

(DRAFT) CIWMB PROTOCOL FOR ENFORCEMENT DECISION-MAKING

INTRODUCTION

An inspector conducting inspections relating to solid waste or waste tires should be alert to the possibility that facts may arise at any given inspection that may warrant consideration for an administrative, civil, and/or criminal prosecution. Inspectors should discuss these options with their supervisors, District Attorney (or Circuit Prosecutor from California District Attorneys Association in a rural county), County Counsel, or CIWMB staff counsel as appropriate. In addition, it is useful to discuss cases at environmental task forces whose purpose is for local, state, and federal agencies and prosecutors to pool resources to investigate and prosecute environmental crimes. For task forces in your area, visit <http://www.calepa.ca.gov/Enforcement/TaskForce/DTSCContacts.htm> It should be noted that prompt referrals, especially for criminal matters, are crucial given the short timeframes allowed for prosecution. It is important to complete inspection reports and informal enforcement actions in a timely matter, and initiate formal enforcement actions (LEAs for solid waste cases) or referrals to CIWMB (waste tire cases) if noncompliance continues.

The following are factors that are to be considered in the decision-making process:

Consider Administrative Enforcement when one or more of the following facts exist:

- Need for penalties or possibility of revocation of permit to obtain compliance;
- One or more violations;
- Conduct, whether intentional or not, that creates a significant harm or a high risk of harm to public health or the environment;
- Informal enforcement action (notice of violation) is not deterring conduct.

Examples of administrative enforcement include cease and desist orders and cleanup and abatement orders, corrective action order, administrative penalties, solid waste permit denial, suspension, and revocations; and waste tire facility permit and hauler denial, suspension, and revocation (See PRC 42850 et. seq. for waste tire storage laws, PRC 42950 et. seq. for waste tire hauler laws, and PRC 44300 and 45000 for solid waste laws.) Furthermore, CIWMB staff may consider enforcement of solid waste facilities should the LEA fail to take enforcement action pursuant to 14 California Code of Regulations section 18350 et. seq. CIWMB staff may also consider termination of existing contracts or grants that violators may have with the Board, and placement of violators on the Unreliable Contractors, Subcontractors, Borrowers and Grantees list (14 California Code of Regulations section 17050 et. seq.).

Consider Civil Enforcement when one or more of the following facts exist:

- Need for injunctive relief to obtain compliance;
- One or more violations;
- More than one County or Program involved;
- Issues of statewide significance;
- Existing administrative enforcement orders or settlements that were violated;
- Major cleanup activity;
- Cases where the city or county is a possible defendant or where local factors make prosecution at the State level preferable (eg. Major employer in small county);
- Desire to establish judicial precedent.

Examples of statutes that can be used for civil enforcement include local nuisance ordinances, land use ordinances, Business and Professions Code section 17200 (almost any violation of law can be considered an unfair business practice), injunction (PRC section 45014 – solid waste cases; PRC section 42845(b) – waste tire cases), PRC sections 42850 and 42962 (waste tires).

Consider referral to prosecutor when one or more of the following facts exist:

- Intentional conduct contrary to law;
- Conduct, whether intentional or not, that creates a significant harm or a high risk of harm to public health or the environment;
- Repeated illegal acts;
- Fraud or deception ;
- Informal enforcement or administrative enforcement actions do not deter conduct or are otherwise inadequate;
- Violations of more than one media such as solid waste and hazardous waste laws.
- data falsification, equipment tampering, witness intimidation;
- false or misleading statements.

Examples of criminal statutes include Penal Code section 374.3 (illegal dumping) and Public Resources Code section 42850.1 (waste tires).

Criminal enforcement usually provides the strongest deterrent. If you are considering a criminal referral, a prompt telephone contact with an environmental prosecutor is appropriate during the first stages of the investigation. In this manner, if the prosecutor feels the case warrants further development as a criminal case, s/he will be able to provide direction in a manner that allows for

efficient development and protects the rights of a potential defendant. Attached please find CDAA's Referral Guidelines that emphasize useful information to a prosecutor in a criminal investigation.