

Integrated Waste Management Board  
Enforcement Policy  
Approved 2/26/97

## OVERVIEW

This Enforcement Policy (Policy) describes Local Enforcement Agency (LEA) and Integrated Waste Management Board (Board) enforcement responsibilities and establishes Board policy regarding its role as a supporter and overseer of LEA enforcement programs. Additionally, it is an umbrella document which ties together several implementation elements designed to collectively address various enforcement related issues. These issues include the need to:

- provide technical assistance, training and guidance to LEAs on inspection and enforcement topics;
- clarify the Board's state oversight role of LEA enforcement programs;
- develop strategies to bring facilities with chronic violations into compliance;
- consider enforcement alternatives for bringing facilities with significant change permit violations into compliance in a more timely manner; and,
- clarify what criteria should be applied to determine if a proposed permit is consistent with the State Minimum Standards

The Enforcement Policy concept was initiated by a workgroup comprised of Board and LEA staff in August of 1996. In October the Enforcement Policy framework was considered and approved by the Permitting and Enforcement Committee. The framework consists of six major implementation elements as described below. Implementation of some of the elements will include the development of regulations. These will be pursued shortly after approval of the Policy elements.

## ENFORCEMENT RESPONSIBILITIES

The LEA is responsible for enforcement within its jurisdiction regarding solid waste handling and disposal, pursuant to Division 30, Public Resources Code (PRC), § 43209, and Title 14, California Code of Regulations (CCR), § 18081(c) and § 18084. These provisions require the LEA to, among other things, enforce the following:

- Applicable provisions of Division 30, Part 4 of the PRC
- Regulations adopted under Part 4, including 14 CCR, Chapter 3 - State Minimum Standards for Solid Waste Handling and Disposal (SMS), applicable sections of Chapter 5 - Administration of Solid Waste Facility Permits, and any local standards
- Solid waste facility permit (SWFP) terms and conditions

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Whenever an LEA identifies permit or SMS violations at a facility, the LEA must take appropriate enforcement action. 14 CCR § 18081(c) requires all facilities and disposal sites within an LEA's jurisdiction to:

- Be in compliance with SMS and the terms and conditions of the SWFP; and
- Be permitted or exempted; or
- Be under appropriate enforcement action(s) pursuant to 14 CCR § 18084 to remedy the violations.

Various enforcement options are available to LEAs as delineated in Division 30, Parts 4 and 5 of the PRC and 14 CCR, Chapter 5, Article 4. These options are also described in detail in the Board's draft Enforcement Advisory to LEAs, which is implementation element # 1 of the Enforcement Policy.

As required by PRC §§ 43101(b)(8), 43214, 43217, 43219(b), 43220, 43302 and 14 CCR § 18350(c), the Board's primary functions regarding an LEA's inspection and enforcement program are to:

- Provide technical assistance, training, support and guidance to LEAs.
- Ensure that LEAs keep the facilities in their jurisdiction in compliance with applicable laws and regulations, by conducting periodic inspections at those facilities and, if necessary, encouraging and assisting LEAs in taking enforcement actions.
- Evaluate the effectiveness of the LEA program.

Secondarily, the Board may take appropriate enforcement actions when the LEA fails to do so. Additionally, it is the Board's responsibility to implement procedures for withdrawal of its approval of a local enforcement agency's designation if it finds that the LEA is not fulfilling its responsibilities. Various statutes and regulations describe the Board's authority, responsibilities and options when an LEA fails to take appropriate enforcement action to remedy documented violations. These include PRC §§ 43214, 43215, 43216, 43216.5, 43219(c&d), 43300, 45012 and 14 CCR § 18350.

## **BOARD ENFORCEMENT POLICY**

The primary goal of the Enforcement Policy is to maintain facilities in compliance with applicable laws and regulations. It is the policy of the Board to ensure that LEAs enforce applicable laws and regulations consistently and equitably among public and private facilities in order to achieve statewide compliance. It is the Board's responsibility and desire to equip the LEAs to succeed in achieving compliance and to develop strong collaborative working relationships between the Board and LEAs. This is fundamentally accomplished by providing technical assistance, training, guidance and support. This policy strongly supports this in that

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all six of the implementation elements serve in one way or another to collectively provide these services to LEAs.

It is also the Board's responsibility to evaluate the LEAs' enforcement programs to ensure that appropriate enforcement actions are being taken and that they are effectively maintaining compliance at facilities in their jurisdiction. This is primarily accomplished on an ongoing basis by conducting inspections of facilities in conjunction with LEAs, reviewing LEA inspection reports and enforcement actions and encouraging LEAs to take appropriate enforcement action when necessary. The Enforcement Policy's inspection program element and State Oversight Role element collectively serve to implement these activities. The results from these elements will be incorporated into comprehensive evaluations of an LEA's program, which are conducted by Board staff every three years. When conducting LEA evaluations, the Board will review whether there is any evidence of unfair or unequal treatment among public and private facilities in the enforcement of solid waste laws and regulations and include any such evidence in its evaluation report.

It is the express policy of the Board to allow LEAs discretion in determining what enforcement actions to take to remedy violations at solid waste facilities. In cases where the LEA is unable to gain compliance through Notice and Orders or other appropriate actions, the Board is available to provide the LEA with technical enforcement assistance. In this case, it is strongly recommended that LEAs seek such assistance in a timely manner, in keeping with the Board's policy of encouraging LEAs to take enforcement actions before taking actions itself.

One of the goals of the Enforcement Policy is for the LEAs to successfully get facilities into compliance so the Board does not have to take enforcement action in an LEA's jurisdiction, or initiate actions related to the status of their certification. Board actions of these types should only be considered after all other options have been exhausted. Implementation element # 6, the State Oversight Role procedures, when viewed in light of the overall Enforcement Policy framework, embodies this concept, and provides a fair, predictable and effective method for evaluating whether or not the LEAs are taking appropriate enforcement action.

### **POLICY ELEMENTS**

The following policy elements are designed to collectively implement the above stated policy goals and address the issues listed on page one of this policy. Included is a description of each element, how it relates to the policy goals and enforcement issues, and its relative stage of completion. These elements, particularly 1, 4 and 6, are the true substance of the enforcement policy. As such, Board staff will bring them before the Board as they are completed in draft form for consideration and direction.

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1) **Enforcement Advisory** - This element contains detailed descriptions and instructive interpretation of the various enforcement options available to remedy violations at solid waste facilities. The document covers everything from operator notification of violations to Notice and Order development to the complex Administrative Civil Penalties (ACP) process. This advisory, particularly the section on ACPs, will be the basis for the development of regulations to incorporate changes brought about by AB 59 and provide clarity to the enforcement process. Also included in this advisory is a section on Board assistance as well as guidance on case development in preparing for formal enforcement actions. This Advisory will be used extensively in the Board's training efforts for LEAs. This element is in final draft form and ready for Board consideration for issuance to LEAs.

2) **Hearing Panel Advisory** - The hearing panel process is an integral part of an LEA's actions during various stages of the enforcement process. This advisory will be designed to lead an LEA through the Hearing Panel process, including appeals to the Board. It will also be used for training LEAs. Although this advisory was originally scheduled for issuance in the spring of 1997, Board staff have placed its development on hold pending the pursuit of certain statutory changes regarding hearing panel procedures.

3) **Inspection and Enforcement Training Program** - This program emphasizes a partnership in compliance among LEAs, operators and the Board. The proposed training schedule is integrated into the P&E division's master training schedule and includes four training sessions over the next 18 months, beginning in the spring of 1997. Training will be offered on explosive gas monitoring and control, interpretation of state minimum standards at solid waste facilities, and enforcement options and strategies.

4) **Permit Compliance Strategy** - This element is still being developed in collaboration with the Board/LEA Enforcement Policy workgroup and focuses on three enforcement-related permit problems:

A) In September of 1996 Board staff identified 52 facilities with significant change permit violations, 35 of which were in violation for over two years (long term). The goal is to bring each of these facilities into compliance with permitting requirements by a respective date certain. As part of this effort, the Enforcement Policy workgroup identified frequent obstacles to revising permits and came up with possible solutions for overcoming those obstacles. Selected solutions will be brought before the Board at a later date for approval to implement.

B) This part of the element will recommend a course of action to address the problems presented by using Notice and Orders to allow operators to operate facilities with significant change permit violations while revising their permit, sometimes over a period of several years.

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C) This part of the element will address a general need for clarification regarding what criteria should be applied to determine if a proposed permit is consistent with the State Minimum Standards (SMS). It will also address the following question: If a long term SMS violation raises doubt about the facility's ability to comply with SMS under the proposed permit, what criteria need to be met to get concurrence from the Board?

**5) Field Inspection Program** - This element has been in place for several years and consists primarily of Board staff inspections in conjunction with LEAs, and follow-up enforcement assistance to LEAs.

**6) State Oversight Role Procedures** - The purpose of this document is to lay out a clear process by which the Board can fulfill its statutory mandate to ensure that LEAs are taking appropriate enforcement actions to keep the facilities in their jurisdiction in compliance with applicable laws and regulations. This document describes the criteria which the Board will apply to determine when an LEA is not taking appropriate enforcement action and the procedures the Board will follow to encourage the LEA to take appropriate action and, if necessary, to initiate its own enforcement action and/or take other actions as required by law. This document was reviewed and commented on by key Board staff and by the four LEA representatives on the Enforcement Policy workgroup and is in final draft form for Board consideration.

