
CalRecycle 2011 Enforcement Report



California Department of Resources Recycling and Recovery

May 2013

S T A T E O F C A L I F O R N I A

Edmund G. Brown Jr.
Governor

Matt Rodriguez
Secretary, California Environmental Protection Agency

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

Caroll Mortensen
Director

Department of Resources Recycling and Recovery (CalRecycle)
Public Affairs Office
1001 I Street (MS 22-B)
P.O. Box 4025
Sacramento, CA 95812-4025
www.calrecycle.ca.gov/Publications/
1-800-RECYCLE (California only) or (916) 341-6300

Publication # DRRR-2013-1458



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Executive Summary

On Jan. 1, 2010, California's recycling and waste diversion efforts were consolidated into a new Department of Resources Recycling and Recovery, known as CalRecycle. CalRecycle manages programs created through two landmark initiatives — the Integrated Waste Management Act and the Beverage Container Recycling and Litter Reduction Act. The new department merged the duties of the Department of Conservation's Division of Recycling and the California Integrated Waste Management Board. This report covers CalRecycle's enforcement activities for 2011.

CalRecycle has a variety of enforcement responsibilities and programs established under different laws. Due to the wide range of laws CalRecycle enforces, each program has a unique set of enforcement activities and measures of performance. CalRecycle's Enforcement Program activities include:

- Oversight of permitted solid waste handling and disposal facilities;
- Evaluation of Local Enforcement Agency (LEA) performance to ensure that permitted solid waste facilities meet standards;
- Enforcement of standards at tire facilities, and of tire hauler and tire flow manifest requirements;
- Enforcement when cities and counties have not implemented diversion programs to achieve their per capita disposal rate;
- Enforcement when businesses do not meet minimum recycled content requirements in products;
- Enforcement of reporting, recordkeeping, and operational compliance of certified beverage container collectors, recyclers, manufacturers, retailers, processors, and dealers; and
- Enforcement of reporting, recordkeeping, and claim documentation for approved electronic waste (e-waste) collectors and recyclers.

Below are highlights from 2011 for CalRecycle's enforcement activities:

- **WASTE TIRE:** CalRecycle increased tire business inspections by more than 250 percent in 2011 by deploying a team of newly trained inspectors. Employing a strategy of focused, regional inspections reduced the backlog of "never inspected" waste tire businesses by more than 50 percent in jurisdictions where there is no local tire enforcement agency.
- **SOLID WASTE:** LEA performance continued to improve in 2011. Eighty percent of the LEAs evaluated were fulfilling all or most of their duties, which is the highest rate ever for the program. The number of LEAs requiring a corrective action plan decreased to the lowest level ever with only one LEA in that category at the end of 2011.
- **LOCAL GOVERNMENT DIVERSION:** Only three compliance evaluations, less than 1 percent of local government programs, were required in 2011 after completion of the first two-year review cycle. That review cycle included only those local governments that did not achieve

the 50 percent diversion goal by 2006, but were making a good faith effort to implement their diversion programs.

- **MINIMUM CONTENT:** CalRecycle undertook revisions to the Rigid Plastic Packaging Container regulations to clarify requirements and level the playing field prior to initiating the next compliance certification process.
- **BEVERAGE CONTAINER RECYCLING:** The California Department of Justice shut down several high-volume recycling fraud rings importing out-of-state beverage containers and fraudulently redeeming them for California Refund Value (CRV). Thirty-one people were arrested in connection with these activities that are estimated by DOJ to have defrauded the state of more than \$3.5 million. These DOJ actions were based on CalRecycle referrals. Also, CalRecycle filed accusations against several program participants seeking more than \$3.4 million in restitution and civil penalties.
- **ELECTRONIC WASTE RECYCLING:** 197,654,811 pounds of covered e-waste was claimed for reimbursement in 2011. Recyclers continued to submit properly documented claims with a compliance rate of 98 percent.

This report was created in part to carry out the mandate of Government Code section 12812.2 related to the statutory responsibility of the California Environmental Protection Agency (CalEPA). It provides an overview of solid waste enforcement and beverage container enforcement program activities during the 2011 calendar year. Accomplishments related to solid waste for previous years are provided at <http://www.calepa.ca.gov/Enforcement/Publications/EnforceRpt.htm>.

Purpose and Scope of Report

This report summarizes CalRecycle's wide-ranging enforcement activities for 2011, describes program elements, and highlights future directions for program improvements. On Jan. 1, 2010, California's recycling and waste diversion efforts were consolidated into a new Department of Resources Recycling and Recovery, known as CalRecycle. CalRecycle manages programs created through two landmark initiatives — the Integrated Waste Management Act and the Beverage Container Recycling and Litter Reduction Act. CalRecycle merged the duties of the Department of Conservation's Division of Recycling and the California Integrated Waste Management Board to better protect public health and the environment by effectively and efficiently managing California's solid waste disposal and recycling efforts.

Enforcement Program Overview

Each year, California is challenged to divert or safely dispose of more than 90 million tons of solid waste, more than 40 million waste tires, more than 193 million pounds of e-waste, and more than 20 billion aluminum, glass, plastic and bi-metal beverage containers. As the state's leading authority on recycling, waste reduction, and product reuse, CalRecycle is charged with overseeing numerous programs — from regulating beverage container recyclers, solid waste landfills, and tire businesses to monitoring the recycled content of newsprint and plastic containers. Protecting public health and safety, the environment and fund integrity — as well as ensuring a level playing field for related solid waste disposal and recycling businesses — are CalRecycle's enforcement priorities. End-user demand for the material collected by beverage container, e-waste, or solid waste recycling is increased by recycled content laws and the collection of quality materials. As a result, California will move forward as an environmental leader and advocate of long-term recycling sustainability.

CalRecycle's enforcement programs ensure regulated communities comply with state laws, regulations, and standards. Potential violations of regulations span a wide spectrum, and almost all can result in administrative action or civil penalties; some are subject to criminal penalties. Compliance is monitored through integrated and consistent auditing, investigations, evaluations, and enforcement efforts.

When enforcing state laws, there are several approaches to gain compliance from the regulated community. CalRecycle focuses its resources on deterring and preventing problems before taking formal enforcement action and imposing penalties. State laws require that CalRecycle enforcement programs have technical assistance, outreach, and training programs. Success depends on effective coordination between government and the private sector. Communication and availability of information play an important role in developing this coordination.

Partnerships at various levels of state and local government enhance CalRecycle's enforcement activities. As a strategy to more effectively provide statewide enforcement for facility-oriented solid waste and waste tire programs, CalRecycle certifies or works with local government enforcement agencies whenever possible. CalRecycle provides ongoing assistance to the regulated community and grant funding to support local enforcement agencies and oversees enforcement statewide to ensure applicable state laws are enforced consistently and equitably. For beverage container and e-waste enforcement, CalRecycle also partners with local governments in various ways and enters into interagency agreements for some enforcement and criminal prosecution activities. Partnerships with the California Department of

Justice, Department of Toxic Substances Control and the state Attorney General's Office facilitate the arrest and prosecution of individuals and entities engaged in fraudulent activities.

Varying Levels of Enforcement Authority

CalRecycle has a variety of enforcement responsibilities and programs established under different laws. One of the key differences among the laws is the level of enforcement authority that impacts the type of enforcement activities.

CalRecycle has **direct authority** for enforcing requirements for:

- Tire haulers and handlers and tire processing and disposal facilities;
- Minimum recycled content programs for rigid plastic packaging containers (RPPC), plastic trash bags, and newsprint;
- Local governments' (cities, counties and CalRecycle-approved regional agencies) waste diversion program implementation to achieve 50 percent waste diversion goals; and
- Certified beverage container recycling centers, processors, collection and drop-off programs, community service programs, and registered curbside programs.

CalRecycle has **oversight authority** over:

- Solid waste handling, processing, and disposal facilities. CalRecycle has the ability to take direct enforcement authority if Local Enforcement Agencies (LEAs) do not choose to do so, or if the LEAs are not adequately performing enforcement duties at solid waste handling, processing, and disposal facilities.

Scope of Program and Goals

Each program has a unique set of enforcement activities and measures of performance due to the wide range of laws CalRecycle enforces. CalRecycle's Enforcement Program ensures that:

- Solid waste and waste tire processing and disposal facilities, are inspected and, if appropriate, placed on corrective action, and if they fail to meet the terms of the corrective action, they may be penalized;
- Waste tire haulers are registered and, if appropriate, may be penalized or their registration may be revoked, suspended, or denied;
- Local governments not making a good-faith effort to implement their diversion programs are evaluated and placed on compliance orders, and if they fail to meet the terms of the compliance order, they may be penalized;
- Beverage container recycling centers are operating within the law and regulations, claims for program payment reimbursement are accurate completed and fully substantiated, material redeemed at recyclers is eligible for reimbursement, and recyclable material imported from out of state or previously redeemed is not illegally redeemed for reimbursement;
- Minimum content programs, including rigid plastic packaging containers, are certified as in compliance with regulatory requirements or penalized as appropriate; and
- All LEAs are properly certified, designated, and evaluated, and, if warranted, placed on work plans, and if they fail to meet the work plans, they may be decertified.

- Covered electronic waste that is recovered for recycling is eligible for reimbursement, compliantly processed, and properly disposed.

Resource Limitations

Organizational changes resulting from the merger of CIWMB and Division of Recycling within a new department led to adjustments in all program areas. In addition, furloughs, required staff vacancies to meet salary savings targets, a state hiring freeze, Governor’s Office special assignments, and staff retirements resulted in reduced staffing levels for enforcement programs.

Program Descriptions and Enforcement Activity Data

Waste Tire Enforcement

Program Highlights

Expanded statewide inspection and surveillance programs and streamlined penalties for hauler violations, in conjunction with renewed emphasis on tire facility permitting, has increased the compliance rates and resulted in a more level playing field for tire facilities, haulers, and generators who operate within the law. CalRecycle’s streamlined enforcement and compliance structure has documented improved compliance by the approximately 1,400 registered waste tire haulers in California. Highlights from 2011 include:

- CalRecycle staff cut the backlog of “never inspected” waste tire businesses by more than half as a result of the redirection of staff and extensive training for new tire inspectors. With a focused regional approach, CalRecycle teams have been able to cost-effectively and efficiently inspect numerous waste tire businesses in a single trip, inspecting a large number of “never inspected” tire businesses in 2011.
- The **Streamlined Penalty Program** for waste tire haulers enables CalRecycle staff to focus on more complex cases and promptly pursue violations. Haulers have appreciated the opportunity to resolve violations quickly and at less expense. In addition, the program increases timely hauler registration. Since the implementation of this program, late renewal violations have decreased by 69 percent, and there have been no repeat offenders.
- **Regulatory Changes** are being discussed to improve the effectiveness of enforcement efforts and make the streamlined penalty process easier to implement at tire facilities.

Program Description

Waste tires are regulated to protect the environment and public health and safety and provide for a “level playing field” for California businesses engaged in the collection, authorized disposal, or diversion of waste tires. CalRecycle was given direct authority in 1990 to enforce laws and regulations related to the storage, handling, and disposal of waste tires. The Waste Tire Manifest System (WTMS) tracks the flow

of tires within California and helps to ensure that tires are accounted for and delivered to authorized disposal or processing facilities by registered haulers. For waste tire generators, haulers, and end-use facilities, WTMS is a continual reminder of their responsibilities under the law. It also documents their compliance with waste tire laws and regulations and, as such, serves as an integral component of CalRecycle's enforcement program.

Enforcement efforts focus on two related fronts: waste tire haulers and handlers, and waste tire storage and processing facilities. For haulers and handlers, the streamlined penalty program enables CalRecycle to pursue vigorous enforcement of the registration and manifest requirements based upon a zero-tolerance compliance strategy adopted in early 2007. For storage and processing facilities, aggressive and progressive enforcement assures compliance with permit conditions and/or state minimum standards. Effectively tracking waste tires moving through the system deters illegal dumping and stockpiling. If illegal dumping or stockpiles are identified, close collaboration with CalRecycle's cleanup programs accelerates cleanup activities.

Tire-Related Businesses: The Haulers, Generators, and Permitted Facilities

Waste or scrap tires are generated by tire-related businesses; hauled by registered haulers to waste tire facilities for storage or discard; and then sent to disposal facilities, processors, and recycling businesses. These businesses produce tire-derived products for roads, athletic turf, playground mats, mulch, and fuel for power generation, to name a few uses of scrap tires. Cement kilns receive whole tires directly from the haulers.

In 2011, the regulated community included approximately 27,648 waste tire-related businesses, including:

- 26,228 waste tire-related businesses, including tire or car dealers, fleet operators, repair shops, dismantlers, cement kilns, agriculture, and other businesses, that are excluded or exempt from permits due to the number of tires stored on-site;
- 1,386 registered waste tire haulers; and
- 34 permitted waste tire facilities (27 minor facilities and seven major facilities).

Tire Hauler and Manifest System: Streamlined Enforcement Process

Any person transporting 10 or more used or waste tires must register with CalRecycle as a waste tire hauler. Those who are unaware of the program are sent letters informing them of the requirements. Registered haulers display a decal in the lower right corner of the windshield to make identification easy. Registrations expire at the end of each calendar year, and renewal packages are sent in early October to make it easy to renew registrations in a timely manner.

Transactions between the waste tire generator, hauler, and storage facility are tracked on a manifest form. Haulers have the option of submitting manifest information electronically or by mail. Inspections occur at registered haulers at least once every two fiscal years, but may be more frequent. In addition to field-based inspections, CalRecycle also conducts office-based monitoring and evaluation of haulers.

Civil penalties for violations of the waste tire hauling and manifesting requirements are \$25,000 per violation per day, and the maximum administrative penalties are up to \$5,000 per violation per day (PRC Section 42962). For some violations (non-controversial, involve less than 2,000 waste tires, and penalties less than \$5,000), an abridged administrative hearing process or "streamlined penalty program" has been

used since 2008. Essentially, a lower penalty is offered to the violator in lieu of prosecution through the more lengthy administrative complaint process.

A penalty letter details the violation and provides two options for the violator: Pay a reduced penalty amount based on pre-approved criteria and do not contest the findings, or contest the findings at a hearing where CalRecycle will ask the administrative law judge to assess significantly higher penalties. If the violator accepts the reduced penalty offer, CalRecycle issues a stipulated decision and order. When the violator signs and returns the notice with payment, the decision is final.

Since the program started in 2008, more than 95 percent of the streamlined penalty offers have been accepted by the tire haulers. The remaining cases, as well as more egregious violations, were prosecuted under the administrative hearing process. Staff has been able to prosecute a significantly higher number of cases using the streamlined penalty process than would have been possible utilizing the administrative hearing process alone. The streamlined penalty process has saved more than \$1.25 million in legal costs based on an average of \$5,000 per administrative complaint (i.e., travel, court fees, attorney fees, etc.). Civil and criminal actions are reserved for egregious violations and repeat offenders.

Permitted Tire Facilities: Progressive Enforcement

Waste tires should be delivered by registered haulers to authorized waste tire facilities. Persons intending to store 500 or more waste tires need a permit to operate. There are two categories of facilities based on the number of tires stored on-site: minor waste tire facilities, which accumulate or store 500 to 4,999 waste tires; and major facilities, which store 5,000 or more waste tires. Compliance is monitored through regular inspections. Permit renewal time frames are strictly monitored and enforced. As permits are renewed, improvements are made in the clarity and extent of permit conditions, making it easier for the regulated community to remain in compliance.

Regular inspections provide early identification of problems related to the proper storage of waste tires. Operating without a waste tire facility permit is a misdemeanor punishable with a fine up to \$10,000 per day and/or up to one-year imprisonment in county jail. If a tire business is out of compliance, the inspector issues a Notice of Violation and specifies a compliance date. In most cases, the business corrects the problem. However, if the violation is not resolved after a re-inspection, or a good-faith effort is not observed, the inspector initiates formal enforcement action, which may include cleanup and abatement orders, administrative complaints, and/or civil or criminal actions.

Administrative complaints are prepared by the CalRecycle legal staff to ensure uniformity of enforcement. Criminal actions for egregious violations and repeat offenders are referred to the local District Attorney or state Attorney General's office.

Unlike the hauler and manifest program, a cleanup and abatement order must be issued before using the streamlined penalty process for waste tire facility violations. The informal rulemaking process began in early 2011 to replicate the successful waste tire hauler streamlined penalty process for waste tire facilities and clarify the enforcement penalty criteria. Using the streamlined penalties is expected to reduce the number of repeat violations and administrative complaints for facilities.

Local Tire Enforcement Agencies Enhance Statewide Enforcement

Prior to 2002, most tire enforcement was conducted by five CalRecycle field staff and focused on cases identified through complaints and referrals from other agencies. To more effectively provide statewide enforcement coverage, CalRecycle now provides funding for local tire enforcement agencies (TEAs)

wherever possible, with CalRecycle staff addressing “gap” areas. Approximately 76 percent of active waste tire sites are covered by CalRecycle-designated local enforcement entities. CalRecycle provides ongoing assistance and funding to TEAs and oversees enforcement statewide to ensure applicable state laws are enforced consistently and equitably.

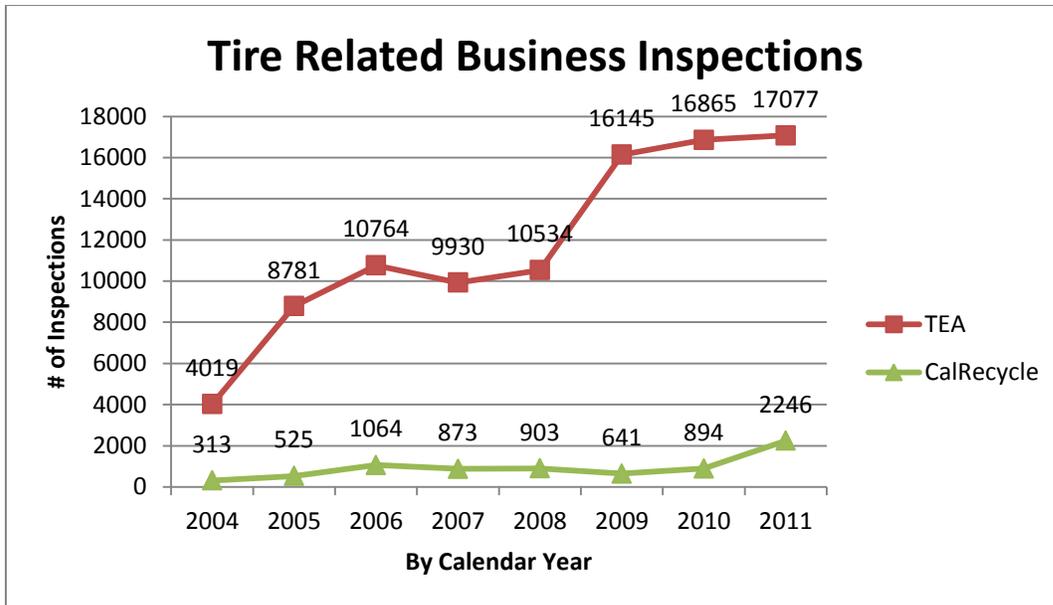
Grant funding supports the activities of 46 cities/counties for waste tire enforcement. Three new counties—Glenn, Orange and Tehama, joined the program in 2011. With the addition of those counties, approximately 13 percent more active waste tire sites can be monitored by local agencies. Eligible county and city jurisdictions use grant funds to support their tire enforcement activities. These TEA grantees perform initial and follow-up inspections for all waste tire businesses in their jurisdiction and issue violation notices. They also identify waste tire sites, investigate illegal tire disposal activities, review waste tire hauler documents, and determine if businesses are complying with all applicable laws, storage standards, and manifest requirements. As a direct result of the waste tire enforcement grants, local agencies have a much more vital and expanded role in enforcement.

Enforcement Activity Data

Inspections

Waste tire facility, hauler, and generator inspections are conducted at regular intervals to ensure compliance with state standards. Permit conditions are also reviewed for waste tire facilities. As the number of TEA grantees increased, more tire businesses were inspected with greater frequency due to a larger number of trained inspectors. The following graph summarizes the 19,323 inspections performed by TEAs and CalRecycle during 2011. The total represents more inspections than in any previous year due in part to more TEAs involved in the program and the addition of newly trained CalRecycle inspectors.

CalRecycle staff conducted 2,246 inspections, approximately 200 percent more than in 2010. That included a large number of inspections at “never inspected” facilities as part of the regionally focused strategy. TEAs conducted more inspections (17,077) than in any previous year. Half of permitted tire facilities (17 out of 34) were inspected.



Total inspections increased significantly in 2011 and the backlog of more than 8,000 “never inspected” tire businesses was cut in half as a result of the redirection of CalRecycle staff and extensive training for new tire inspectors during late 2010. With this focused approach, CalRecycle teams have been able to cost-effectively and efficiently inspect numerous waste tire businesses in a single trip.

Enforcement Action: Waste Tire Hauler Registration and Manifest

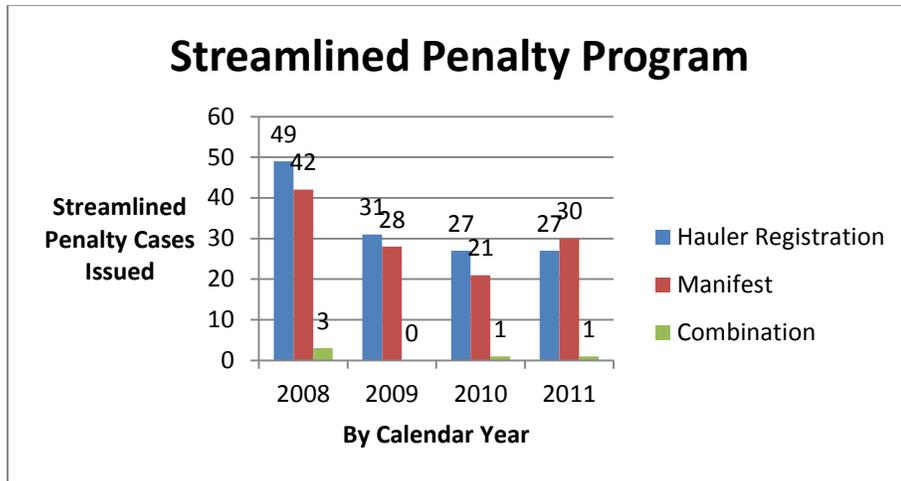
Enforcement actions for waste tire haulers include both the streamlined penalties and administrative hearings. Since the streamlined penalty program began in 2008, the number of repeat violations and administrative complaints has been reduced. The effectiveness of this streamlined approach helps ensure a level playing field by decreasing the number of unregulated haulers who are not complying with waste tire laws.

During the summer of 2011, CalRecycle became aware of significant issues related to “baled tires” so staff prepared a bulletin to clarify the statutory requirements. Despite clarification, an increase in illegal activities related to tire baling and export led to increased violations as noted in the sections below. State law defined baled tires as “...either whole or altered waste tires that have been compressed and then secured with a binding materials for the purpose of reducing their volume. Baled tires are waste tires, not tire-derived products, and therefore, must be manifested. Waste tire baling facilities are NOT collection sites, and therefore, such facilities need to be permitted.” Regulatory discussions also included strategies to address these issues.

Streamlined Penalty and Administrative Complaint Cases

For some violations (noncontroversial, involve less than 2,000 waste tires, and penalties less than \$5,000), an abridged administrative hearing process or “streamlined penalty program” has been used since 2008. Essentially, a lower penalty is offered to the violator in lieu of prosecution through the more lengthy

administrative complaint process. The following charts compare enforcement cases resolved using both processes.



The **streamlined penalty process** was used for 27 hauler registration penalty cases, 30 manifest cases, and one combination (hauler registration and manifest) in 2011. This represents an increase in total cases for 2011 in contrast to the previous three-year decline. This approximately 16 percent increase is in part due to an additional staff inspector and a focus on haulers transporting tires to unauthorized locations.



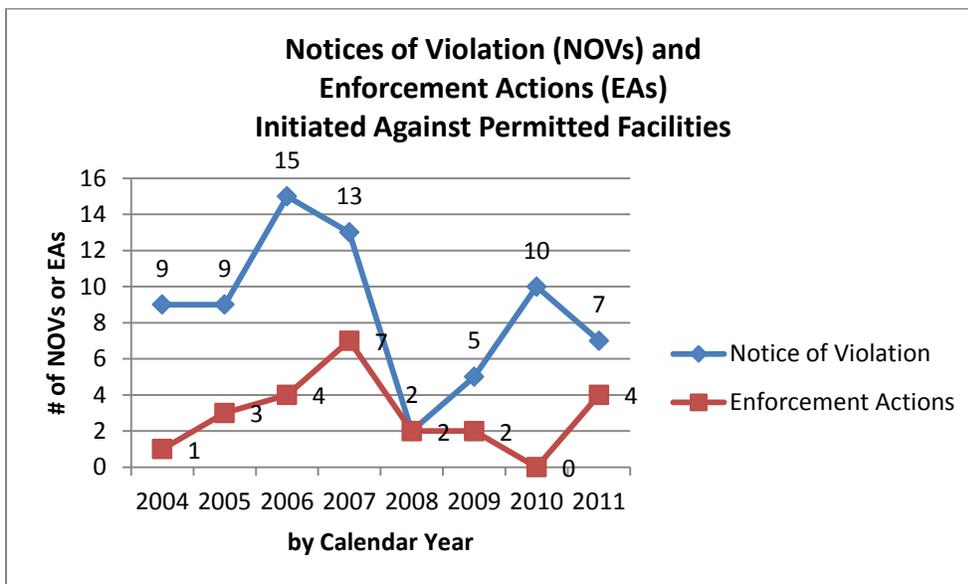
In 2011, the number of administrative complaints remained relatively stable for hauler registration and manifests with only three hauler registration complaints.

Enforcement Action: Permitted Waste Tire Facilities

If a permitted waste tire facility is out of compliance, the inspector issues a Notice of Violation (NOV) and specifies a compliance date. In most cases, the business corrects the problem. However, if the violation is not resolved, the inspector initiates formal enforcement action. Unlike the hauler and manifest program, a cleanup and abatement order must be issued before using the streamlined penalty process for waste tire facility violations. In May 2010, CalRecycle began discussing regulatory changes to replicate the successful streamlined penalty process for waste tire facilities. Use of streamlined penalties is expected to reduce the number of repeat violations and administrative complaints.

Enforcement Action Against Permitted Waste Tire Facilities

The graph below summarizes notices of violation and significant enforcement actions taken by CalRecycle against permitted waste tire facilities. During 2011, there were seven NOVs issued. Although the number of violations is lower than in 2010, the compliance rate was also significantly lower. There were four enforcement actions (EA) were taken in 2011, primarily against balers who continued to illegally accept tires before they were permitted as tire facilities.



Solid Waste Facilities Enforcement

Program Highlights

CalRecycle continues to work with LEAs to ensure the highest level of compliance at solid waste facilities and operations. Examples of 2011 success stories include:

- Compliance monitoring focused significantly on landfill gas standards (gas monitoring and control regulations effective February 2009). Nearly 75 percent of all violations noted in 2010 were related to high landfill gas (methane) readings at monitoring wells or lack of landfill gas monitoring plan implementation.
- Continuing significant improvement in LEA performance over the past three evaluation cycles. Eighty percent of the LEAs (44) were fulfilling all, or most, of their duties, which is the highest level ever for the program. The number of LEAs requiring a corrective action plan decreased to the lowest level ever.

Program Description

Solid waste enforcement programs protect public health and safety and the environment and ensure a level playing field for solid waste disposal-related businesses. In contrast to waste tire enforcement, CalRecycle has oversight authority for solid waste handling, processing, and disposal facilities/operations. Direct authority resides with LEAs to ensure that facilities/operations are operated correctly. CalRecycle has the ability to take direct enforcement if LEAs do not choose to, or are not adequately performing enforcement duties.

In contrast to other CalRecycle enforcement programs, federal laws come into play regarding state minimum standards at solid waste landfills, particularly Subtitle D of the Resource Conservation and Recovery Act (RCRA) which regulates the management of nonhazardous solid waste. It establishes minimum technical standards and guidelines for environmentally sound management of solid waste, while allowing states to develop more flexible municipal solid waste landfill criteria. As an approved state, California and its local governments are the primary planning, regulating, and implementing entities for nonhazardous solid waste management, such as household garbage and nonhazardous industrial solid waste.

In addition to CalRecycle, the State Water Resources Control Board, the Air Resources Board, and Department of Toxic Substances Control each have regulatory authority over specific aspects of solid waste disposal and handling. CalRecycle regulations do not duplicate or conflict with other agency requirements regarding hazardous waste or the protection of water and air quality. However, CalRecycle is granted authority for odor control at compost facilities. The permitting and enforcement requirements take the shared responsibility for solid waste handling into account. The environmental agencies are required to notify each other when they observe violations or when they issue enforcement orders under their own authority that may also constitute violations within their sister agencies' jurisdictions.

CalRecycle's regulation of solid waste facilities includes:

- Reviewing permitting and closure/post-closure documents;
- Inspecting facilities to ensure state standards and permits are effectively implemented;
- Enforcing state standards and permit conditions in addition to, or in lieu of, the LEA;
- Taking appropriate enforcement action if the LEA fails to take appropriate enforcement; and
- Certifying and evaluating LEAs.

State and Local Governments Work Together

Enforcement at active and closed solid waste facilities is a partnership between local and state government. LEAs have primary responsibility for ensuring that facilities within their jurisdiction operate according to state minimum standards and permit conditions. They are designated by their local governing bodies and certified by CalRecycle to implement solid waste handling and disposal regulations. LEAs make sure facilities are properly permitted and inspected to remain in compliance with state minimum standards or permit conditions. If facilities are not in compliance, LEAs take progressive enforcement action to remedy violations according to state statute, standards, and regulations as described in their approved Enforcement Program Plan (EPP). CalRecycle approves each EPP as part of LEA certification. The EPP describes the progressive enforcement process the LEA will follow when taking enforcement action.

There are 61 LEAs statewide; their activities are funded through a mix of local funding and annual state grants. CalRecycle-certified LEAs cover all but six jurisdictions: the cities of Berkeley, Stockton, and Paso Robles; and the counties of San Luis Obispo, Santa Cruz, and Stanislaus. CalRecycle acts as the “local” enforcement agency in those six areas.

Although each LEA is responsible for its jurisdiction, CalRecycle works with LEAs to ensure that state laws are consistently and equitably enforced. To ensure state programs are implemented effectively, CalRecycle:

- Provides training, technical assistance, support, and guidance to LEAs;
- Conducts pre-permit inspections for all facilities;
- Reviews monthly LEA inspection reports;
- Conducts 18-month inspections for all active landfills;
- Publishes a list of facilities with chronic violations (inventory);
- Acts as the enforcement agency if no local agency is designated; and
- Certifies and evaluates the LEAs and their EPPs.

CalRecycle has the following authority if the LEA fails to inspect or appropriately enforce:

- Place the LEA on a work plan or probation;
- Take direct enforcement action;
- Decertify a portion of or the whole LEA program; or
- Take other measures as necessary.

Compliance Targeting Strategy

CalRecycle achieves statewide compliance by working with the LEAs and equipping them to succeed. The intent is to deter and prevent problems through all available means before taking formal enforcement action. To enable that outcome, the [Compliance Targeting Strategy](#) (December 2007) builds upon principles developed collaboratively by the LEAs and CalRecycle. It provides direction for CalRecycle staff on how to monitor compliance and focus resources in these cases:

- Chronic violations where the LEA has not issued a Notice and Order or Compliance Schedule;
- Multiple enforcement orders with little or no progress; or
- Inspections not conducted or state minimum standards not adequately assessed.

Elements of the Solid Waste Inspection and Enforcement Program

Inspections: Routine, unannounced inspections ensure that active and closed facilities or operations comply with applicable state minimum standards and permit conditions. The inspector reviews the site and records for compliance with all standards for the particular facility type, and issues an inspection report based on the findings. If the conditions are approaching noncompliance but do not warrant a violation, an “area of concern” is noted on the report to prompt the operator to take action. If the facility is not in compliance, the inspector documents this on the inspection report with sufficient details regarding the findings and the violation. Inspectors have the option of submitting inspections electronically to a statewide database. Frequent inspections allow early detection of noncompliance. Most simple violations are corrected within a month or two.

In addition, CalRecycle inspects all facilities before they are issued a permit and inspects landfills every 18 months. These oversight inspections allow CalRecycle to ensure consistent enforcement of statutes and regulations. When resources allow, CalRecycle conducts additional, focused discretionary inspections of active facilities and operations.

Informal Enforcement Activities: Targeted compliance begins with informal activities so the operator can demonstrate a good faith effort to comply. Informal activities include noting violations on an inspection report, issuing a written Notice of Violation (NOV), providing technical assistance during a compliance meeting with the operator, or issuing compliance schedules.

Enforcement Action: If violations persist, formal enforcement action is taken. All formal enforcement actions begin with a “Notice and Order.” It details compliance steps and the remedy, penalty, or consequences of noncompliance. After notifying the operator of a violation, the LEA has the authority to issue Corrective Action Orders and Cease and Desist Orders. If an operator fails to comply with the order, the LEA may seek the remedies stated in the order. Remedies available to the LEA include pursuing administrative civil penalties not to exceed \$5,000 for each day of violation; petitioning the Superior Court to enjoin the violation or impose civil penalties not to exceed \$10,000 for each day of violation; suspending or revoking the permit; and finally, pursuing criminal penalties.

The appeal process for the enforcement order — either a hearing officer or hearing panel — is outlined in each local EPP. In contrast to the waste tire program, monetary fines or penalties are less frequently collected due to differences in the regulatory structures of the two programs.

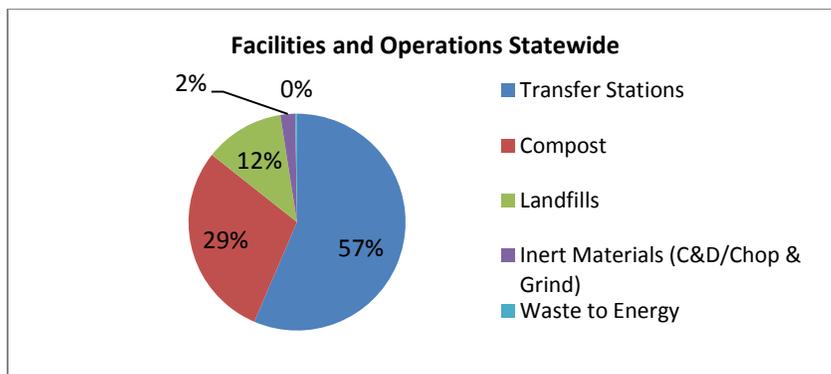
In order to track and report on statewide compliance, CalRecycle publishes two lists on the CalRecycle website generated from the Solid Waste Information System (SWIS) database. The “inventory” lists facilities that repeatedly violate state minimum standards. After two consecutive violations of the same standard are noted on an inspection report, CalRecycle issues a Notice of Intent (NOI) advising the landfill operator of CalRecycle’s intent to list them on the inventory if the violations are not corrected within 90 days. If the violation is not corrected and documented in an inspection report, CalRecycle informs the operator that their facility has been listed on the inventory. The LEA is required to develop a compliance schedule, which is typically in the form of a Notice and Order. CalRecycle also publishes all current enforcement orders for violations of permit conditions or other applicable regulations including state minimum standards. Thus, facilities are tracked for significant violations by listing on the inventory and/or under an enforcement order.

Facilities on the inventory require oversight and receive enhanced compliance assistance from the LEAs. CalRecycle works closely with the LEA to develop a case-by-case strategy to move facilities off the inventory.

Solid Waste Disposal Facilities and Operations

In 2011, California’s solid waste disposal infrastructure included 538 permitted, active solid waste facilities and 640 authorized operations. The number of facilities and operations increased by about 2 percent in the last year. Operations are distinguished from facilities in that they do not require a permit; however, they do require a notification that is sent to the LEA. The modified approach is due to the type of waste material handled and/or the quantity of waste handled. Operations are also inspected less frequently as they pose less environmental risk. The types of facilities and operations are as follows:

- Active Permitted Facilities (538)
 - 297 waste transfer and processing facilities;
 - 98 composting facilities;
 - 140 disposal facilities (or landfills); and
 - 3 waste-to-energy (transformation) facilities.
- Authorized Operations (640)
 - 368 waste transfer and processing facilities;
 - 246 composting facilities; and
 - 26 disposal (inert materials) facilities.



Enforcement Activity Data

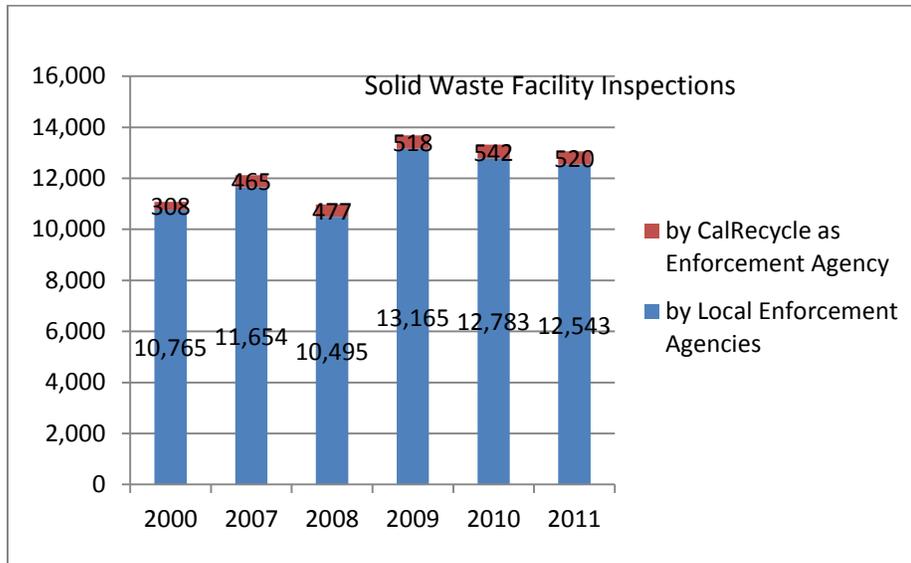
Inspections

Facilities and operations are inspected regularly to allow early detection of noncompliance with regulations, state minimum standards and permit conditions (facilities only).

Regular Inspections (LEAs and CalRecycle as enforcement agency)

The chart below summarizes inspections performed by the “enforcement agency” — either the local enforcement agencies or CalRecycle (for six cities and counties with no designated LEA). During 2011, 13,063 inspections were conducted, slightly less than the two previous years.

The overwhelming majority of these regular inspections are conducted by the LEAs as they provide enforcement for 95 percent of the counties and all but three cities statewide. During 2011, LEAs conducted 12,543 inspections and CalRecycle conducted 520.



Violations at Disposal Facilities (Landfills): Violations cited during 2011 continued in a similar ranking as 2010, although violations related to new regulations to protect against explosive landfill gas migration decreased significantly. (Compliance challenges related to the implementation of these new landfill gas regulations is explained in more detail later in this report.) Of the 686 violations cited in 2011, more than 50 percent were for gas monitoring and control. Considering there are only 141 active, permitted landfills, 199 is a very high number of violations. There were four times as many violations for gas monitoring as compared to the second most frequently noted violation--operator noncompliance with “permit terms and conditions.” The total number of “permit terms and conditions” violations decreased significantly compared to 2010, as did the number of “daily cover” violations. New to the “top five” list in 2011 were violations related to Title 27 full permit reviews. Grading and erosion control fell of the “top five” list.

Total Landfill Violations	Violation Category
199	Gas Monitoring and Control
54	Operator Compliance with Permit Terms and Conditions
42	Report of Disposal Site Information
39	Title 27 Full Permit Review
18	Daily Cover

Violations at Compost Facilities: Of the 208 violations at compost facilities, the most frequently cited violation in 2011 was “operator noncompliance with permit terms and conditions” which ranked fourth in 2010. Violations for “vectors, odor, litter, etc.” ranked second compared to first in 2010, and the total number of violations in this category decreased in 2011 compared to 2010. Violations related to “fire prevention” increased in 2011 compared to 2010. New to the 2011 “top five” list of violations were violations related to “feedstock.”

Total Compost Violations	Violation Category
26	Operator Compliance with Permit Terms and Conditions
23	Vectors, Odor, Litter, etc.
22	Fire Prevention
14	Chip & Grind Storage Limit Time
13	Feedstock

Violations at Waste Transfer and Processing Facilities: The majority of the 300 violations cited in 2010 relate primarily to the facility permits rather than state minimum standards as compared to the other facility types listed above. Two new violation categories were included in the top five for 2011 that did not appear in that list for 2010—vector control and recordkeeping.

Total Transfer Station Violations	Violation Category
23	Operator Authorized by SWF Permit
45	Compliance with Permit Terms and Conditions
14	Vector, Bird and Animal Control
13	Solid Waste Removal
9	Record Keeping Requirements

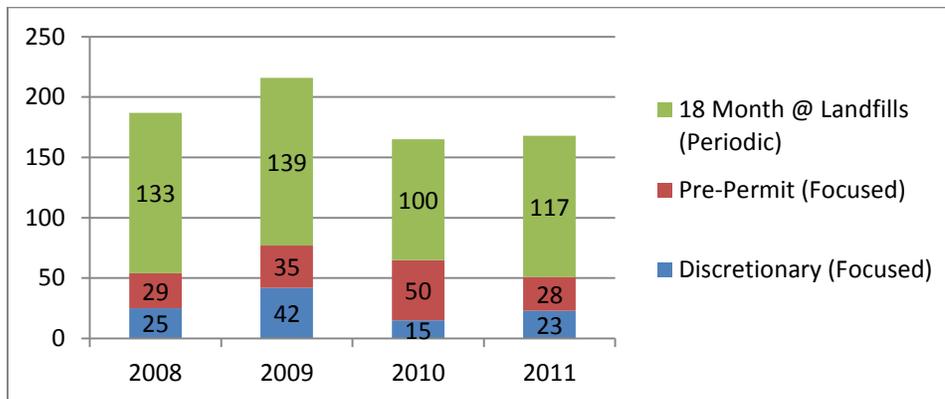
Oversight Inspections (CalRecycle only)

CalRecycle conducts three types of oversight inspections to evaluate the LEAs and ensure consistent application of standards and regulations to protect the public safety and environment as required by statute:

- Eighteen-month inspections at landfills;
- Pre-permit inspections to ensure that state minimum standards are met at facilities applying for permits; and
- Discretionary/focused inspections at all facility types.

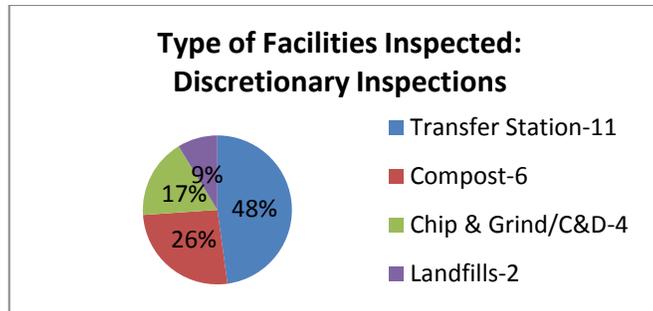
In 2011, CalRecycle conducted 168 oversight inspections, similar to 2010. Approximately 70 percent of those oversight inspections (117) were the 18-month inspections of landfills. In 2011, the 28 pre-permit inspections accounted for about 17 percent of the total oversight inspections. Pre-permit inspections take priority when allocating staff resources as they are required before the permit can be issued. Since fewer facilities were permitted in 2011, less pre-permit inspections were required. As a result, there were almost 50 percent more discretionary/focused inspections conducted in 2011 than in 2010. Staff conducted 23 discretionary/focused inspections during 2011. (Note: Inspections of closed facilities are not included in these totals.)

CalRecycle Oversight Inspections



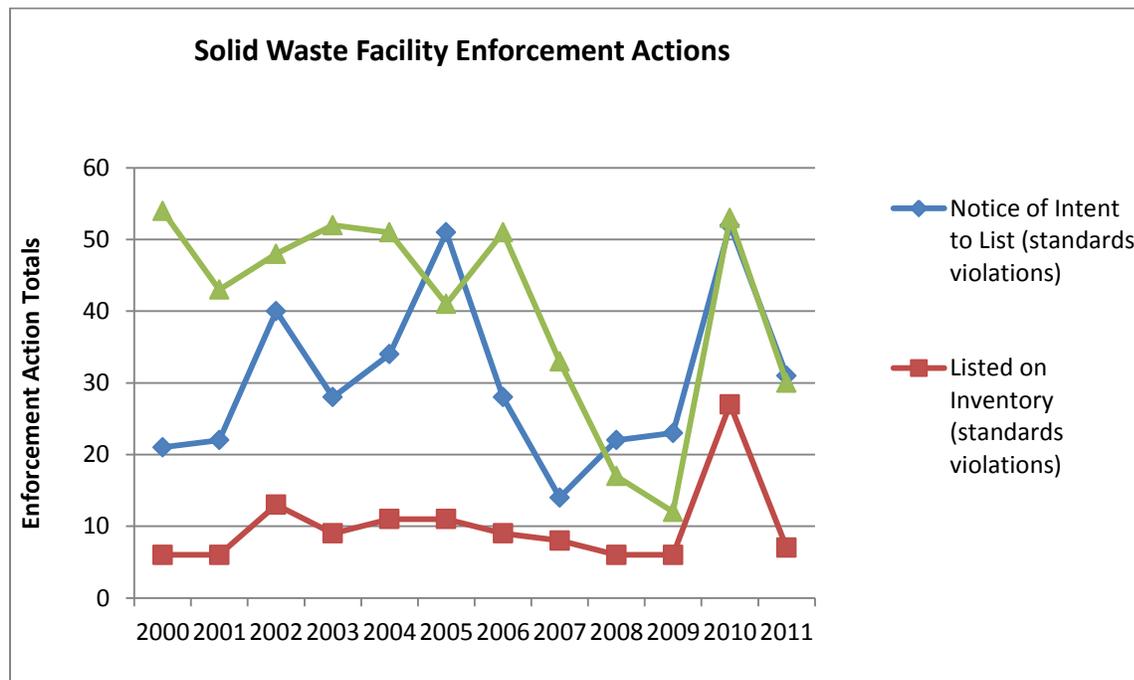
Discretionary inspections (focused): In 2008, CalRecycle conducted additional inspections beyond the 18-month and pre-permit inspections. These discretionary inspections address other mandates associated with effectively evaluating the LEAs and ensuring that state minimum standards are met. CalRecycle conducted 51 discretionary inspections in 2011. Of those, more than half were facilities that CalRecycle inspectors had not visited before. Approximately one third were conducted in conjunction with an 18-month inspection. The remaining facilities were inspected in response to LEA requests or due to compliance concerns or enforcement violation history.

In contrast to the 18-month inspections of landfills, the mix of facilities inspected in this category includes all facility types: compost facilities; chip and grind; construction and demolition (C&D); transfer stations/material recovery facilities (MRFs); and landfills. The decrease in facilities permitted in 2011 enabled staff to almost double the number of discretionary inspections. Since statute does not require CalRecycle inspections after facilities/operations are permitted/authorized unless they are landfills, CalRecycle inspected other types of facilities and operations to ensure proper application of state minimum standards at all facility types. As transfer stations/MRFs represent the majority of facilities/operations statewide, nearly half of the discretionary inspections in 2011 were at transfer stations/MRFs. Almost one quarter of discretionary inspections in 2011 were at compost facilities which is proportional to compost facilities/operations statewide.



Enforcement Action

Noncompliance with state standards and permit conditions is tracked in several ways on the CalRecycle website. One webpage, the “inventory,” lists solid waste facilities with chronic violations of one or more state minimum standards for solid waste handling and disposal. Another page publishes details regarding solid waste facilities and disposal sites under enforcement order for permit and/or state minimum standard violations. The graph that follows summarizes enforcement actions taken against facilities that chronically violate state minimum standards and/or permit conditions.



Thirty-one facilities received **Notices of Intent to List** on the Inventory during 2011 for repeated violations of state minimum standards. Listing is triggered by at least one violation of state minimum

standards for two consecutive months. These figures represent a significant decrease from 2010 when the number of listings was higher as a result of new regulations taking effect to protect against explosive landfill gas migration. CalRecycle sends a letter to the facility operator notifying them of its intent to list the facility on the CalRecycle website (Inventory) if the violation is not corrected within 90 days of receipt of that notice.

Consistent with that decrease in Notices of Intent to List for 2011, only seven facilities were **listed** on the [Inventory of Facilities Violating State Minimum Standards](#) in 2011. Changes implemented by the operators generally led to compliance within the 90-day timeframe. Compared to 2010, the number of facilities “listed” in 2011 was 75 percent less than total listings for 2010. By the end of 2011, only two of the facilities listed during 2011 remained on the Inventory.

As another measure of noncompliance, facilities and disposal sites that are under enforcement orders for permit or state minimum standard violations are also tracked. Those enforcement orders include Cease and Desist Orders; Notices and Orders; compliance schedules; stipulated Notices and Orders; and Penalty Orders. During 2011, 30 solid waste facilities (primarily landfills) were under enforcement orders. As noted earlier in the report, the number of enforcement actions is higher than in previous years as a result of landfill gas violations in response to new regulatory requirements, but it declined by about 20 percent from 2010 to 2011 as operators complied with the implemented their landfill gas plans.

	Solid Waste Facility Enforcement Action Type		
Year	Listed on Inventory	Notice of Intent to List on Inventory	Enforcement Orders (various)
2000	6	21	54
2001	6	22	43
2002	13	40	48
2003	9	28	52
2004	11	34	51
2005	11	51	41
2006	9	28	51
2007	8	14	33
2008	6	22	17
2009	6	23	12
2010	27	52	53
2011	7	31	30

Upgrade of Landfill Gas Monitoring and Control Systems

The increase in violations as a result of the implementation of landfill gas monitoring and control regulations (effective February 2009) remained a major part of the compliance monitoring and enforcement workload in 2011. Construction of new monitoring well networks was required for 124 landfills with an October 2009 compliance date. As approved plans were implemented, emphasis shifted to compliance monitoring to protect against explosive gas methane migration (greater than 5 percent methane by volume in probes). The number of violations during 2011 decreased significantly. Most new violations were excessive gas levels at recently constructed probes, although some were for failure to implement approved monitoring plans.

LEA Evaluations: Significant Improvement Continues

Each LEA is evaluated by CalRecycle every three years to ensure LEAs are fulfilling their duties. Staff members apply standards outlined by the statute to ascertain whether the LEA has:

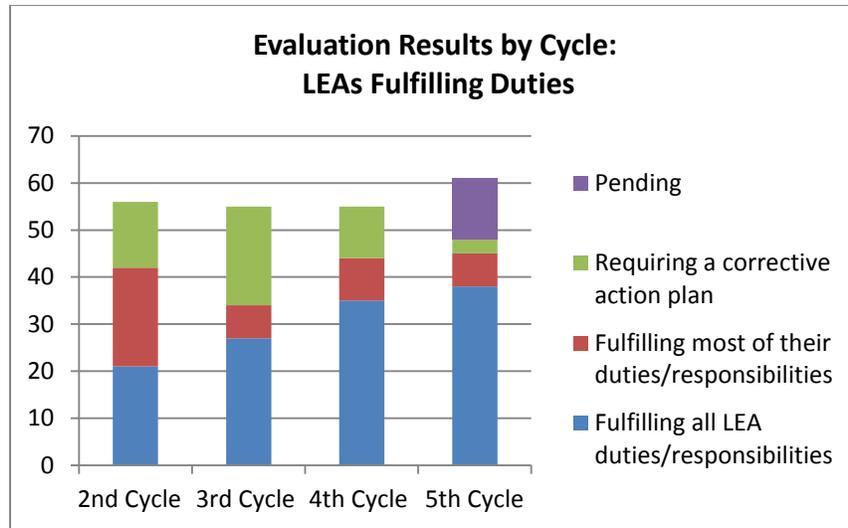
- Consistently enforced statutes and regulations pertaining to solid waste handling and disposal;
- Implemented its CalRecycle-approved Enforcement Program Plan; and
- Complied with certification requirements related to staffing adequacy, technical expertise, budget resources, training, and EPP processes.

An LEA is not fulfilling its duties if it has:

- Failed to exercise due diligence in the inspection of solid waste facilities and disposal sites;
- Intentionally misrepresented the results of inspections;
- Failed to prepare, or cause to be prepared, permits, permit revisions, or closure and post-closure maintenance plans;
- Approved permits, permit revisions, or closure and post-closure maintenance plans that are not consistent with Part 4 and Part 5 of the Public Resources Code (PRC);
- Failed to take appropriate enforcement actions; or
- Failed to comply with, or taken actions that are inconsistent with or unauthorized by statute or regulations.

It is important to note that these statutory criteria for the evaluation are limited. For example, the criteria do not address the quality of inspections conducted or quality of permits prepared by an LEA. However, quality is addressed to a limited extent in the evaluation of the last bullet above to the extent that an LEA does not fulfill a requirement that is specified in either statute or regulation.

LEA performance has steadily and significantly improved over the past decade. As the chart shows, the number of LEAs fulfilling all of their duties is steadily increasing. Preliminary results for the current cycle (5th), show a similar trend with nearly 80 percent of the LEAs (38) fulfilling all, or most, of their duties. This is the highest number ever for the program even though not all the evaluations are complete. (Evaluation cycles take more than one year to complete, thus the results for the 5th Cycle include some pending evaluations.) The number of LEAs requiring a corrective action plan decreased significantly, to the lowest level since 2000 with only one LEA on a work plan by the end of 2011.



The 5th cycle began in 2010 and the multi-year cycle is not yet complete, although nearly 80 percent of the 61 reports are final. As shown in the chart, for the 48 reports that were completed in 2011, 38 LEAs were fulfilling all their responsibilities during the 5th Cycle. Even though the cycle is not yet complete, this represents the highest number of LEAs fulfilling all responsibilities during the last decade. No LEAs were decertified during this cycle.

LEAs that required corrective action work plans decreased significantly during the 5th Cycle. Only three LEAs required a work plan. Of those on corrective action during the 5th Cycle, two-thirds corrected their deficiencies by the end of 2011. Only one LEA remained on a work plan and their lack of compliance resulted in an Administrative Conference Agreement.

LEA Evaluation Findings/Results	5 th Cycle-48 LEAs) 2010-2013 (Partial)	4 th Cycle-55 LEAs 2006-2010	3 rd Cycle-55 LEAs 2003-2006	2 nd Cycle-56 LEAs 2000-2003
Fulfilling all LEA duties/responsibilities	38	35	27	21
Fulfilling most of their duties/responsibilities	7	9	7	21
Requiring a corrective action plan	3	11	21	14
Withdrawal of designation De-certification	0	0	0	0

Local Government Diversion Enforcement

Program Highlights

- Compliance rates for local government diversion program implementation continue to improve. Statistics for 2011 show a compliance rate of 99 percent.
- Only three compliance evaluations, less than 1 percent of local government programs, were required in 2011 after completion of the first two-year review cycle. That review cycle included only those local governments that did not achieve the 50 percent diversion goal by 2006, but were making a good faith effort to implement their diversion programs.

Program Description

CalRecycle has direct authority for the evaluation and enforcement of requirements for local government waste diversion (cities, counties, and regional agencies). The goal is to minimize waste and maximize diversion of materials from landfills through waste prevention, recycling, and composting. Local governments develop plans and implement programs (source reduction, composting and recycling) to divert 50 percent of waste disposed (based on 2000 figures).

CalRecycle's enforcement role is to:

- Conduct compliance evaluations of local government programs to determine if they are failing to implement their unique diversion programs or failing to make progress in meeting their unique per capita disposal targets.
- Monitor the progress of noncompliant local governments in implementing their corrective action plan to come into compliance with diversion requirements.

Actual Per Capita Disposal Provides More Timely and Accurate Information

The compliance evaluation review process was adjusted to reflect the new per capita disposal measurement system from Senate Bill 1016 (Chapter 343, Statutes of 2008), which changed the measurement system from estimated diversion to actual per capita disposal. The new system accounts for local growth by relying on per capita disposal as an indicator. As residents or employees increase, report-year disposal tons can increase and still be consistent with the 50 percent per capita disposal target.

Through this system, each local government's compliance will continue to be evaluated on a case-by-case basis. Local governments will not be compared to other local governments or the statewide average. Instead, they will each have a unique target and will only be compared to their own 50 percent per capita disposal target. Recent changes in the law allow a local government and CalRecycle to obtain more

timely and accurate information on reductions in tons disposed. These changes also focus efforts on diversion program implementation and make compliance determinations easier.

Local governments submit an annual report on the implementation of their diversion plans to CalRecycle. Every two or four years, CalRecycle reviews each local government's progress in implementing its unique waste diversion programs. The first two-year review cycle is for local governments that were making a good-faith effort to implement their diversion programs to achieve the diversion requirements in 2006. This review was conducted in 2010. Only three referrals for compliance evaluations were made in 2011. The first four-year cycle (2012) will include local governments that achieved 50 percent diversion and implemented their diversion programs in 2006. The referrals from that cycle will form the basis for compliance reviews in 2013.

Compliance Review Process

After conducting the compliance evaluation, there are three possible outcomes. CalRecycle can determine that the local government:

- Met unique per-capita disposal targets;
- Made a good faith effort to implement its diversion programs; or
- Failed to make a good faith effort to implement its diversion programs.

When local governments fail to make a good faith effort, CalRecycle holds a hearing to determine whether to place the local government on a compliance order, which directs the local government to develop a plan outlining specific steps and deadlines to bring them into compliance. The focus of the plan is on the implementation of all reasonable and feasible diversion programs. CalRecycle monitors the local governments on compliance orders. If the local government fails to meet the compliance order requirements, there is a public hearing to determine whether or not they are subject to penalties (up to \$10,000 per day).

Regional Programs Reduce Costs

There are approximately 540 cities and counties in California that are required to plan and implement diversion programs to achieve 50 percent diversion goals. In order to reduce program and reporting costs, as well as to improve accuracy of measurements by reducing complex boundaries, cities and counties are allowed to join regional agencies. Because many cities and counties have joined regional agencies, in 2011 there were 414 local governments subject to these requirements.

Enforcement Activity Data

Compliance Evaluation Reviews

Three local governments were referred for a compliance evaluation review in 2011. These evaluations of Calaveras County, Mammoth Lakes, and Mendota were a result of the first two-year review cycle of those local governments making a good-faith effort to implement their diversion programs. Out of 414 local programs, only three, or less than 1 percent, warranted compliance evaluation.

Compliance Orders

Seven local governments were on active compliance orders at some point during 2011. However, by the end of the year, only four remained on compliance. Compton, Firebaugh, and Greenfield fulfilled the

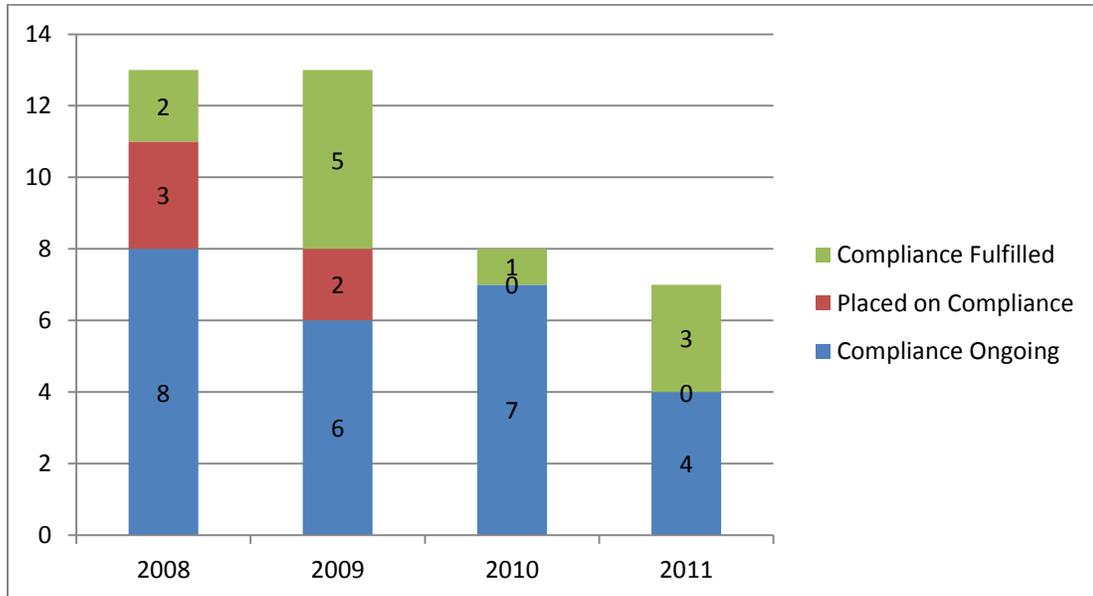
terms of their compliance orders and were removed from compliance status. Because there were no local governments referred for a compliance evaluation during the year, no new compliance orders were issued. The local governments with active compliance orders at the end of 2011 were: Clearlake, Downey, Ridgecrest, and Santa Paula. These local governments were still fulfilling the terms of a compliance order from a previous year. No penalty hearings were held in 2011.

Regardless of what approach is used to report compliance, there was significant improvement in 2011. Statistics for 2011 show a compliance rate of 99 percent. Both the total number of local governments under compliance orders during any point during 2011, and with ongoing compliance orders at the end of the year continued to decrease compared to the previous years as noted on the chart below. During the course of a year, there are generally three categories:

- **Compliance Fulfilled** — the local government fulfills the terms of its compliance order at some point during the year and is removed from compliance status;
- **Placed on Compliance** — the local government is issued a new compliance order as the result of a compliance evaluation review;
- **Compliance Ongoing** — the local government continues to fulfill the terms of the compliance order that was issued in a previous year.

The number of local governments on active, ongoing compliance orders fell to the lowest level in the past four years—dropping from a high of nine in 2008 to a low of four in 2011. This represents a compliance rate of 99 percent.

Local Government Diversion Programs Enforcement Actions



Penalty Hearings

Penalty hearings are held for local governments that do not make a good faith effort to implement their diversion programs. In 2011, there were no penalty hearings. Ridgecrest (2009) was the last local government subject to a penalty and it remains under an active compliance order.

Minimum Content Program: Rigid Plastic Packaging Container

Program Highlight

- The regulations were revised to clarify requirements and level the playing field before the next compliance certification process is undertaken.

Program Description

California's law was enacted in 1991 as part of an effort to reduce the amount of plastic disposed in landfills and to increase the use of recycled plastic resin in the manufacturing of new containers. CalRecycle regulates product manufacturers that sell certain products in rigid plastic containers in California. (Some rigid plastic containers are exempt from this law due to the type of product they hold, e.g. food, drugs, toxic or hazardous products). The companies are expected to be in compliance at all times.

Compliance Options Promote Particular Goals

Compliance can be achieved in several ways, with each option promoting a particular goal of the law. Some compliance options were designed to encourage source reduction (waste prevention) or reuse/refilling of rigid plastic containers. The third, or recycling compliance option, promotes increased use of postconsumer resin in the manufacturing of RPPCs, and reduces the amount of virgin resin required.

Each year, CalRecycle reviews a percentage of registered product manufacturers to verify information and compliance with the law. A sample is randomly selected from a pool of known companies that produce or generate covered RPPC products. They are required to submit a one-page registration form to CalRecycle containing data required by statute and regulations to document compliance. California statute allows CalRecycle to assess penalties of up to \$50,000 for any violation, up to a maximum of \$100,000 annually. Violations include, but are not limited to, failure to submit all required forms, submitting incomplete forms, or failing to comply with the RPPC law.

Enforcement Activity: Clarifying Regulations

No enforcement actions were taken during 2011 because RPPC regulations were being revised. The certification cycle was temporarily suspended. Suggestions for regulatory revisions were based on issues

identified when conducting compliance certifications and taking enforcement actions. Regulation revisions are needed to:

- Improve clarity and specificity;
- Reorganize the regulations to improve ease of understanding;
- Eliminate inequities in regard to what types of containers are regulated; and
- Establish a process to allow product manufacturers to obtain advisory opinions early in the process.

The formal rulemaking began in February 2011 and CalRecycle anticipates submitting the rulemaking package to the Office of Administrative Law (OAL) in 2012.

Beverage Container Recycling Enforcement and Fraud Prevention

Program Highlights

- Parallel administrative investigations by CalRecycle and criminal investigations by the California Department of Justice (DOJ) and Attorney General's Office (AG) led to prosecution of the Tung Tai Group (a certified processor) and TOMRA Recycling (a certified recycler). These businesses were unlawfully selling and purchasing previously redeemed beverage containers, effectively redeeming them for a second time. In addition to relinquishing their certifications to operate, settlements yielded payment of \$1.077 million to CalRecycle.
- Several large cases were prosecuted as a result of referrals to DOJ and AG for fraudulent redemption of out-of-state containers. In a Lassen/Plumas county case, seven defendants pleaded no contest to felony charges for fraudulent redemption of containers from Nevada. In addition to paying \$1.5 million in restitution, five defendants were deported and the two others were sentenced to six months incarceration and three years' probation. In a Riverside County case, individuals rented trucks to import beverage containers from Arizona, broke them down into smaller/redeemable quantities, and then transported the material in vehicles bearing California vehicle license plates. DOJ arrested the importers as they left the recycling centers after receiving payment on the ineligible material. They were responsible for approximately \$170,000 in fraudulent redemption over a 3-month period. Criminal prosecutions by the AG resulted in guilty pleas to illegal redemption and grand theft. CalRecycle will pursue administrative cases against the certified recycling centers that purchased the ineligible containers.

Program Description

More than 20 billion CRV-eligible beverage containers made from aluminum, glass, plastic, and bimetal are sold in California each year. When not recycled, they contribute significantly to the state's litter

challenges or end up in landfills. In 1986, the Legislature created a funding mechanism to encourage the recycling of certain beverage containers.

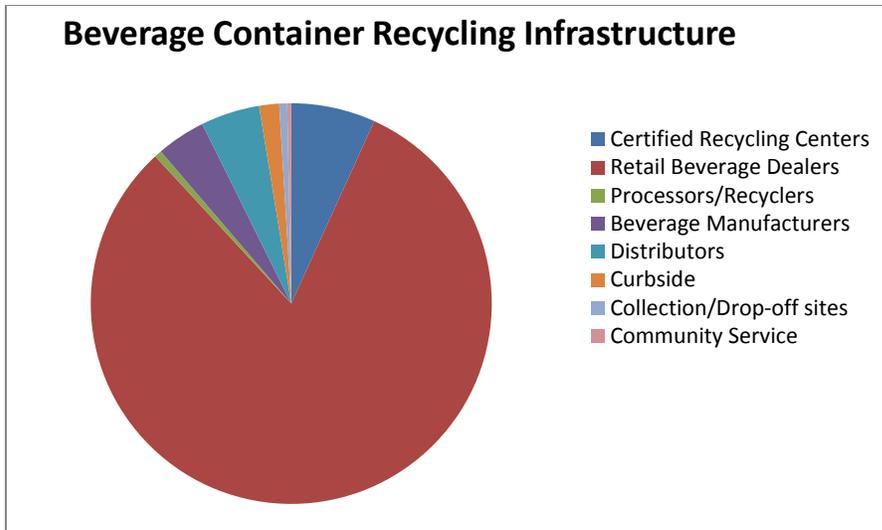
To finance the beverage container recycling program, processing fees and redemption fees are collected from beverage manufacturers and distributors for each CRV-eligible beverage container sold in California. The money is deposited into a special account —the California Beverage Container Recycling Fund — and used to cover refunds, processing payments, handling fees, grants, and administrative costs. Most beverages sold in the state and packaged in aluminum, glass, plastic, and bi-metal cans are subject to CRV. Notable exceptions are milk, wine, distilled spirits, 100 percent vegetable juice in containers larger than 16 ounces, and 100 percent fruit juice in containers 46 ounces or larger.

Consumers play a key role in this program and receive a refund for recycling beverage containers. They pay CRV at the checkout stand — a nickel on containers less than 24 ounces, a dime for containers 24 ounces or larger. Consumers receive CRV reimbursement when the empty beverage container is returned to a certified recycling center. The recyclers then sell the eligible containers to processors. Recyclers have the responsibility to verify that the beverage containers qualify for refund before claiming it from the processor. Processors also receive material through curbside recycling programs and certified collection or drop-off programs, and pay for the material at rates specified by CalRecycle. The processor requests reimbursement from CalRecycle to cover the payments it makes to recyclers and other program participants, and also receives processing payments from CalRecycle. If processors submit fraudulent or improperly documented claims, CalRecycle can deny or reduce payments.

Statewide Infrastructure for Convenient Recycling

California’s beverage container recycling infrastructure has developed in response to this program. Californians recycled an average of more than 45.7 million beverage containers each day in 2011. The network of regulated businesses that make this possible includes:

- Retailer Beverage Dealers 29,506
- Certified Recycling Centers 2,464
- Beverage Manufacturers 1,435
- Distributors 1,722
- Curbside 584
- Collection/Drop-off 231
- Processors 214
- Community Service 118



Enforcement Focus on Fraud Deterrence, Prevention and Mitigation

CalRecycle’s enforcement efforts focus on identifying and investigating certified entities or individuals perpetrating fraud against the program and/or operating in violation of the law. Program fraud associated with the illegal redemption of used beverage containers, particularly those imported into California from out-of-state, is a significant threat to the solvency of the Beverage Container Recycling Fund. Enforcement is based on information gathered through a combination of audits, inspections and investigations:

- Probationary review of recycling centers;
- Annual inspections of recycling centers;
- On-site inspections of processor loads;
- Risk assessment and data analysis (through DORIIS); and
- On-site investigations leading to administrative penalties or criminal prosecution as warranted.

Given the large volume of data managed by the program, the Division of Recycling Integrated Information System (DORIIS) is an essential tool. This near “real time” system integrates various data and tracking systems to pinpoint reporting anomalies (e.g. higher than average daily purchase volumes, spikes in daily volumes, etc.) and target suspect claims. For example, CalRecycle can place suspect transactions on hold until the supporting documents can be reviewed for accuracy and completeness. DORIIS also enables investigators to place suspect recycling center operators on pre-payment inspection status until CalRecycle can perform on-site inspection of the corresponding load of beverage container materials. When used collectively, these systems and processes provide CalRecycle both pre-and post-payment opportunities to prevent fraud.

CalRecycle currently works with state law enforcement agencies including the Department of Justice and the state Attorney General’s Office because they have the authority to pursue criminal investigations and prosecution. In 2011, CalRecycle renewed interagency agreements with both entities through Fiscal Year 2013-2014. At the local level, partners include sheriff departments in Los Angeles, Riverside, and San Bernardino counties and police departments in Ontario and Sacramento.

Program fraud associated with the illegal redemption of used beverage containers imported into California is a significant threat to the solvency of the Beverage Container Recycling Fund. In June 2011, the California Department of Food & Agriculture (CDFA) began a three-month, no-cost pilot project to monitor imported beverage containers at all 16 border inspection stations. That successful pilot led to a two-year interagency agreement beginning in Fiscal Year 2012/13 to continue the monitoring.

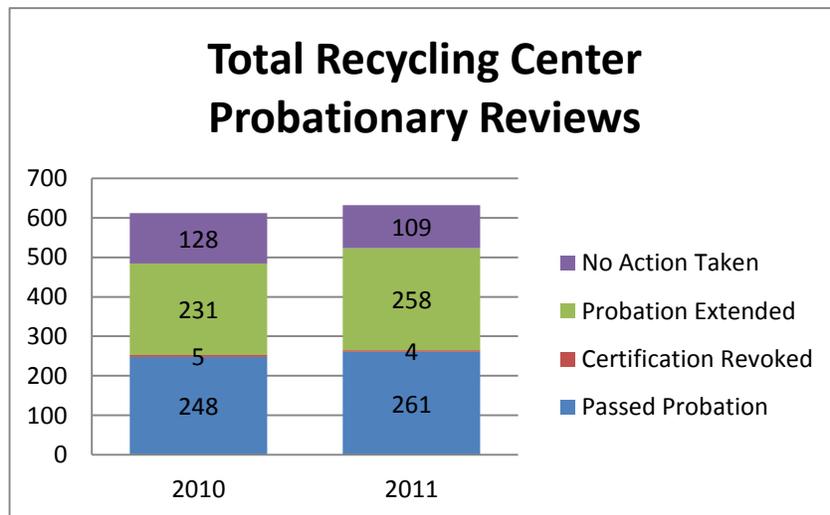
In August and October 2011, CalRecycle held a series of informal public workshops regarding the current allowable daily load limits for consumers. CalRecycle data analysis suggested that the daily load limits are not indicative of typical consumer activity and allow unscrupulous individuals to illegally redeem containers imported from out-of-state at California recycling centers. Proposed regulations were developed as a result of these workshops and will be released by the Office of Administrative Law for public comment in Fiscal Year 2012/13.

Enforcement Activity Data

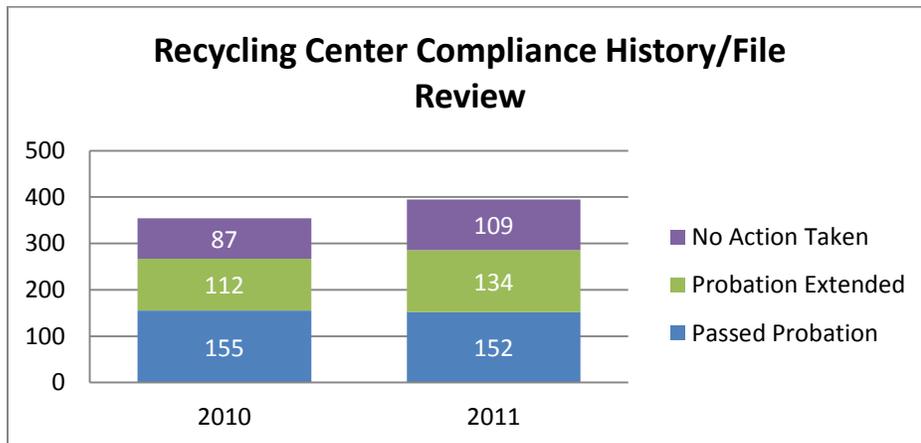
Recycling Center Probationary Reviews

Recycling centers are “on probation” for the first two years of operation. CalRecycle staff review their operations to ensure that participants are complying with applicable statutes and regulations. As a result of the reviews, CalRecycle may extend a recycler’s probationary certification status, approve a non-probationary certification, or revoke a participant’s probationary certification.

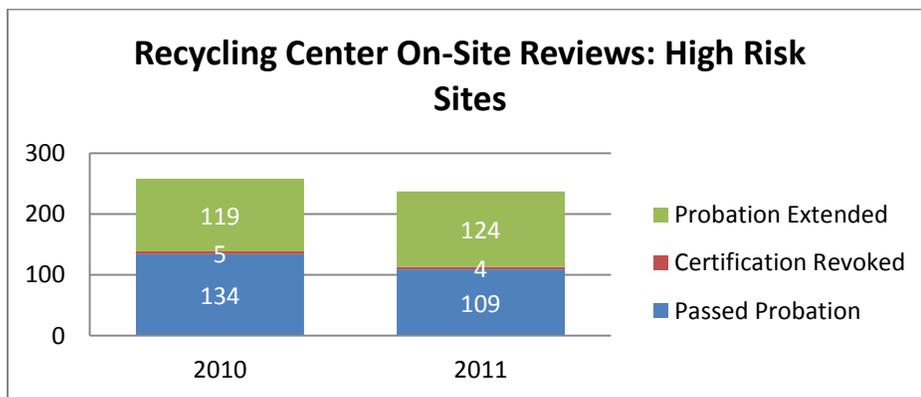
CalRecycle took action on 632 probationary certificates during 2011. Based upon a standard risk assessment, staff determined if a compliance history/file review is sufficient or if a site visit is warranted. The number of recycling centers with probationary certificates expiring in 2011 was similar to 2010.



- Compliance History/File Review (395):** More than one-third of recycling centers passed probation (152 or 38.5 percent); another one-third (134) had their probationary certificates extended for another year and the remaining one-third (27.6 percent or 109 centers) had no action taken. No action was taken because they were decertified, abandoned, subject to ongoing investigations, or not recycling centers (i.e., processors, curbside programs, collection programs, or community service programs).



- On-Site Review of High Risk Sites:** For the 237 recycling centers that were deemed high-risk and warranted an on-site review, 109 (46 percent) passed probation, 124 (52.3 percent) had their probationary certificates extended for another year, and four (1.7 percent) had their probationary certificates revoked. As a result of these site reviews, auditors assessed \$358,762 in restitution, civil penalties, and/or interest.



CalRecycle denied 10 applications for certification during 2011, which was twice as many as in 2010. These applications were denied because the applicants had a history of program noncompliance/violations, or were associated with individuals or operators with such a history. Two certifications were granted conditional approval.

Recycling Center Inspections

Each of the 2,464 certified recycling centers is inspected at least once annually to ensure compliance with program requirements. The inspection consists of a test sale to verify that the recycler is inspecting loads of material from consumers to determine payment eligibility, paying consumers the correct amount, and complying with operational requirements — particularly signage — that support consumer convenience. If the program participant is not in compliance, the inspector issues a Notice of Noncompliance (NONC). If the infraction is not corrected, a Notice of Violation (including fine) is issued. In areas where there is no certified recycling center, retail beverage dealers serve as the recycling center and also are inspected to ensure compliance with signage and product labeling requirements.

Recycling center inspections increased by almost 50 percent in 2011 based on risk analysis and fraud tips submitted to CalRecycle. However, the compliance rate was much higher in 2011. A similar number of NONCs were issued, but by the end of the year, only 20 percent failed to correct the infraction and were issued a violation. In 2011, only 154 violations were issued compared to 233 in 2010. By the end of the year, 96 percent of the recycling centers inspected were in compliance with only 4 percent of those inspected issued violations. Only about 1 percent (44) was placed on prepayment controls.

The number of inspections at dealers increased by 37 percent and dealers not in compliance tripled in 2011. Non-compliance was noted during 21 percent of inspections in 2011 compared to 10 percent in 2010. However, a higher proportion of those dealers corrected the infractions. By the end of the 2011, 96 percent of the dealers inspected were in compliance with only 4 percent issued violations/fines.

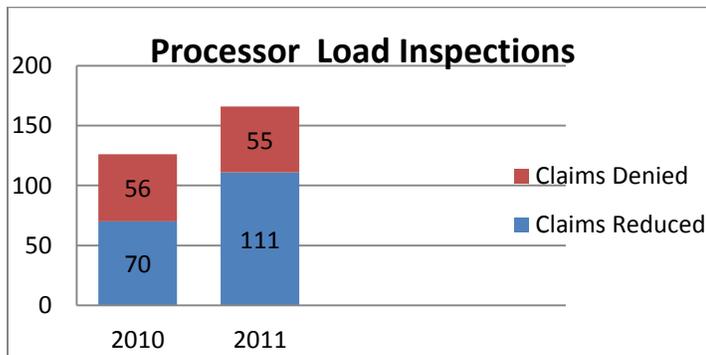
As a special project in 2011, 201 inspections were conducted at recycling centers with any transaction for aluminum over 250 pounds. (Such large transactions must be reported to CalRecycle weekly.) Those site visits resulted in 42 violations. Violators were required to review their records for two years and report all 250-pound aluminum transactions. This led to a fivefold increase in the number of such transactions reported for that review period.

Facility Type	Total Inspections	Non Compliance	Violation/fine	Payment Controls
Recycling Center	3,683	771	154	44
Retail Beverage Dealers	3,391	779	123	N/A

Processor Load Inspections

CalRecycle inspected approximately 8,914 recycler loads as part of the 2011 processor/recycler inspection program. In comparison to 2010, fewer load inspections were conducted because staff resources were more focused on completing high priority investigations identified by risk analysis and fraud tips submitted to CalRecycle. Investigators inspect recycling center shipments to processors to verify the eligibility of the material and review the accuracy/completeness of the claim for reimbursement. As a result of processor load inspections, only about 1 percent of claims, (111) were

reduced due to inaccuracy or ineligible containers in the load. Another 55 claims were denied for ineligible material (previously baled or out-of-state) or for fraudulent recordkeeping. Payment reductions and denials on inaccurate or fraudulent claims resulted in a net savings of \$414,953, which is about half what was inaccurately/fraudulently claimed in 2010.



In addition, parallel administrative investigations by CalRecycle and criminal investigations by Department of Justice and the Attorney General’s Office can lead to de-certification of recycling center and prosecution, such as the Tung Tai Group case discussed later in the report.

Risk Assessment and Data Analysis

Risk assessment and data analysis identify high risk participants, based on anomalies in past reporting, for further investigation or review by CalRecycle or Department of Justice. Given that approximately 1,500 shipping reports valued at \$1.5 million to \$3 million per day are submitted, automated analysis is an essential tool for fraud prevention.

On a daily basis, all shipping reports submitted to DORiis are reviewed by an automated Fraud Detection Report. This report identifies anomalies such as high average purchase volumes or spikes in daily volumes before claims are processed for payment. On average, 10 percent of the shipping reports are flagged by the report for further auditing or investigation.

With the DORiis Investigative Portal, CalRecycle can stop the processing of a shipping report for payment within five minutes of a determination. This system reviews all shipping report claims in near real time. Staff can then place suspect shipping reports on hold for auditing, reduce the amount claimed, deny the claim for reimbursement, or attach the shipping report to the processor claim for reimbursement.

Investigations and Criminal Prosecution

After “high risk” participants are flagged, administrative investigations are conducted to identify falsified documents or fraudulent claims. This forensic review prevents or leads to the recovery of unsubstantiated and/or illegal payments. Although most investigations result from risk analysis or inspections, a significant number are initiated based on hotline or email tips. Findings can result in administrative civil penalties, restitution, and/or revocation of the recycler’s certification.

In 2011, 17 recycling center investigations were completed by CalRecycle staff. Three accusations were filed against certified recycling centers, resulting in approximately \$3.46 million in restitution and civil penalties. A total of 20 recycling center certifications also were revoked as a result of these cases.

One major investigation disclosed that Aztlan Recycling falsified consumer purchase records and submitted claims for ineligible material. CalRecycle initiated administrative action to revoke the certificates of all 12 recycling sites operated by Aztlan Recycling and Stallion Recycling, an affiliated operation. They requested a hearing to appeal the revocation, and CalRecycle's decision to revoke the operations was upheld.

In another investigation, CalRecycle filed an accusation against American National Recycling in April, 2011 for numerous violations, including 589 purchase transactions of containers in excess of the allowable consumer limit and submission of claims for the ineligible transactions or those not supported by consumer purchase records. Several American National Recycling staff was arrested for redeeming out-of-state beverage containers. In 2012, CalRecycle agreed to settle the case with the operator which required them to pay \$500,000 in restitution/civil penalties and banned them from future participation in the program.

As noted earlier, CalRecycle does not have statutory authority to conduct criminal investigations or to criminally prosecute. When CalRecycle investigations reveal potential criminal activity, the case is referred to Department of Justice for further investigation and subsequent prosecution, if warranted, by the AG. Several such cases are detailed below.

Parallel administrative investigations by CalRecycle and criminal investigations by DOJ and AG led to prosecution of the Tung Tai Group (a certified processor) and TOMRA Recycling (a certified recycler). These businesses were unlawfully selling and purchasing previously redeemed beverage containers, effectively redeeming them for a second time. Thus, Tung Tai failed in its responsibility to cancel previously redeemed containers so that they would not re-enter the marketplace. In addition to being de-certified, settlements yielded payment of \$1.077 million to CalRecycle.

Cases involving ineligible beverage containers being brought to California for redemption are increasingly the focus of criminal investigations. In January 2011, DOJ followed up on a CalRecycle referral based upon a tip from a Riverside County sheriff's detective. Several individuals rented trucks to import beverage containers from Arizona and transport them to a storage facility in Riverside. The ineligible out-of-state material was then broken down into smaller quantities, transported in vehicles bearing California vehicle license plates, and cleverly redeemed in quantities just below the allowable daily load limits. DOJ arrested the importers as they left the recycling centers after receiving payment on the ineligible material. The importers were responsible for approximately \$170,000 in fraudulent redemption over a three-month period. Criminal prosecutions by the AG resulted in guilty pleas for illegal redemption and grand theft. CalRecycle will pursue administrative cases against the certified recycling centers that purchased the ineligible containers.

In another case involving imported beverage containers, a comprehensive CalRecycle investigation report provided the basis for further investigation by DOJ. Beverage containers from Nevada were being fraudulently redeemed at recycling centers in Lassen and Plumas Counties. In September 2011, the seven defendants pleaded no contest to felony charges for fraudulent redemption of out-of-state containers. In addition to paying \$1.5 million in restitution, five defendants were deported and the other two were sentenced to six months incarceration and three years of probation.

Electronic Waste Enforcement

Program Highlights

- In 2011, 197,654,811 pounds of covered e-waste were claimed for reimbursement — slightly more than in 2010.
- Recyclers continue to submit properly documented claims. Payment claim adjustments remained below 2.3 percent due to non-compliant or significantly inconsistent documentation. The compliance rate was 98 percent.

Program Description

E-waste is an informal term for unwanted electronic products such as computers, televisions, DVD players, etc. nearing the end of their “useful life.” Discarded electronic products can present environmental hazards if not properly managed because they contain lead, mercury, and other elements that are hazardous to humans and the environment when discarded.

In 2003, the Electronic Waste Recycling Act created a funding mechanism to encourage the proper recycling of certain video display devices such as televisions and computer monitors (covered electronic devices). The covered electronic waste recycling program pays qualified collectors and recyclers a standard rate intended to cover the average cost of managing discarded covered electronic devices.

To finance the program, retailers collect a fee from consumers when they buy covered electronic devices. (Only covered electronic wastes originating from California sources are eligible for payment in the program, but all electronic discards are considered hazardous wastes and may not be discarded in the trash.) Collected fees are remitted by retailers to the state and deposited in an account.

Approved collectors and recyclers make it convenient for consumers to properly dispose of e-waste. They request payment from the state to cover the cost of covered electronic waste collection, processing, and recycling activities. Recyclers (and collectors) are reimbursed by CalRecycle at a standard rate per pound of covered electronic waste recovered and recycled. If recyclers submit improperly documented claims, CalRecycle can deny or reduce payments.

Partnership for E-Waste Enforcement

Recyclers and collectors are reimbursed by CalRecycle at standard rates per pound of covered electronic waste recycled. If recyclers do not submit properly documented claims, CalRecycle can deny or reduce payments. In addition, CalRecycle can suspend or revoke approval for collectors or recyclers to participate in the program.

Due to the hazardous characteristics of electronic waste, program administration and enforcement is shared between CalRecycle, the Department of Toxic Substances Control (DTSC) and the Board of Equalization (BOE). CalRecycle works closely with DTSC, whose primary focus is on the material handling compliance and enforcement portion of the program. BOE ensures that the proper fees are collected to fund the program. CalRecycle and DTSC also share fraud investigation responsibilities delineated through a Memorandum of Understanding.

CalRecycle's enforcement role is to:

- Review recycler claim documentation to ensure that covered e-waste that is recovered for recycling is eligible for reimbursement, compliantly processed, and properly disposed. Payments can be approved in full, adjusted, or denied.
- Review annual net-cost reports and adjust standard payment rates based on calculated industry average net costs. Collectors and recyclers may have their approval to participate revoked for failing to submit a complete and accurate net cost report.

DTSC's enforcement role is to:

- Inspect e-waste storage, collection, and recycling facilities and handlers to verify their compliance with regulations.

BOE's enforcement role is to:

- Ensure that the appropriate fees are remitted and deposited into the Electronic Waste Recovery and Recycling Account to fund the program. If fees are not collected and/or remitted by the retailers, CalRecycle can levy administrative penalties up to \$2,500 per offense; civil penalties up to \$5,000 per offense; or civil liability against manufacturers up to \$25,000.

Statewide Infrastructure for Convenient Collection

Growth in California's electronic waste collection and recycling infrastructure has been fostered by the recycling payment system. CalRecycle pays approved recyclers, and those recyclers are required to pay collectors.

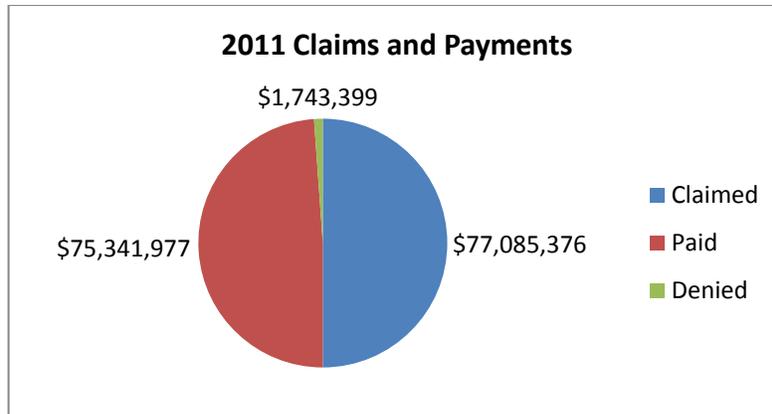
In 2011, there were approximately 590 approved collectors and 60 approved recyclers, which is an increase compared to 2010. Voluntary participants represent a diverse group, including nonprofit organizations, landfills, local governments, and traditional e-waste collection and recycling businesses. Annual participant turnover of more than 10 percent is typical. The e-waste infrastructure also recovers substantial quantities of miscellaneous electronic waste not covered by the payment system.

Enforcement Activity Data

Enforcement actions taken by CalRecycle fall into two main categories: adjustment or denial of payment claims, and suspension or revocation of approval to participate.

Payment Claim Reviews

Recyclers (and collectors) are reimbursed by CalRecycle at a standard payment rate per pound of covered electronic waste recovered and recycled. In 2011, 197,654,811 pounds of covered e-waste was claimed for reimbursement. If recyclers do not submit properly documented claims, CalRecycle can deny or reduce payments. The level of payment claim adjustments remained low in 2011, consistent with 2010. Although more than half of the 297 payment claims submitted in 2011 incurred some degree of payment adjustment, this resulted in only a 2.3 percent reduction in the total 2011 payment amount claimed. This represents a compliance rate of 98 percent for total dollars claimed, roughly equal to that experienced in 2010.



Revocations and Suspensions

In 2011, only 32 certifications for collectors and recyclers were revoked. That is almost 75 percent less than the 121 revoked in 2010. Essentially, all of those were for failure to submit the annually required Net Cost Report, except for one revocation for failure to notify CalRecycle of significant operational changes. Revocations, unless successfully appealed, prevent a participant from reapplying to the program for at least six months.

Nine participants were suspended in 2011 compared to only five in 2010. Suspensions typically result from a material management violation detected by the DTSC during an inspection and are imposed until the participant is determined to be back in compliance.

Future Directions

Although each CalRecycle enforcement program has a unique set of activities and performance measures, program improvement is a consistent focus for all the programs. Whether through streamlining processes or pursuing regulatory reform, staff is committed to adapting proven strategies to increase compliance. Adapting strategies that work well in one program enables CalRecycle to accelerate effective departmental practices. Staff plans for 2012 program adjustments based on previous successes include:

Combine Waste Tire Rulemakings (Formal): For efficiency, two rulemakings may be combined during 2012 as they move from the informal to formal phase. Key changes leading to more consistent, enforceable regulation relate to illegal activities for tire baling and export, consistency with the State Fire Marshal's new fire regulations, five-year permit reviews, and exemptions from manifesting for common carriers that deliver waste tires to port terminals.

Landfill Gas Monitoring: Emphasis in 2012 will continue to be on compliance monitoring of methane gas at the permitted facility boundary to protect against explosive gas migration. Those in violation during 2010 will be making corrections based on the proposed schedules provided in their remediation plans. Staff will continue to monitor the implementation of those plans.

Compost Facilities Rulemaking (Informal): The focus of stakeholder workshops will be on draft regulatory text in 14 issue areas. CalRecycle staff will use the comments to draft informal text that will culminate in formal changes to composting regulations.

Local Government Compliance Monitoring: Staff will begin compliance evaluation reviews for the first group of local government diversion programs referred for compliance reviews under the new per capita disposal goal law.

RPPC Rulemaking (Formal): CalRecycle anticipates submitting the formal rulemaking package to the Office of Administrative Law in 2012. Revisions are designed to create a more level playing field and improve the effective and efficient implementation of the law.

Beverage Container Program Structural Reform: California's cost-effective beverage container recycling program continues to be one of the best programs in the U.S. with an 82 percent recycling rate. However, the combination of an increasing recycling rate and current legislative mandates is threatening the solvency of the Beverage Container Recycling Fund. In 2012, CalRecycle will conduct a series of stakeholder workshops to actively solicit input on strategies to ensure program integrity and address the structural deficit of the Fund.

Partnerships for Border Control: Monitoring Out-of-State Beverage Container Imports: Based on the success of the 2011 pilot project, the Out-of-State Beverage Container Monitoring Program with California Department of Food and Agriculture is expected to begin in 2012. While agents are reviewing vehicles at border inspection stations, they will also be able to identify non-California recyclable beverage containers from being brought in from out-of-state. Adding this "new" non-agricultural pest to their "no entry" list helps curtail a particularly costly form of fraud.

Refining Beverage Container Data Analysis to Detect Fraudulent Claims: CalRecycle anticipates installation and implementation of the data mining model developed in 2012 to flag suspects for

administrative review. The software will identify patterns of submitting unsupported claims for reimbursement and/or claiming beverage container program payments on ineligible materials (e.g., imported used beverage containers, previously redeemed empty beverage containers). CalRecycle's investigative audits on the recycling centers that engaged in the fraudulent redemption of ineligible material will be completed in 2012 and will likely result in administrative remedies.

Refining E-Waste Data Analysis: CalRecycle staff will focus on expanding online reporting and documentation capabilities in 2012 and 2013. This enables more real-time monitoring of activity within the industry, and enhances early intervention to prevent small problems from becoming a compliance crisis.

Partnerships for E-Waste Fraud Investigation: CalRecycle will transition fraud prevention resources from DTSC and look to the Department of Justice for focused assistance in detecting, investigating and prosecuting fraud. This partnership will result in more effective enforcement and deterrence to mitigate the threat of financial crimes in the program.

LIST OF ACRONYMS

Acronym	Full Name
AG	Attorney General's Office
BOE	Board of Equalization
Cal/EPA	California Environmental Protection Agency
CalRecycle	Department of Resources Recycling and Recovery
CIWMB	California Integrated Waste Management Board
CRV	California Redemption/Refund Value <ul style="list-style-type: none"> • Redemption is paid when container purchased • Refund is paid when the container is recycled
DOC	Department of Conservation
DOJ	Department of Justice
DORIIS	Division of Recycling Integrated Information System
DTSC	Department of Toxic Substances Control
EA	Enforcement Action—solid waste and tire
EPP	Enforcement Program Plan—solid waste
E-waste	Electronic waste
Inventory	Inventory of Solid Waste Facilities That Violate State Minimum Standards
LEA	Local Enforcement Agency—solid waste
MOU	Memorandum of Understanding
MRF	Materials Recovery Facility—solid waste
NOI	Notice of Intent (to list on Inventory)
NON	Notice of Noncompliance—beverage container
NOV	Notice of Violation—beverage container, solid waste and tire
PRC	Public Resources Code—state
RCRA	Resource Conservation and Recovery Act—federal
RPPC	Rigid Plastic Packaging Container
TEA	Tire Enforcement Agency
SWIS	Solid Waste Information System
WTMS	Waste Tire Manifest System