings and in consultation.
2. CIWMB staff will provide comments on all aspects of the project and project impacts. This is done to ensure that all potential issues are identified and have an opportunity to be resolved. Most issues can be linked to some aspect of the design or operation of the facility. CIWMB staff will defer to agencies with higher level of expertise on the issue. For example, while CIWMB might flag air or water issues in its comments in a scoping session or on a draft EIR, final determinations on air quality or water quality issues will be deferred to the air district and regional board respectively to make final determination relative to the issue discussed in the comments and will not pursue the issue further
3. The Board as Responsible Agency, must make the same findings as a Lead Agency when granting approval of the project in the form of permit concurrence (Guidelines Section 15096 h). If any impact remains significant after mitigation, the Board must adopt a Statement of Overriding Considerations in order for the project to be approved.
4. Relative to issues identified during the CEQA process:

- a. If all the issues identified by CIWMB staff have been addressed in the Lead Agency's CEQA record then the staff will recommend the document be used to support the Board's ability to concur in the proposed permit that identifies the project.
- b. If some issues remain, CIWMB staff will continue to work with the Lead Agency to find resolution. If the Lead Agency is an LEA, CIWMB staff and the LEA may wish to take the issue through the Board's Management eventually to the Executive Director and should have legal staff present during discussions to find resolution. If discussion with the Lead Agency does not result in resolution, CIWMB staff will need to find an alternative way to resolve remaining issues. CIWMB staff will only pursue issues that remain that are within their purview and not entirely within another agencies oversight

Find resolution through direct discussions with the applicant and or other responsible party. The applicant may wish to waive time in order to complete the discussions

- i. If the findings in 15162 or 15052 can be made, prepare additional documentation. (The costs of preparing additional CEQA documentation may be imposed on the project applicant.)
- ii. Bring the permit to the Board with recommendations including i and iii above as well as recommend reviewing the LEA performance with respect to the CEQA requirements.
- iii. Sue the Lead Agency after consultation with CIWMB Legal office, P&E Deputy Director, and the CIWMB Executive Director.

### 3. Thresholds

Will be added at a later date

#### **Phase II – EAC may want to write a resolution on one or more of the following:**

- Inconsistency between projects/Inconsistency on the same project with different staff – Differing comments from multiple staff, at different times – Phase II
- Scope: CIWMB should only provide comments on issues it has purview on. - See roles
- Timing: What happens if CIWMB comments early on in process and Responsible Agency with expertise in the subject matter? Considers that the Lead adequately addressed them, but then CIWMB makes same comments much later when Board is taking discretionary action on permit? Does CIWMB internal process need to be reviewed? I.e., at end either sue or say nothing?





**Partnership 2000**

**Partnership 2000 Work Group: CEQA Issues**

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**Agenda**

**Prior Work: February 5, 2004**

Workgroup reached consensus that the focus of the conference session should be to supplement existing CEQA guidance documentation and fill in missing pieces of information. Mainly the supplements could be some hard and fast rules that LEAs and Board staff could use to make decisions re: CEQA process and findings and understand likely CIWMB response to any particular decision. [Homework](#) was assigned to the workgroup members to send in their top list of information they believe is missing from available [CEQA guidance](#).

Time	Topic	Action
2:30-2:40	Opening Remarks	<ul style="list-style-type: none"> <li>• Welcome Participants (Facilitator)</li> <li>• Provide context for the session (Facilitator)</li> <li>• Review agenda and goal of session</li> <li>• Recap pre-conference meetings (Facilitator)</li> <li>• Ask questions and request clarification (meeting participants)</li> </ul>
2:40-3:00	Issue Review	<ul style="list-style-type: none"> <li>• Present list created by work group</li> <li>• Review/modify list (meeting participants)</li> <li>• Gain consensus on list</li> </ul>
3:00-3:15	Priority Issue Identification	<ul style="list-style-type: none"> <li>• Prioritize Issue list (meeting participants)</li> </ul>
3:15-4:30	Develop CEQA Guidance	<ul style="list-style-type: none"> <li>• Begin development of guidance for priority issues (meeting participants)</li> <li>• Assign issues needing further research or development to work group member for post-conference follow-up (meeting participants)</li> </ul>
4:30-4:45	Next Steps	<ul style="list-style-type: none"> <li>• Assign any remaining issues to work group members</li> <li>• Develop review protocol</li> <li>• Develop implementation plans for CEQA guidance (meeting participants)</li> </ul>











## **Introduction**

This issue paper is part of a joint effort between LEA and CIWMB staff to chronicle how compliance is achieved at solid waste facilities, identify problems or barriers to achieving compliance or taking enforcement, and present ideas for solutions that would solve these problems. The main step of the partnership process on compliance will be to present this information to Board Members of the CIWMB for discussion, feedback and direction.

The overall issue can be characterized by a series of questions. How do the CIWMB and LEAs define and assess compliance? What is the relationship between an educational/compliance first approach to deterring and preventing problems, and a stringent enforcement and penalty approach when problems do occur? How can we measure and compare these different approaches and their outcomes?

## **History**

In August 2003 the Partnership 2000 workgroup met to prioritize issues on Enforcement and Inspections. The top three issues included:

- Belief that CIWMB should acknowledge education as the cornerstone of compliance
- Current methodology lacks a clear definition of compliance and a method to measure compliance and EA performance
- Inadequate hammers to levy fines.

During the 2004 LEA/CIWMB Conference, the Gaining Compliance workgroup determined that inspectors use a variety of methods to reduce violations and focused primarily on a model that achieves compliance by relying on education and cooperation. The workgroup also discussed enforcement options available under other programs such as the CUPA in order to assess applicability to solid waste laws.

In September 2004, the work group met to discuss what gaps for enforcement exist in the current system in order to focus on possible solutions to resolve barriers. These included:

- No way to measure compliance
- Cumbersome enforcement process
- Education and training not consistent
- Multi-media coordination lacking
- Publicity examples not available
- Legislative barriers

## **Next Steps**

After discussion with the California Conference of Director of Environmental Health's Solid Waste Policy Committee, the Enforcement Advisory Council, participants at the 8<sup>th</sup> Annual LEA/CIWMB Partnership Conference, and Permitting and Enforcement management, the working group will present this information to the Permitting and Enforcement committee or at a workshop. The group will be looking for direction and workable solutions in those areas identified as gaps.

## **Compliance and Enforcement System**

When dealing with enforcement there are several approaches to gain compliance: a widely used informal compliance approach which relies on education and cooperation between the LEA and operator, and then the more formal enforcement penalty approach. Both methods are addressed below.

### **Compliance First Approach**

An approach that many LEAs adhere to was presented by the Orange County LEA at the LEA/CIWMB Conference in 2004. The Orange County LEA currently utilizes a model that places an emphasis on training and preventing violations. This places the focus and resources on the majority of facilities in the State that are consistently in compliance. The goals of this model are to obtain consistent long-term compliance at solid waste facilities, ensure that solid waste operations are not creating a nuisance, hazard, or threat to public health and the environment, provide efficient and effective use of LEA resources, and ensure that on any given day a solid waste facility can pass a CIWMB inspection.

The three steps of this approach to achieve consistent compliance at solid waste facilities include:

- On-going education and training for inspectors, management, operators and when applicable, the planning department.
- Use the inspection report to provide sufficient details on any actual or potential regulatory violations and whenever possible, provide positive comments about the operations.
- Establish relationships between inspectors and operators based on mutual respect and involve the LEA learning the operations beyond what is needed to do an inspection.

To make this compliance first model successful, the LEA assists the operator directly whenever possible by reviewing draft documents and letters, research regulations and procedures for the operator, helping the operator through the sometimes very confusing regulatory process, and obtains assistance from the CIWMB as appropriate. Unless staffing limitations prevent it, inspection and enforcement staff should rotate among facilities so that they can maintain an objective perspective of the operation by stepping away from the site periodically and allow fresh viewpoints from fellow inspectors.



Conversely, if staffing is limited, inspection and enforcement staff can and should gain fresh perspectives by attending inspections in neighboring jurisdictions.

Overall, for 95-97% of solid waste facilities and operations, the “cooperation model” achieves its objective of assuring well-run solid waste facilities in substantial compliance with regulations. Of the 976 active facilities and operations in the State, approximately 33, roughly 3%, are undergoing some form of formal action. Underlying this statistic however, is a question of whether many more facilities should be subject to enforcement as described in the section “Measuring Compliance”.

## **Enforcement/Penalty Approach**

When cooperative efforts fail to correct violations or prevent threats to public health and safety and the environment, stronger measures are required. An LEA will have to assume a command-and-control stance by utilizing penalty provisions.

It is not always clear where the threshold is between the compliance first/education approach and the enforcement penalty approach. Advisory 38 raised the issue of thresholds between compliance and enforcement. The advisory provided detailed descriptions and instructive interpretation of the various enforcement options available to remedy violations at solid waste facilities. Portions of the Advisory have already been incorporated into regulation. Some LEAs use their Enforcement Program Plan to determine when they will move from one action level to the next. Others follow guidance from the CIWMB staff that follows the statutory or regulatory scheme to determine next steps. Overall, most enforcement actions are taken when a facility or operation is in violation of Permit Terms and Conditions, operating illegally, or violating state minimum standards with the majority falling into Permit enforcement.

More discussion on the topic of consistent application of enforcement strategies will be discussed in the next section.

An example of an enforcement/penalty approach lies within the CIWMB’s Enforcement Agency EPP – at [hyperlink Enforcement Assistance Enchiridion--Chapters 3-4](#).

This approach, detailed in Appendix 1, describes a sequence for taking action at a facility up to and including penalties and fines. The steps correspond with the circumstances discovered at the site unless a more expeditious process is warranted. This sequence follows guidance and regulatory schemes set up by the CIWMB.

While the steps outlined in the Board as EA’s EPP present a sound process, there are barriers that the Board members and CIWMB staff have been made aware of during the processing of permits and through the routine work they do alongside LEAs.

One underlying issue continues to surface regarding appropriate and timely enforcement of permit terms and conditions – how long should the LEA wait to issue a cease and desist (for the activity in violation, not the entire site unless warranted) upon discovery of

the violation such as exceedence of tonnage or vehicle limits. Subsequently what actions should the LEA take when compliance dates have passed?

## **Problems and Program Gaps, Ideas for Solutions**

This next section discusses general categories where the working group identified specific needs for change. By doing so, the group listed the need, described the problem that is caused by the gap, and then offered a solution to address the need.

### **Problem: *Cumbersome Enforcement Process - LEA perspective***

When dealing with non-complying facilities, there are barriers in the current enforcement system that limit enforcement or even discourage enforcement. Many LEAs have long believed that the current enforcement process is difficult to use or cumbersome and basically drains LEA resources by allowing the operator to appeal enforcement orders including the orders that impose penalties. The existing enforcement mechanism allows operators to appeal, essentially indefinitely, while pursuing compliance, all of which taxes LEA resources and discourages formal enforcement. While the process is clearly spelled out in regulations and technical assistance is provided by the CIWMB staff when appropriate, it still may be difficult to utilize those processes locally. For example, LEAs may opt not to pursue this approach when the amount of a potential fine at the end an enforcement process (including possible appeals, courts actions, time during which compliance isn't achieved due to the dispute) is weighed against faster and less resource draining informal resolution of the issue(s).

This concern was partially addressed by AB2159 which shortened timeframes for appeals of enforcement orders at permitted facilities, established an option to hear appeals before a hearing officer instead of a panel, and removed the stay of an order during the appeal process for unpermitted sites. However, the stay of an enforcement order while moving through the appeal process still applies to permitted sites.

Further, some potential solutions could be gleaned from the CUPA model which has many attributes:

- ✓ very time efficient,
- ✓ the procedures are clearly stated with flow charts and if / then boxes,
- ✓ defined roles and responsibilities,
- ✓ progressive enforcement options,
- ✓ a settlement process option,
- ✓ a streamlined hearing process,
- ✓ detailed penalty calculations, and
- ✓ limits to the appeal process (Judicial Review only).

### **Solution 1: *Changes to Law and Regulations, Standard Forms***

To the extent that the laws and regulations can make processes for taking enforcement action more efficient, the more likely it will be that they will be used. Once used a few

times, this should have the effect of making informal compliance efforts that much more likely to work (deterrent effect).

Some potential changes to provide for an effective enforcement model include:

1. Provide specific timelines in regulations to follow (some of these could allow for some flexibility if justified). For example:
  - Violation Citation
  - 30 days to fix
  - If not fixed – automatically must issue an order
  - 30 days to comply
  - If no compliance, automatic finesThis timeline would need to be in regulations.
2. Provide standard fill in the blank forms for Orders in the regulations (like Judicial Council Forms for civil filings).
3. Legislative Changes (see “*Legislative Process Barriers and Solutions*” in Appendix 2 for additional discussion).

### **Solution 2: Other State Enforcement Approaches**

When assessing enforcement issues it can be useful to look at the programs of other states. In doing this, however, it must be remembered that in every state except California, all environmental programs are contained within one state environmental agency.

Two States that have assessed large monetary penalties for enforcement actions are Pennsylvania and Texas. In Pennsylvania all enforcement actions are appealable by the operator or the public to an environmental hearing board composed of attorneys appointed by the governor. The exception is that an inspector can generally issue a notice of violation without an appeal.

Pennsylvania has a “penalty matrix” that is used for arriving at a penalty and fine amount. This matrix takes into account the degree of severity of the violation, the degree of willfulness to violate and the type of violation. In addition, there is a Pennsylvania “Standards and Guidelines for Identification Tracking and Resolving of violations” that spells out the entire enforcement process in detail.

Pennsylvania uses the matrix and guidelines at each solid waste facility to assess penalties and fines. Its Solid Waste Management Act allows a maximum of \$25,000 per day per violation. The matrix is used to determine the monetary percent for each violation. On big sites with multiple violations over a long period of time fines can add up to hundreds of thousands of dollars in some cases.

Texas also has a Penalty Policy Matrix for all media including waste air and water. To go along with the matrix they also have a “penalty calculation worksheet”. When a penalty is determined “enforcement coordinators” negotiate with the operator and offer

20% off the penalty for working through environmental coordination instead of going through litigation.

Big penalties are usually assessed to big waste companies with multiple violations over several years. Fines can again, using the penalty calculation worksheet, add into the hundreds of thousands. It is interesting to note that Texas usually does only yearly inspections on the big sites and relies heavily on reports from the operators.

**Problem: *Measuring Compliance***

Some stakeholders, including regulators, the public and some operators, contend that LEAs and Board do not enforce the laws and regulations strongly enough because there are few, if any, fines imposed or collected. This raises the issue of how does the Board and the LEAs actually measure compliance.

While measuring the total tally of fines and penalties could lead to a valid measurement, the working group also found a need to measure the value of time, efforts and resources expended through less formal actions that result in compliance with the regulations, before formal enforcement activity becomes necessary. In many cases, the time spent to achieve compliance informally resulted in greater efficiency, savings, and benefits to the public and the environment. In contrast, enforcement actions processed within the constraints of the current system are very costly and resource intensive for local and state government.

**Solution: *Determine Percentages***

One suggestion would be to measure the percentage of facilities that are not cited for violations, the percentage of facilities that are cited but then return to compliance, and the percentage of facilities that are issued enforcement orders and then comply. In other words, compare different approaches to achieve compliance for the same type of violation to see if the results are the same with the less stringent approach. Still, any method used would need to distinguish between those operators that complied on their own and those that had help or prodding by the LEA.

Some methods for measuring informal compliance efforts could validate the tactic that employs education and training. In order to be effective and useful, the compliance measurements would need to be quantifiable, easy to track, easy to collect, and not raise other issues of concern.

Additional parameters that may augment or complement include:

1. Track Orders Issued
2. Track Violations out of SWIS
3. Track Areas of Concern out of SWIS
4. Track number of facilities without any violations or Areas of concern in a specific time period

5. Track CIWMB inspections that verify LEA inspections results
6. Have CIWMB randomly inspect facilities other than active landfills in each LEA jurisdiction
7. Post LEA performance evaluations results

One disadvantage of a focus on facilities is objections by operators regarding publicizing potential non-compliance (for example, concerns they've expressed about inspection reports noting violations that haven't been embodied in a Notice and Order). However, some of the measurements suggested above could prevent these objections while allowing for a measurement of enforcement/compliance efforts.

***Problem: Lack of Publicity That Could Aid Local Efforts***

Some stakeholders have suggested that media publicity may help in the deterrence of illegal and illicit operations and thus overall compliance may be a result when violators or violations are publicized either in the local media or on a website that tracks violations. This means that if the jurisdiction publicizes illegal activities, or as needed on facilities with reoccurring violations; the undesired publicity may spur overall industry efforts to prevent problems and maintain compliance. Most likely, the illegally operating business will know that its actions will be publicized and that type of message is usually unwelcome and thus acts as a deterrent to others.

This is based in part on a premise that many business owners or operators who operate illegally, chronically cause violations, or who seem to be on the un-ending track of enforcement order after enforcement order, experience few repercussions of their behavior. In addition, the type of person who willingly begins an illegal operation experiences little impact when caught under the current methods, except for being often ordered in writing to cease and desist. Most violators hedge their bets that the cost of getting caught is less than the monetary gain they enjoy by violating laws and regulations.

Several state and local agencies have experienced a reduction in illegal, criminal and negligent behavior when the agency begins a publicity campaign. For instance, one jurisdiction publicizes the results of their restaurant inspections in total on their website. They also alerted the local media that they would be making this information available to the public. Not only did this provide the general public with a level of awareness of which restaurants might not have the healthiest practices, it served as notice to the industry that their violations might hurt their bottom line.

Additionally, at the onset of publishing the CIWMB's Inventory of Solid Waste Facilities that Violate State Minimum Standards (Inventory) in the late 1980's, the impact of being on that list was tremendous. Many of the chronic violators began to clean up their conditions in order to avoid being listed. As of this writing, fewer sites end up on the Inventory mostly due to fewer sites with long term violations and also due to the Industry's familiarity with the Inventory. The state and LEAs may need to look at other methods to prevent those who negligently violate the law by establishing illegal operations or who intentionally violate the terms of the governing permit.

***Solution: Involve Local Media, Publish Results***

Encourage local jurisdictions to develop a method beyond the State's current practice of publishing the Inventory and Enforcement Actions. This would involve posting information on the local jurisdiction's website where the public can view details of illegal operations, chronic violators and other activity that needs to be deterred. Additionally, this method could be shared with local franchise haulers so that they can become aware of what sites are in violation of the standards or permit.

Should this proposal be included as a priority, then staff could work with LEAs and the CIWMB Office of Public Affairs to develop options for an approach that will be circulated to staff, the EAC, CCDEH and finally to the Board.

***Problem: Need for Increase in Formal Education and Training***

LEAs and board staff spend valuable time working on enforcement/compliance issues with operators. The data for compliance at landfills shows that most landfills are operating in compliance with State Minimum Standards for Solid Waste Handling. However, since the adoption of the flexible tiered framework of regulatory oversight in 1995, the type and number of solid waste facilities other than landfills has greatly expanded. In 1994 the infrastructure had 13 activity types such as landfill, transfer station

or transformation facility. By 2004 this number had blossomed to 51 activity types including all the new categories for construction, demolition and inert activities, chipping and grinding of organic material, or biosolid composting. Companion with the tiers and activity types, the number of permit activities grew from just 20 Full Solid Waste Permits processed in 1993 to a breakdown of 2004 numbers that includes 30 full permits, 1 Standardized, 20 Registration and 123 Notification tier permits. Over the eleven year span, LEAs processed 193 Full SWFPs, 40 Standardized, 128 Registration and 420 Notification Tier permits.

The data listed above shows that LEAs are spending a high percentage of time enforcing statutes and regulations at facilities other than landfills (landfills fall into the Full Permit Tier and the other tiers are used for the other types of facilities and operations). Many of the operational problems observed throughout the state result from a lack of focused operator and inspector training in these areas.

There is currently a gap in the level of information and training for solid waste professionals in the area regulated under the tiered structure such as, transfer processing operations & facilities, compostable materials operations & facilities, Construction, Demolition and Inert processing operations and facilities.

***Solution: Provide Increased Training Opportunities for LEAs, Industry and Inspectors***

Education and training can play a major role in achieving compliance at solid waste facilities. When an operator understands the public health and environmental impacts of their activities, they frequently put forth the effort to abide by the regulations. The operator is also influenced to abide by regulations when they are fully educated about the potential impacts of formal enforcement whether it is from imposed fines or negative community perception regarding their business.

It is critical that LEA staff be trained to stay current with regulatory changes and public health and environmental principals so that they can convey accurate information to an operator. However, the LEA should not be the only source of education for an operator. Outside educational venues are important for both the operator and the inspector. For example, in recent years landfill operators have been participating in landfill management training. Education and training should not be limited to landfills only, but needs to be extended to transfer stations, CDI, composting facilities, pile management, ADC and other diversion-driven activities. All parties recognize that joint training is a critical component to compliance. Board members discussed this issue at the April Permitting and Enforcement Committee Meeting and staff will bring another item forward regarding expanded training options during the summer months.

***Problem: Need for Increased Multi-Media Coordination When Appropriate***

Regulation of California's landfills is primarily shared among the following agencies:

- The State Water Resources Control Board (SWRCB) promulgates water quality protection regulations that are enforced at the local level by nine Regional Water Quality Control Boards (RWQCB).
- 35 air districts have primary authority to regulate emissions from landfills and are responsible for developing and enforcing air quality regulations. The Air Resources Board provides technical support to the districts and oversees local district compliance with State and federal law.
- CIWMB promulgates regulations for other aspects of solid waste disposal. These regulations are enforced at the local level by 54 LEAs or the CIWMB when serving as the EA.

Because each agency has specific areas of authority, there is a need for coordination amongst the agencies in order to have a comprehensive understanding of what is happening at landfills.

In some cases, LEA, CIWMB, RWQCB and Air District staff might not be aware of each other's efforts to gain compliance at a solid waste facility for the media under their respective authority. In this scenario, an operator might be confused as to which entity's request to obey first in the case of conflicting information. Regulatory agencies should not leave it to the operator to sort out compliance when there is a multi-media aspect involved.

**Solution: *Continued Coordination***

Areas of coordination that could have a positive effect on compliance include inspections, review of monitoring reports, enforcement actions, permits (WDRs and SWFPs), review of closure plans and other technical documents, regulation development, and media/outreach. For instance, LEAs and RWQCBs should be aware of actions being proposed by each other to correct compliance problems when both agencies are affected, including any proposed construction and changes to monitoring programs, and should coordinate with one another in the development of a plan to correct compliance problems. A good example of this is the need for the LEAs and RWQCBs to coordinate in the design, installation, and operation of the landfill-gas control and monitoring systems. Section 20425(d) (3) of Title 27 requires the RWQCB to coordinate with the LEA as appropriate when landfill gas is involved. Air districts would also need to be included if their program would be affected.

Coordination is already occurring to some degree, but it is unclear to what extent and in what program areas. To get a better understanding of what is happening statewide, staff from the SWRCB and CIWMB met with RWQCBs and LEAs to discuss the need for coordination, solicit ideas on where and how to coordinate, and identify what could be workable. To enhance communication and coordination, it was suggested that LEAs share inspection reports and coordinate an occasional inspection with the RWQCB, and have quarterly meetings and/or invite the RWQCB staff to attend a LEA Round Table. Another improvement to coordination is the current effort by the SWRCB to make documents more accessible with electronic filing. SWRCB will have more data



available on their website beginning in July 2005, when paper submittals will no longer be required

Additional recommendations for greater coordination will be presented at the LEA/CIWMB 8<sup>th</sup> Annual Conference in May.

## Appendix 1

### **Example of Action Level Sequence for an Enforcement/Penalty**

**Approach** – Excerpt from CIWMB's Enforcement Agency Enforcement Program Plan

#### **3.3 Enforcement Options**

*Enforcement actions should correspond to the following action level sequence unless circumstances warrant a more expeditious process. The action levels below are consistent with the CIWMB's Enforcement Policy provided in LEA Advisory No.38.*

##### **3.3.1 Action Level A**

- *Compliance Request: Request operator, by telephone or written correspondence, to correct and prevent recurrence. A memo of each telephone contact or a copy of the correspondence should be sent to the facility file.*
- *Warning Notice: A notice mailed or issued at the time of inspection using the applicable inspection form (e.g., Disposal Site Inspection Report--CIWMB-52, Transfer/Processing Facility Inspection Report--CIWMB-53, etc.) identifying violations. This notice should include a compliance date and should be signed by the facility owner or operator.*
- *Compliance Meeting: EA Section staff schedule a formal meeting with the operator and appropriate regulatory agencies to discuss specific violations and compliance methods. All parties to this meeting should agree on a specific schedule for corrective measures. It should be made clear that failure to comply with the corrective measures agreed to at this meeting may result in further enforcement action.*

##### **3.3.2 Action Level B**

- *Notice of Violation: A written notice/letter sent to the owner/operator containing a summary of the violation(s) documented during an inspection. This notice requires a written response from the owner or operator, within an established time limit, summarizing the actions which have or will be taken to correct the reported violation(s).*
- *90-Day Notice of Intent (NOI): Any facility, which has a repeat violation for the same standard(s) during two successive months, will be issued an NOI letter. The NOI will indicate which standards continue in violation and gives the owner/operator 90 days in which to correct the violation(s).*

##### **3.3.3 Action Level C**

- *Notice and Order: This action is an order issued pursuant to PRC 45000, 45005, and/or 14 CCR 18304, requiring the owner/operator to take corrective action*

*and/or cease and desist from an illegal activity and to clean up or abate any condition resulting from that activity. It is normally issued when corrective action(s) can be completed within 90 days.*

- *Stipulated Order of Compliance and Agreement: This action is issued pursuant to 14 CCR 18304, to correct SWFP violations and directing action(s), which usually require more than 90 days to correct. This order constitutes a contract between the EA and the owner or operator.*

*[Notice & Orders and Stipulated Orders are to be reviewed and signed by the Legal Office and signed/issued by the Deputy Director. A copy of the issued enforcement order is to be sent to the owner and operator, via certified mail, within five business days of issuance. Orders (Word 6.0, 46 KB or Adobe Acrobat PDF, 53 KB) prepared by EA Section staff contain the information as required by 14 CCR 18304(b).*

- *Inventory of Solid Waste Facilities Which Violate State Minimum Standards (Inventory): If the owner or operator has not corrected a violation(s) within 90 days from the date the NOI was received, the EA Section will include the facility in the Inventory. Upon including a facility in the Inventory, EA Section staff will develop a compliance schedule pursuant to PRC 44106(a).*

#### *3.3.4 Action Level D*

*If an owner/operator fails to comply with the actions specified in an enforcement order, the EA Section will pursue implementation of the notices stated in the order, including, but not limited to:*

- *Contract for Corrective Action: If an owner/operator fails to take corrective action by the date specified in an enforcement order, the EA Section will recommend the CIWMB contract to have the corrective action completed by a third party {PRC 45000}.*
- *SWFP Suspension or Revocation: Subsequent to the failure of all other enforcement actions, the EA Section will pursue action through the hearing panel process to suspend or revoke the SWFP {PRC 44106(b), 44305, 44306, 14 CCR 18307}.*
- *Petition the Court: Through the Legal Office, petition the superior court to enjoin violations or impose upon the owner, operator, or both, civil penalties in an amount not to exceed \$10,000 for each day of violation occurring after a specified date {PRC 45023}.*
- *Administrative Civil Penalties: If an owner/operator fails to attain compliance by the time schedule in an enforcement order, EA Section staff may request civil penalties be imposed administratively {PRC 45011}.*

- *State Attorney General Referral: A referral to the Attorney General to petition the court on our behalf.*
- *District Attorney Referral: A referral to a District Attorney to petition the court on our behalf.*

### **3.4 Guidelines for Response to Noncompliance**

*Responses to instances of noncompliance should generally be initiated considering the following guidelines, unless the seriousness of a particular noncompliance warrants a more expeditious response.*

- *Action Level A: After discovery of noncompliance.*
- *Action Level B: Following determination of failure to comply with Action Level A.*
- *Action Level C: Following determination of failure to comply with Action Level B. Note: Several enforcement actions may be taken within Action Level C. Each action should carry with it a time frame for initiating action.*
- *Action Level D: Following determination of failure to comply with Action Level C.*

### **3.5 Selection of Appropriate Enforcement Action**

*The following criteria should be considered in selecting an appropriate enforcement action:*

- *Degree of risk to public health and safety or the environment;*
- *History of violations;*
- *Degree of cooperation or recalcitrance exhibited by the owner/operator;*
- *Culpability of the operator;*
- *Financial resources of the owner/operator;*
- *Whether the circumstances leading to the noncompliance have been corrected;*
- *Whether the violations are likely to continue;*
- *Whether the violation can be remediated;*
- *Need to take immediate cleanup action; and*
- *Any economic benefit realized by the owner/operator as a result of the noncompliance.*

## Detailed Information on Legislative Process Barriers and Solutions

The working group delineated a number of potential legislative changes that would increase the authority of the CIWMB and LEAs to take enforcement actions. These are categorized and briefly described below.

### 1) Increase CIWMB and LEA Authority to Take Enforcement Actions

*Problem:* The CIWMB has limited ability to take direct enforcement action when it is not acting as EA. In addition, enforcement authority for both the CIWMB and LEAs focuses on owners and operators of solid waste facilities but does not address other entities that may violate provisions of the Integrated Waste Management Act.

*Solution:* Consider legislative concepts that would authorize direct CIWMB enforcement, prohibit illegal disposal of solid waste, and expand CIWMB and LEA authority to take enforcement actions against other persons who are in violate of the IWMA.

### 2) Increase Types of Penalties

*Problem:* Existing enforcement tools, although enhanced by recent legislation, are still not sufficient for LEA use in taking all appropriate enforcement actions against permitted facilities that are in violation of the IWMA and against illegal sites. For example, AB 1497 removed the \$15,000 annual cap on administrative civil penalties, but an enforcement agency may only impose such a penalty (\$5,000/day) if compliance is not achieved in accordance with a time schedule established as part of a corrective action or cease and desist order, or any other order, or the facility or disposal site poses a potential or actual threat to public health and safety or the environment. In addition, LEAs do not have authority to issue tickets/infractions for minor violations, an effective enforcement tool that is easy to implement. Violations of solid waste laws are not crimes, so EAs cannot use criminal penalties in enforcing solid waste laws. Criminal enforcement is deserved in certain cases and would have a strong deterrent effect on prospective future violators.

*Solution:* Consider legislative concepts that would authorize LEAs to issue tickets for minor violations of SWF permit conditions and State Minimum Standards, broaden the applicability of civil penalties to any IWMA violation, and establish criminal penalties.

### 3) Modify the AB 59 Appeal Process

*Problem:* Current law enables solid waste facility operators to challenge an enforcement order or other determination of the EA by appealing it to a local hearing panel and subsequently to the CIWMB. AB 2159, which became effective January 1, 2005, speeds up the process of getting to the first hearing of an appeal (although that hearing may be continued indefinitely), but an automatic stay will still apply except: 1) in cases of imminent and substantial threat, and 2) where a solid waste facility is operating without any permit at all or outside the boundaries specified in a permit where the operator has not applied for (or has been denied) a permit prior to the issuance of the cease and desist order. In addition, the local hearing panel process is costly and time-consuming and can act as a detriment to effective enforcement. The automatic stay provisions and the availability of appeals to local hearing panels increase the cost and complexity of carrying out enforcement, substantially delay enforcement, and in some cases, create disincentives for enforcement.

*Solution:* Consider legislative concepts, some controversial, that would eliminate the automatic stay of enforcement orders pending conclusion of appeals, while still providing for operators' due process rights; eliminate local hearing panels and instead provide for appeals directly to the Board; and eliminate provisions which excuse complainants from the duty to exhaust administrative remedies prior to seeking judicial resolution of disputes.

**4) Establish CIWMB and LEA Authority to Impose Environmental Restrictions**

**After Remediation:**

*Problem:* With the exception of burn dump sites, the CIWMB and LEAs do not have the authority to impose "environmental restrictions" (i.e., real covenants that run with the land) on properties where other solid wastes remain in place after limited remediation. Consequently, in those cases, buyers of land containing solid wastes may not know they are buying a potential environmental problem or that the land they are buying may not be suitable for certain uses. In contrast, existing law authorizes DTSC and the SWRCB/RWQCB to impose "environmental restrictions" on properties where wastes remain in place, generally after limited remediation.

*Solution:* Consider legislative concept that would authorize the CIWMB, when it has approved remediation of solid waste disposal sites where solid waste will remain in place, to impose environmental restrictions on real property.

**5) Revise requirements for revoking a solid waste facilities permit.**

*Problem:* The process for suspension or revocation of a SWFP sets the bar impossibly high to effectively use this tool. Suspension requires a finding of significant or imminent and substantial threat to public health and safety or to the environment for immediate temporary suspension. Neither of these terms is defined, and due to the subjective nature of these terms, it is difficult for an inspector/LEA to prove that level of threat. Additionally most of the minimum standards address public nuisances not public health threats. Revocation of a SWFP is possible only if: a) the permit was obtained by misrepresentation or a failure to disclose, or b) the Operator has been issued a final order and continues to violate such that there is a chronic recurring pattern of non-compliance, which has posed or may pose a significant risk to public health and safety or to the environment.

*Solution:*

**6) Provide LEA's More Tools To Use Regulatory Permit Tiers**

*Problem:* LEA enforcement tools are limited in lower regulatory permitting tiers. LEAs have limited ability to control registration permit approval. Permit conditions cannot be placed on registration permits. Therefore, these permits are not discretionary. If the permit package is complete (minus any CEQA compliance finding or land use approval finding), the permit is issued. In addition, LEAs have limited ability to control EA notification "approval".

*Solution:*



**Partnership 2000**

**Partnership 2000 Work Group: Gaining Compliance**

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**Agenda**

**Prior Work: February 5, 2004**

Work group reached consensus that the focus on the conference session would begin by reviewing other existing enforcement models (compliance, administrative, and prosecutorial). These models would be evaluated by a list of [priority criteria](#), which will be created by the work group members prior to the conference. Group will focus on aspects of each model could be used within our current framework of enforcement statutes and regulations; what changes might need to be made in existing statutes and regulations to fix what doesn't work; and ultimately what attendees will leave the conference with at the end of the session.

Time	Topic	Action
2:30-2:40	Opening Remarks	<ul style="list-style-type: none"> <li>• Welcome Participants (Facilitator)</li> <li>• Provide context for the session (Facilitator)</li> <li>• Review agenda and goal of session</li> <li>• Recap pre-conference meetings (Facilitator)</li> <li>• Ask questions and request clarification (meeting participants)</li> </ul>
2:40-3:00	Review Criteria List	<ul style="list-style-type: none"> <li>• Present list created by work group</li> <li>• Review/modify list (meeting participants)</li> <li>• Gain consensus on list</li> </ul>
3:00-4:00	Enforcement Model Presentation	15-minute presentation on the following enforcement models: <ul style="list-style-type: none"> <li>• <a href="#">Compliance Model</a> (Patti Henshaw)</li> <li>• <a href="#">Administrative Enforcement Model, CUPA and Prosecutorial Model</a> (Lisa Brown)</li> </ul>
4:00-4:45	Next Steps	<ul style="list-style-type: none"> <li>• Create workgroups to review and analyze each model using criteria list</li> <li>• Develop initial findings on aspects of models that could be applied in current structure</li> <li>• Develop "wish list" for changes to statute and regulations</li> <li>• Determine how workgroup will develop a product that provides compliance tools, and tools to improve ability to take appropriate enforcement action (case studies)</li> <li>• Discuss process for implementation (i.e. Committee or Board workshop, etc)</li> <li>• Set future meeting dates to finish work</li> </ul>



**Partnership 2000**

**Gaining Compliance Subgroup Agenda: February 5, 2004**

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**Determine focus of conference workgroup**

What form would guidance look like if goal was to:

- Increase the ability to take appropriate enforcement? or
- Improve tools available to gain compliance?

Examples:

Study other enforcement models: (Bring in guest speakers)

- Compliance model (Patti Henshaw, Dean Peterson),
- Enforcement ticket (fines-Dan Avera to seek spokesperson, possibly Air District)
- Administrative enforcement model (Larry Matz or Mike Dorsey)
- Prosecution model (San Joaquin County, Donna Heron or Robert McClellon)

Juxtapose models when you have

- No management support or no support from DA,
- Good DA and good management support

Other

**Determine steps to take during conference session to accomplish goal**

Example: Study other enforcement models

- Pull out portions of each model that's doable in our current framework
- Write list of items that LEAs/CIWMB staff want to be able to use in their work
- Include a review loop and consensus activity to finalize product

**Determine how to roll out the product**

Example: Study other enforcement models

- CIWMB workshop on enforcement models, problems, current data on compliance rates, solutions and case studies .





**Partnership 2000**

**Steering Committee Meeting Agenda: July 1, 1998**

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1. Welcome
2. Discussion of the connections between other Board programs (the 50% solid waste diversion mandates) and LEA responsibilities:
  - Overview of facility compliance priority team target #4; and
  - Overview of other priority team plans.
3. Results of follow-up on Asilomar P-2000 conference feedback issues:
  - Burn ash issue and assistance on multiple permits in post closure period; and
  - Permit, enforcement and CEQA issues.
4. Discussion of P-2000 work group conclusions on the role of the EAC and its connections with Roundtables, the CCDEH Solid Waste Policy Committee and the CCDEH Technical Advisory Committee.
5. Discussion of the LEA relationship with the Board.
6. Discussion of overlap issues with other agencies including goals, objectives, policies, including the MOU issue.
7. Next steps/future meetings.



## Partnership 2000

### Steering Committee Meeting Notes: July 1, 1998

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#### Item 1: Welcome

#### Item 2: Discussion of Connections Between Board Diversion Mandates and LEA Responsibilities

- It was discussed that LEA representatives could be considered for membership on each of the four Board priority teams though some LEAs have been reluctant to be involved with diversion. The four teams are; the Local Government Diversion Assistance Team, the Greening Team, the Facility Compliance Team and the Construction and Demolition Strategy Team.
- There was discussion of putting a small focused team together to brainstorm overlap with diversion. Such a team could identify issues before problems developed. Conflict resolution techniques could be used to resolve differences. The Local Government Technical Advisory Committee could be asked to suggest local representatives. Also the markets perspective should be represented, and the team should probably not be larger than 10 people. It was pointed out that LEAs on the team should be involved with meetings of local task forces to bring a broader perspective and allow early local input. It was also stated that the team should explore why diversion is necessary and not a barrier. Then because vertical integration (where a hauler is also a disposal site owner) is a market place problem, it was discussed that perhaps there should be a hauler with a transfer station on the team.

#### Item 3: Results of Follow-up on Asilomar P-2000 Conference Feedback Issues

- To deal with the need for guidance on burn ash an LEA advisory "Process For Evaluating and Remediating Burn Dump Sites" has been drafted and is undergoing internal review. Two LEA advisories are also being prepared which deal with multiple permits in the post closure period. The first, which is about ready to go out, is called "Waste Diversion Activities at Solid Waste Landfills and Closed or Closing Disposal Sites". The other, called "Disposal Site Postclosure Land Use", is still under review by Board legal staff.
- Follow-up on the permit, enforcement and CEQA issues was not discussed as complete information was not available at the time of the meeting but is being addressed.

#### Item 4: Discussion of the Role of the EAC and its connections with the Roundtables and CCDEH Committees

The discussion of P-2000 work group conclusions on the role of the Enforcement Advisory Council (EAC) and its connections with LEA Roundtables, the California Conference of Directors of Environmental Health (CCDEH) Solid Waste Policy Committee and the CCDEH Technical Advisory Committee took place earlier at the CCDEH meeting.

#### Item 5: Discussion of the LEA relationship with the Board

It was expressed that appeals are a quasi-judicial process in which LEAs should be given equal time to communicate their position, equal treatment by the Board and due process within the local jurisdiction involved. It was mentioned that Board staff might take on an investigative role during an appeal process. There was discussion of a CCDEH letter on the ground rules on how to do an appeal. Dorothy then indicated that she would broach the entire issue with the Board's legal office for further follow-up with CCDEH.

#### Item 6: Discussion of Overlap Issues with Other Agencies

Finally there was a discussion of current overlap issues stemming from the passage of AB 1220 in October of 1993. There was concern that the Board's legal office could be selectively determining what overlap is and that this focus on overlap without an overall policy could lead to a lessening of LEA oversight. A process for dealing with overlap and a policy for what it means was discussed. There was also the concern that AB 1220 was just meant to focus on landfills but is now carried over to other regulations for other facilities. It was then proposed that Patty Henshaw and selected CCDEH Technical Advisory Committee members should meet with Board legal staff. Dorothy indicated that she would work on arranging such a meeting.

#### Item 7: Future Meetings

The next Steering Committee meeting will be held on either October 7, 1998 or November 4, 1998.





**Partnership 2000**

**Steering Committee Meeting Agenda: February 4, 1998**

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1. Welcome

2. Recap of current Partnership 2000 commitments

- Permit change partnership
- LEA evaluation process
- Next annual meeting
- Partnership 2000 web site

3. Proposed new initiatives/commitments

- Clarification and focusing on the role of the EAC
- Exploration and focusing on the connections between LEA program responsibilities and the achievement of 50% diversion from landfill disposal
- Identification of Asilomar conference feedback issues for new Partnership 2000 commitments
- Focusing on a plan to make appropriate changes to AB 59
- Providing direction for the permit change partnership effort

4. Next steps/future meetings



## Partnership 2000

### Steering Committee Meeting Notes: February 4, 1998

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With some brief introductory remarks and thoughts, Dorothy Rice focused on Partnership 2000 (P2000) efforts to date. Discussion then turned to current P2000 commitment:

- The Permit Change Partnership Workgroup is drafting an LEA advisory on the subject. The advisory will address what is the appropriate content of a permit and will provide a template for basic permit issues. The advisory is being designed to provide maximum flexibility to LEAs while still meeting general permit standards. It should also be written to address anticipated questions like why there are no tonnage limits in a permit.
- The LEA evaluation process is ongoing. Sharon Anderson will convene an LEA Evaluation Procedure Workgroup in the next 2 or 3 months. This workgroup will lay out a strategy to meet the three year evaluation mandate and will lay out a process to determine when each LEA will be evaluated. The big difference will be not in what an evaluation does but in **how** it is done.
- The next annual P2000 meeting will not be at Asilomar. Staff attempted to get Asilomar, as it was the unanimous choice, but found that it was already booked over a year in advance. As a result this year's annual meeting will be held at Granlibakken near Lake Tahoe over three days from August 19-21. Next year the meeting will again be at Asilomar.
- The Steering Committee members were given a draft copy of this P2000 web site for their review and comments. John Bell explained the web site and answered questions.

Steering Committee discussion shifted to the proposed new initiatives and commitments:

- The committee members expressed the need to avoid duplication between the Enforcement Advisory Council (EAC) and the Roundtable meetings, Technical Advisory Committee (TAC) meetings and the meetings of the California Directors of Environmental Health (CCDEH). An EAC scoping committee will be formed and meet in the near future to address the role of the EAC. Dorothy Rice will chair the workgroup and Mark Arico will provide Board staff input.
- The committee agreed to put the LEA link to 50% diversion on the "back burner." The Board has formed Priority Teams which will fully explore this issue. Four teams have been created: C&D Strategy Team; Local Government Diversion Assistance Team; Facility Compliance Team, and; the Organics Team.
- These teams will not only discuss the connection between LEAs and diversion goals but will also work together to see how to support these goals and determine what resources are needed. The C&D Strategy and Local Government Diversion Assistance Teams have already started. The other two teams will start within 2 weeks and should take 6 to 8 weeks to finish.
- Asilomar conference feedback issues were well documented in the Permitting and Enforcement (P&E) Division's "Summary Presentation Breakout Session Issues and Proposed Next Steps" dated November 12-14, 1997. All feedback issued identified will be taken care of either by ongoing workgroups or as branch assignments to staff within the P&E Division.
- Discussion on AB 59 change was deferred until a later date as LEAs are developing clean-up legislation.
- The permit change partnership effort is the focus of the Permit Change Partnership Workgroup. This group will address problems with the current permitting process and define the roles of the LEAs and the Board.

Next Ralph Chandler shared his view of the role of this P2000 Steering Committee. He wanted what P2000 is and what it is not to be very clear. It is a place where, through proper subcommittees and forums, important issues can be raised. The P2000 effort fosters improved communication and establishes proper connections for issues. The steering committee is not itself a problem solving forum, it assists in identifying issues and formalizes the appropriate mechanism for the issue to be resolved (i.e. work group formation, etc.).

Finally, it was decided that the P2000 Steering Committee would meet quarterly and directly after CCDEH meetings where possible.



**Partnership 2000**

**Steering Committee Meeting Agenda: September 10, 1997**

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1. Welcome
2. Discussion of Steering Committee Role/Purpose
3. Recap of Original Partnership 2000 Commitments
  - Level of Facility-Based Performance
  - EAC's Role
  - LEA Assistance Function
  - Continue Partnership 2000
4. Current Partnership 2000 Projects/Status Report
  - Permit Change Partnership
  - LEA Evaluation Process
  - Annual Meeting
5. New Initiatives/Process for Generating Projects
6. Next Steps/Future Meeting(s)



## Partnership 2000

### Steering Committee Meeting Notes: September 10, 1997

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Thank you for your participation in the September 10 Partnership 2000 Steering Committee Meeting (P2000). I feel that we had a very productive meeting in terms of reviewing progress to date and proposing topics for future P2000 projects. The purpose of this memorandum is to provide a record of our meeting and to seek your input on aspects of the discussion that you might portray differently.

As you recall, our Agenda for the meeting included:

1. Discussion of Steering Committee role/purpose;
2. Recap of original P2000 Commitments;
3. Status report on current P2000 projects;
4. Discussion of new initiatives;
5. Discussion of next steps/future meetings.

Under item one, it was stated through our discussion that the purpose of this Steering Committee would be twofold:

1. To ensure that P2000 commitments/projects are advancing satisfactorily, and
2. To initiate new P2000 projects.

Under item two we reviewed implementation progress for the original four P2000 commitments. For "level of facility-based performance" (enforcement issues), it was noted that significant aspects of this commitment have been achieved (Enforcement Advisory, Training, etc.), and that remaining aspects are proceeding satisfactorily. For the commitment relating to the Enforcement Advisory Council (EAC) role, it was discussed that while the original commitment has been met, significant issues remain concerning the role of the EAC. As regards the commitment to an "LEA assistance function"; it was discussed that this is a "work in progress" that is continuing to develop and be implemented. Examples include the California Integrated Waste Management Board (CIWMB) training program, the recent technical assistance survey and the Permitting and Enforcement (P&E) Division reorganization to address issues of how to more effectively provide a local enforcement agency (LEA) assistance function that is clear and distinct from the evaluation function. As regards the fourth original commitment to "continue P2000" it was discussed that most aspects of this commitment are being achieved. One outstanding area, which will be addressed during the upcoming training cycle, is the commitment to offer conflict resolution training for LEA's and P&E Division staff.

The status report on current P2000 projects included: Permit Change Partnership, the "evaluation" of the LEA evaluation process, and the upcoming November annual meeting for CIWMB and LEA staff. It was discussed that these projects are proceeding satisfactorily at this time.

As regards the discussion of a process for developing new P2000 projects/initiatives it was discussed that Steering Committee Members would bring suggestions forward to Steering Committee meetings. Suggestions may result from issues that are being discussed at the roundtables and EAC meetings. Two suggestions that were discussed at the September 10 meeting for new P2000 projects were:

1. Clarification and focusing of the role of the EAC, and
2. Exploration and focus on the connections between the LEA Program responsibilities and the achievement of 50% diversion from landfill disposal.

There appeared to be consensus in the group that the two issues listed above are appropriate topics for P2000. There was little discussion regarding how these issues would be brought forward or developed. One suggestion I would make for next steps on the EAC issue is that the Deputy Director for the P&E Division develop a plan for next steps for review by this Steering Committee. For the second issue, I would suggest that my Deputy Director for P&E, Waste Prevention & Market Development and Diversion Planning & Local Assistance develop a plan for next steps for exploring the relationship of the LEA program with the 50% diversion mandate. In both instances the plans would include the establishment of LEA/CIWMB working groups to capture the issues and

develop options for resolution. Please let me know if this approach sounds workable to you as a way to initiate these two new projects.

Another issue that I think merits our attention is improved communication about P2000 projects and accomplishments. To date, we have not established a routine mechanism for updating LEA and CIWMB staff on our activities. I think it is important for our staff to be aware of what P2000 projects are underway, being considered, etc. In this way, they can better provide input and support to the Initiatives. A suggestion is that following each Steering Committee Meeting, a brief report be prepared of our discussions for joint signature of myself and the California Conference of Directors of Environmental Health (CCDEH) Solid Waste Policy Committee and LEA and CIWMB staff. If you agree with this approach to information dissemination, I would propose to have this current report modified to reflect any comments Steering Committee members may have and by adding a signature block for CCDEH. We would then post the report to our web sites as one method for advising staff of our proposed new P2000 initiatives as well as our plans for developing those issues further with their involvement.

I look forward to your comments and suggestions. Thank you for your continued commitment to P2000.

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**California Department of Resources Recycling and Recovery (CalRecycle)**





## **Partnership 2000**

### **Partnership 2000 Work Group: CEQA Issues**

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#### **Homework**

##### **Items that are not included in existing CEQA guidance or need to be revised:**

1. Methods to improve communication between Board staff and LEA's
2. Methods to resolve conflicts
3. Definition and understanding of lead and responsible agency (understand how GC 15096(d) could apply to both the LEA and CIWMB)
4. Define and discuss specific roles when LEA is the Lead Agency for the CEQA process, putting the CIWMB as a responsible agency (guide, consult and scope of comments)
5. Definition of a project
6. Develop quick rules if mutually agreed upon (hard and fast rules)
7. Develop specific actions and determinations the LEA makes in approving a permit as stated in the regs and appropriate CEQA for that determination (could be a listing of case histories)
8. Develop specific actions and determinations the Board must make in concurring in a permit as stated in regs and appropriate CEQA for that determination (could be a listing of case histories)
9. Develop "thresholds of significance". Developed a state level that would establish some guidelines or thresholds for various types of facilities, but would be flexible enough for "local" refinement and application and give an idea of minimal acceptability for the CIWMB).
10. Develop broader agency CEQA "Guidelines", including thresholds.
11. Define timing of LEA compliance with CEQA requirements, discretionary approval at time of submittal of a proposed permit.



## **Partnership 2000**

### **Partnership 2000 Work Group: CEQA Issues**

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#### **Resources**

##### **Board**

- ERS staff contacts list
- Top 10 CEQA process problems (CIWMB Spring 2000 CEQA training)
- LEA role as a responsible agency (CIWMB Spring 2000 CEQA Training)
- LEA Advisory No. 36: CEQA Cumulative Impact Analysis
- LEA Advisory No. 22: Changes in Design or Operation and CEQA Compliance Environmental Review Document Preparation Guidelines

##### **Other**

- California Resource Agency's CEQA page
- CEQA Guidelines (Resources Agency)
- Interactive CEQA Flowchart (Resources Agency)
- CEQA Definitions (Resources Agency)
- Governor's Office of Planning and Research (State Clearinghouse)
- CEQA Notification Forms (State Clearinghouse)
- CERES (Resource Agency)
- LUPIN (Part of CERES)



**Partnership 2000**

**Partnership 2000 Work Group: Gaining Compliance**

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**Criteria**

**Criteria to measure various enforcement models for fit within current system:**

1. Few steps
2. Need to involve other entities (fewer = better?)
3. Efficiency in terms of gaining compliance using the least amount of resources and in terms of time (partly related to expense)
  1. (at inspector level versus using management involvement, legal assistance, Board assistance etc)
4. Effectiveness in terms of gaining desired outcomes which could be further broken down into
5. Effectiveness for gaining compliance with state minimum standards
6. Effectiveness is gaining compliance for permitting issues
7. Political in terms of potential for political influence (interference/influence/interest of local governing body or Board members)
8. Legal in terms of needing legal resources of counsel (hearing panel, civil penalties etc)
9. Timeliness in terms of amount of time needed to gaining compliance
10. Expertise in terms of ability of LEAs to carry out the model (I am thinking here that it really depends on whether you are a staff of one or many but maybe that will be ferret out in the other criteria)
11. Legislative/reg change obvious a model that can be implemented immediately or even thru regulations is much quicker than a legislative change



## **Partnership 2000**

# **Compliance Model**

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### **Objectives**

- To obtain consistent long-term compliance at solid waste facilities
- To ensure that solid waste operations are not creating a nuisance, hazard, or threat to public health and the environment
- To provide efficient and effective use of LEA resources,
- To ensure that on any given day a solid waste facility can pass a CIWMB inspection.

### **Obtaining compliance through on-going education:**

- Inspector education
- Management education
- Operator education
- Planning Department education

### **Obtaining compliance through the inspection report:**

- Details! Details! Details!!
- Follow up with positive comments

### **Obtaining compliance through established relationships:**

- Always based on mutual respect
- Learn the operations beyond what is needed to do the inspection

### **The Extras:**

- Review draft documents and letters
- Research regulations and procedures for the operator
- Obtain assistance from CIWMB
- Rotate inspectors



## Partnership 2000

# Enforcement Options

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### CalEPA Deputy Secretary for Law Enforcement

- Develop a program to ensure consistent, effective, and coordinated enforcement actions.
- Establish a cross-media investigations unit to assist state and locals.
- Refer cases to prosecutors.
- Gov't Code 12812.2

### Types of Enforcement Actions

- LEA and Court System
  - Criminal
  - Civil
- LEA Only
  - Administrative
  - Informal

### Administrative Enforcement Actions

- Administrative order or action (penalties, clean up or quarantine orders)
- Denial, suspension, revocation of operating permits, licenses
- Orders can be contested at a hearing and appealed
- Standard of proof – “Preponderance of Evidence”

### Examples of LEA Administrative Enforcement Actions

- Solid waste sites/facilities
  - Cease and Desist Orders PRC 4402, 45005
  - Corrective Action Orders PRC 45000
  - C&D & penalties PRC 45011
- Tires
  - When designated, for any violation of waste tires PRC 42850
- License suspension, revocation, modification
  - Solid waste PRC 44305

### Advantages of Administrative Enforcement

- Enforcement stays within “control” of the regulatory agencies
- Informal
- Attorneys may not be required
- Low cost
- Faster than court actions
- Not dependant on an “outside prosecutor” willing to take the case

## **Disadvantages of Administrative Enforcement**

- Stays and appeals
- Perceived lower deterrence effect than other enforcement actions
- Often not as “public” a process as other options

## **Other Administrative Enforcement Models—CUPA**

- Administrative Enforcement Authority (AEO)
- Procedures are those of the Administrative Procedures Act (Gov’t Code 11500 et seq.)
- Statutory factors in imposing a penalty in an AEO:
  - The nature, circumstances, extent, and gravity of the violation
  - The violator's efforts to prevent, abate, or clean up
  - The violator's ability to pay the penalty
  - The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community . H&SC 25404.1.1 (b) .

## **Penalty Distribution**

- CUPA retains all penalties imposed by AEO

## **Minor Violations**

- CUPA may only issue a Notice to Comply (if corrected immediately, then not even this is issued).
- If facility comes into compliance within time specified (not to exceed 30 days) and sends the agency certification of compliance, then there can be no further agency enforcement action.

## **Excluded from “Minor” Violations**

- Any knowing, willful, or intentional violation.
- Any violation that enables the violator to benefit economically or to gain a competitive advantage.
- Any violation by a “chronic” or “recalcitrant” violator (defined terms).

## **A minor violation may become a non-minor If**

- Facility fails to correct within the specified time
- Fails to send in notification of correction within specified time
- Falsely reports correction

## **The Hearing Process**

- Gives Respondent the option of using state or local hearing officer.
- Require use of Administrative Procedures Act (Gov’t Code “APA”) for service, notice, hearing and final orders.
- Consistent with process in hazardous waste program

## **Judicial Review**

- Provides for judicial review of the final AEO.
  - Petition for writ of mandate
  - No automatic stay if petition filed
  - The court shall uphold the decision of the UPA if the decision is based upon substantial evidence in the record as a whole.
- In accord with HMMP and hazardous waste provisions. HSC §25187 and §25514.6.

## Civil Actions

- Monetary penalties
- Injunctions (require or prohibit action)
- Filed through court system (City Attorney, District Attorney, Attorney General)
- Standard of proof – “Preponderance of Evidence”

## Examples of Civil Actions

- Solid waste
  - Failure to comply with an order PRC 45014 \$5,000@ and injunctions
  - Other violations PRC 45023 \$10,000@
  - Failure to furnish reports PRC 45023
- Tires
  - Violations PRC 42850 \$500-\$5,000@

## Criminal Actions

- May result in fines and/or imprisonment
  - Infractions (fines only, no jail)
  - Misdemeanors (fines and up to one year jail)
  - Felonies (fines and more than one year in prison)
- Brought against most serious offenders
- Filed through court system (City Attorney, D.A. A.G. U.S. Attorney)
- Standard of proof – “Beyond a Reasonable Doubt”

## Waste Crimes

- Waste tires. Misdemeanor. PRC 42850.1
- Oil recycling fraud. Misdo/Felony PRC 48680.
- Dumping garbage into nav. water or the ocean. Misdo. H&SC 117480.
- Putting human excreta in water. Misdo H&SC117515.
- Waste w/in 150 ft. waterways. Misdo. P.C. § 374.7.
- Hazardous waste Misdo/felony HS&C 25189.5
- Nuisance. Misdo. PC 372
- Code violations . Infrac /Misdo.
- Dumping PC 374.3
  - Infraction
  - “Commercial quantities” Misdo.
- Appliances with doors. Misdo. PC 402b

## Choosing an Enforcement Action

- Degree of deviation from legal requirements
- Potential for harm/threat to health and safety and environment
- Past violations
- Efforts to comply
- Deterrent effect on violator and regulated community

- Unusual circumstances or mitigating factors

### **Which Option to Choose?**

- Civil
  - Injunctive relief needed to obtain
  - Multi-jurisdictional issues
  - Previous violations of administrative orders
  - Prosecutor available
- Administrative
  - Only one agency involved
  - First time violator

### **Civil or Criminal?**

- Civil
  - Injunctive relief needed to obtain compliance or remediation
  - Multi-jurisdictional issues (cross-media)
  - Previous violations of administrative orders
- Criminal
  - Civil or administrative remedies inadequate
  - Sufficient evidence to convict beyond a reasonable doubt

### **Statutes of Limitations**

- Criminal
  - Misdemeanor - 1 year
  - Felony - 3 years
- Civil/Administrative
  - 1, 3, or 5 years

### **So Who Decides What's a Crime?**

- Public Prosecutors

### **Public Prosecutors**

- "The district attorney is the public prosecutor, except as otherwise provided by law..."
- "The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses."
- Gov't Code 26500-26543
- Determining whether to institute criminal proceedings is discretionary.
- Authority to investigate the facts is unlimited.

### **Where to Get Help**

- Will the DA take your case?
- Where can I get enforcement training?
- Where can I find out what agencies are doing?

### **Environmental Enforcement Task Forces**

- What is an Environmental Enforcement Task Force?
  - A coordinated approach to environmental enforcement between federal, state and local entities usually involving



periodic meetings

### **Advantages**

- Case or Project Driven
- Enhances detection or remediation of serious environmental crimes
- Information exchange in a timely manner
- Share and mobilizes resources and expertise
- Prevents redundancy and conflicts

### **What Cases to Take to Your Task Force?**

- Intentional, repeat, recalcitrant violations.
- Pattern and practice of non-compliant behavior
- Potential or actual substantial harm to public or environment
- Threaten integrity of the effectiveness of program goals (falsification and/or lack of record-keeping)
- Violations in multiple programs

### **Participating Enforcement and Regulatory Agencies**

- District Attorneys/US Attorneys
- CalEPA and its BDO's
- Department of Fish and Game
- Code Enforcement
- CHP/Sheriff Office/Police
- Local Agencies

### **How to Participate**

- Enforcement is a Public Process
- Documents are public records.
- Publicize all enforcement actions to avoid charges of favoritism.
- Never negotiate publicity.
- Never agree to secret or off the record settlements.
- No deterrence without public information.