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# CalRecycle 2012 Enforcement Report



California Department of Resources Recycling and Recovery

**January 10, 2014**

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

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# Executive Summary

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The Department of Resources Recycling and Recovery, known as 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 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.
- Enforcement of reporting, recordkeeping, and claim documentation for approved electronic waste (e-waste) collectors and recyclers.

This report, which covers CalRecycle's enforcement activities for 2012, was created in part to carry out the mandate of Government Code section 12812.2. It provides an overview of solid waste enforcement and beverage container enforcement program activities during the 2012 calendar year.\* The following are a few highlights from 2012.

- **WASTE TIRES:** Expanded statewide inspection and surveillance programs and streamlined penalties for hauler violations, in conjunction with renewed emphasis on tire facility permitting, have increased compliance rates.
- **SOLID WASTE:** LEA performance has significantly improved over the past three evaluation cycles. Although the current cycle is not yet complete, nearly 90 percent of the Local Enforcement Agencies (LEAs) (48) evaluated were fulfilling all, or most, of their duties, which is the highest level ever for the program.
- **LOCAL GOVERNMENT DIVERSION:** Only three compliance evaluations were required after the first two-year review cycle—less than 1 percent of local government programs. Only those local governments that did not achieve the 50 percent diversion goal by 2006, but were making a good-faith effort, were reviewed during this first cycle.
- **MINIMUM CONTENT:** The Rigid Plastic Packaging Container (RPPC) revised regulations were approved in June 2012 with an effective date of January 1, 2013.

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\* Accomplishments related to solid waste for previous years are provided at <http://www.calepa.ca.gov/Enforcement/Publications/EnforceRpt.htm>.

- **BEVERAGE CONTAINER RECYCLING:** The largest case settled in 2012 was an accusation against American National Recycling. The operator agreed to pay \$500,000 in restitution/civil penalties and was banned from future participation in the program. Several employees were arrested for redeeming out-of-state beverage containers.
- **ELECTRONIC WASTE RECYCLING:** Recyclers continue to submit properly documented claims. CalRecycle adjusted only 2.7 percent requests for payments due to noncompliant or significantly inconsistent documentation.

## ***Purpose and Scope of Report***

This report summarizes CalRecycle’s wide-ranging enforcement activities for 2012, describes program elements, and highlights future directions for program improvements. CalRecycle manages programs created through two landmark initiatives: the Integrated Waste Management Act and the Beverage Container Recycling and Litter Reduction Act. CalRecycle helps 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.

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 auditing, investigations, evaluations, and enforcement efforts.

When enforcing state laws, there are several approaches to achieving and maintaining 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 regulated community.

Partnerships at various levels of state and local government enhance CalRecycle’s enforcement activities. To effectively ensure statewide enforcement for solid waste and waste tire programs, CalRecycle certifies and/or works with local government enforcement agencies whenever possible and provides ongoing assistance to the regulated community. For some enforcement and criminal prosecution activities in the beverage container and e-waste programs, CalRecycle partners with local governments and has interagency agreements with the California Department of Justice, Department of Toxic Substances Control, and the state Attorney General’s Office.

## **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 various levels of enforcement authority, which determine the types 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 government (cities, counties and CalRecycle-approved regional agencies) waste diversion programs for achieving 50 percent diversion.
- 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 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 regularly inspected and if appropriate, facility operators are required to take corrective action, if they fail to carry out 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, complete, 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 participants, including those in the rigid plastic packaging container program, are either certified as in compliance with regulatory requirements or penalized.
- 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.

# Program Descriptions and Enforcement Activity Data

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## ***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 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.

### **Program Description**

Waste tires are regulated to protect the environment and public health and safety and to provide 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 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 cleanup programs accelerates cleanup activities.

### **Tire-Related Businesses: 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 2012, the regulated community included approximately 30,336 California waste tire-related businesses, including:

- 28,855 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.
- 1,441 registered waste tire haulers.
- 40 permitted waste tire facilities (32 minor facilities and eight 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 an identification decal in the lower right corner of the windshield. Registrations expire at the end of each calendar year, and renewal packages are sent in early October to facilitate timely registration renewals.

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 of registered haulers occur 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 (such as those that are noncontroversial or involve fewer 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.

Under the streamlined penalty program, 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. 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 and continued through 2012 to replicate the successful waste tire hauler streamlined penalty process for waste tire facilities and to clarify enforcement penalty criteria. Using the streamlined penalty approach is expected to reduce the number of repeat violations and administrative complaints for facilities.

### **Local Tire Enforcement Agencies (TEAs) 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, or 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.

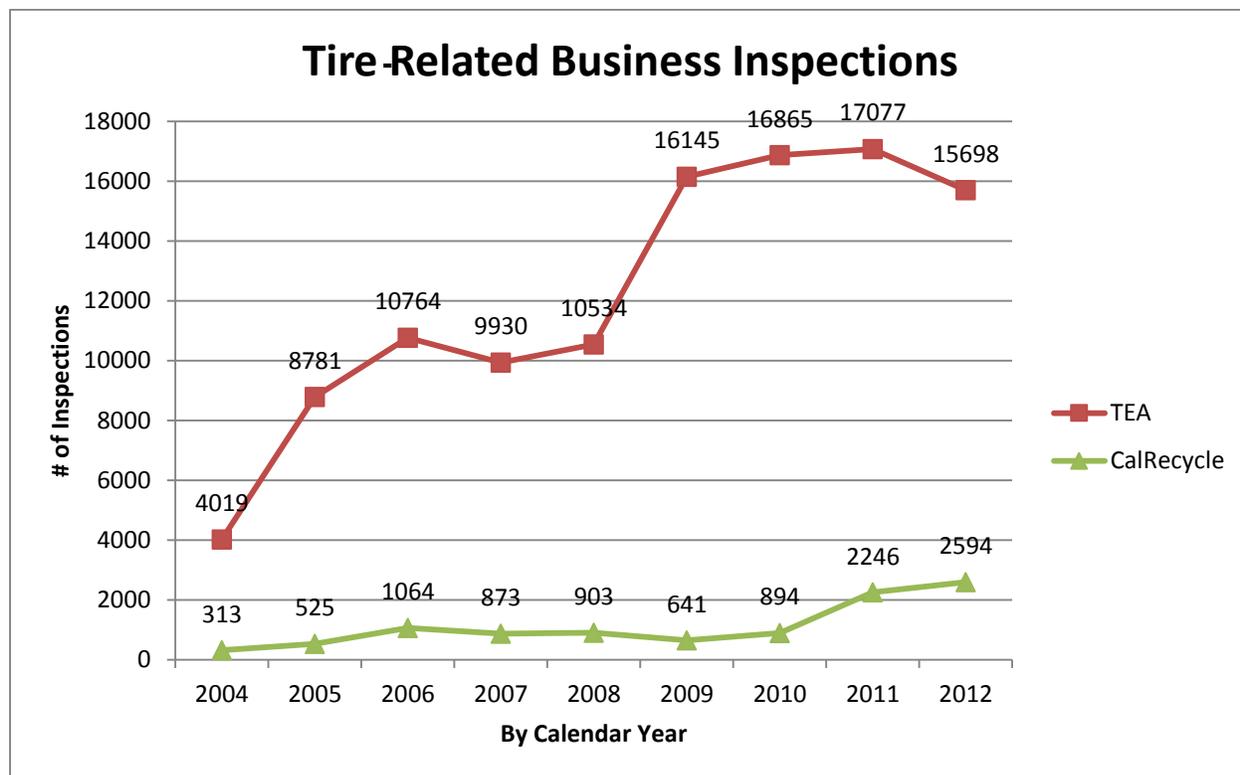
Grant funding supports the activities of 46 cities/counties for waste tire enforcement. Eligible county and city jurisdictions use grant funds to support their tire enforcement activities. These TEA grantees perform initial and follow-up inspections for all waste tire businesses in their jurisdiction and issue violation notices. They also identify waste tire sites, investigate illegal tire disposal activities, review waste tire hauler documents, and determine whether 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 18,292 inspections performed by TEAs and CalRecycle during 2012.

TEAs conducted 15,698 inspections in 2012, slightly fewer than in the two previous years. CalRecycle staff conducted 2,594 inspections, approximately 15 percent more than in 2011. This increase is partly as a result of the increasing efficiency and effectiveness of new inspectors.



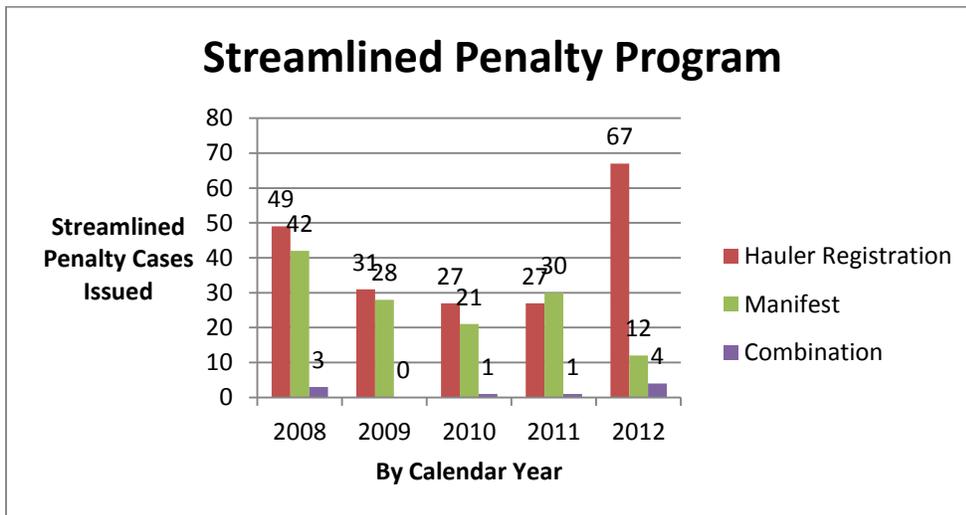
### Enforcement Action: Waste Tire Hauler Registration and Manifest

Enforcement actions for waste tire haulers include both 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.

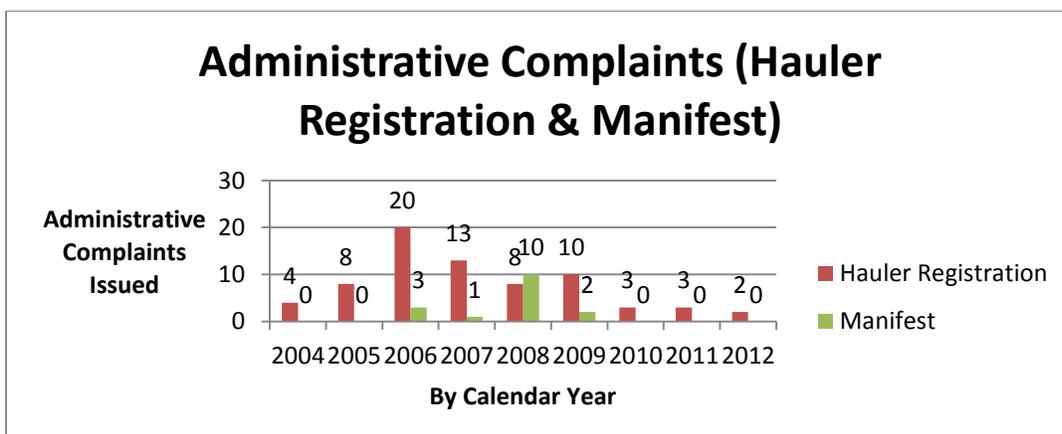
During the summer of 2011, CalRecycle became aware of significant issues related to “baled tires,” and prepared an information bulletin to clarify the statutory requirements. Despite clarification, an increase in illegal activities related to tire baling and export led to increased violations, as noted in the sections below. State law defines baled tires as “... either whole or altered waste tires that have been compressed and then secured with a binding material 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, but hauler violations went up significantly during 2012 as a result of this continuing challenge as inspectors focused on haulers transporting tires to those unauthorized locations.

## Streamlined Penalty and Administrative Complaint Cases

For some violations (noncontroversial, involving fewer 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 and costly administrative complaint process. The following charts compare enforcement cases resolved using both processes.



The streamlined penalty process was used for 67 hauler registration penalty cases, 12 manifest cases, 4 combinations (hauler registration and manifest), and one tire site case in 2012. This represents an increase of approximately 150 percent in hauler penalties and a 68 percent increase in total cases during 2012 due to the large number of haulers transporting tires to unauthorized locations.



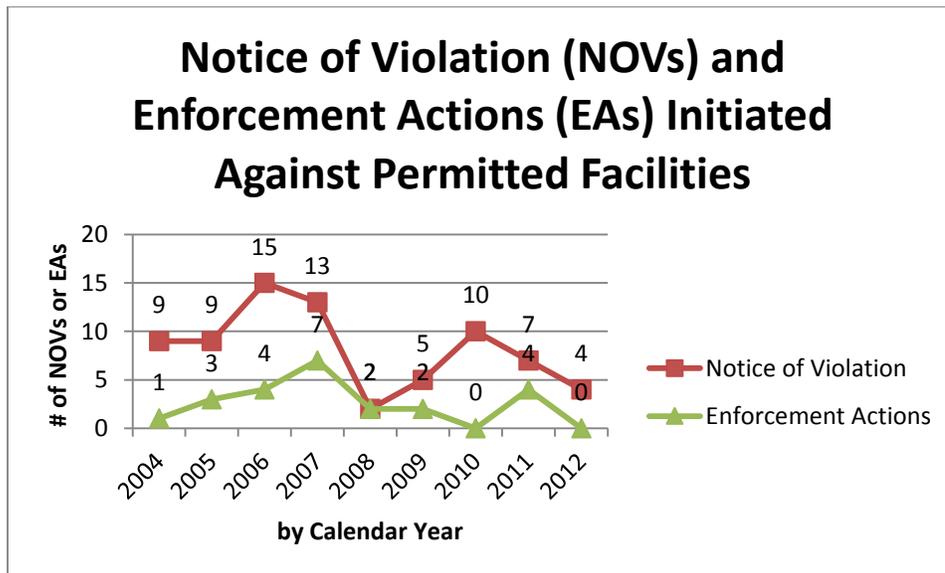
In 2012, the number of administrative complaints remained relatively stable for hauler registration and manifests with only two hauler registration complaints. In contrast to the past several years, two sites were issued administrative complaints in 2012 due to the tire baling and export issues discussed earlier. The sites illegally accepted tires before they were permitted as tire facilities.

**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 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 once the regulations have been revised and are in effect.

**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 2012, there were only four NOV's issued. The number of violations continued to drop in 2012. No enforcement actions were taken in 2012.



# Solid Waste Facilities Enforcement

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## ***Program Highlights***

LEA performance has continued to improve over the past three evaluation cycles. Although the evaluation cycle is not yet completed, nearly 90 percent of the LEAs (48) evaluated were fulfilling all, or most, of their duties, which is the highest level ever for the program.

The number of facilities and operation issued enforcement orders continued in a downward trend for the year.

## ***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 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 has authority over odor compliance at compost facilities. The permitting and enforcement requirements take the shared responsibility 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 of requirements under other agencies' authorities.

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 do so.
- Certifying and evaluating LEAs.

## **State and Local Governments Work Together**

Enforcement at active and closed solid waste facilities is done in 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), which CalRecycle approves. The EPP describes the progressive process the LEA must follow when taking enforcement action.

There are 60 LEAs statewide; their activities are funded through a mix of local funding and annual state grants. CalRecycle-certified LEAs cover all but seven jurisdictions: the cities of Berkeley, Stockton, and Paso Robles; and the counties of San Benito, San Luis Obispo, Santa Cruz, and Stanislaus. CalRecycle acts as the “local” enforcement agency in those seven areas. San Benito County was added in May 2012.

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 (inventory) of facilities with chronic violations.
- Acts as the enforcement agency if no local agency is designated.
- 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.
- Take other measures as necessary.

### **Compliance Targeting Strategy**

CalRecycle achieves statewide compliance by working with the LEAs and providing guidance and direct assistance. The intent is to deter and prevent problems through all available means before needing to take 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 such as:

- Failure by the LEA to conduct required inspections or to adequately assess state minimum standards.
- Chronic violations for which the LEA has not issued a Notice and Order or Compliance Schedule.
- Multiple enforcement orders with little or no progress.

### **Elements of the Solid Waste Inspection and Enforcement Program**

**Inspections:** Routine, unannounced inspections ensure that active and closed facilities and 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 finding. 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. Many violations are corrected within a few days or within months’ time.

In addition, CalRecycle inspects all facilities prior to a permit action 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.

**Compliance Activities:** Compliance activities begin with ensuring facility operators are fully aware of the operational and permit requirements for their facility. Compliance activities continue after a violation is noted and reported to the operator in the form of providing technical assistance and reasonable time to correct the violation.

**Enforcement Action:** If violations are not corrected, formal enforcement action is taken. All formal enforcement actions begin by issuing an enforcement order. The order describes the issues needing to be addressed and compliance steps required, as well as the penalty or consequences if compliance is not achieved. After notifying the operator of a violation, the LEA has the authority to issue a Corrective Action Order and/or a Cease and Desist Order. 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; or suspending or revoking the permit and pursuing criminal penalties.

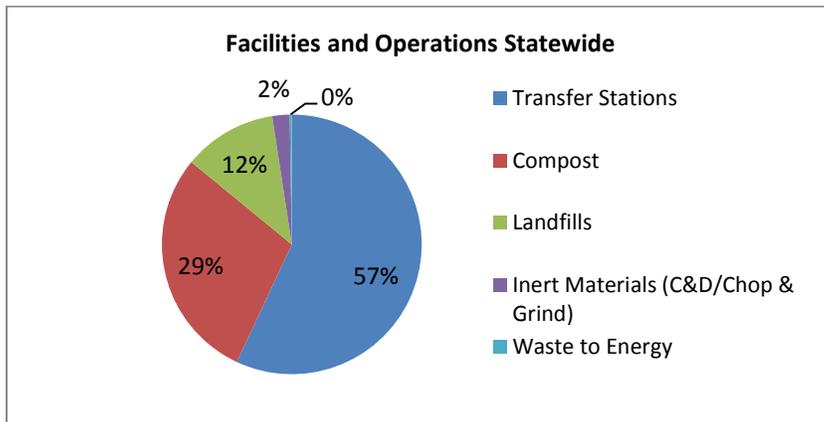
CalRecycle publishes two lists on the CalRecycle website generated from the Solid Waste Information System database. The “inventory” lists facilities that repeatedly violate state minimum standards. After two consecutive violations of the same standard are noted on an inspection report, CalRecycle issues a Notice of Intent 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 an enforcement order. In addition to the inventory list, CalRecycle publishes all current enforcement orders.

Facilities on the inventory require additional oversight and receive enhanced compliance assistance from the LEAs. CalRecycle works closely with the LEA to develop a strategy to bring facilities into full compliance.

### **Solid Waste Disposal Facilities and Operations**

In 2012, California’s solid waste disposal infrastructure included 546 permitted active solid waste facilities and 655 active authorized operations. 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. Operations are inspected less frequently as they generally pose less environmental risk than does a facility. The types and number of facilities and operations are as follows:

- Active Permitted Facilities (546)
  - 306 waste transfer and processing facilities
  - 97 composting facilities
  - 140 disposal facilities (or landfills)
  - 3 waste-to-energy (transformation) facilities
- Authorized Operations (655)
  - 378 waste transfer and processing facilities
  - 251 composting facilities
  - 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).

The chart below summarizes inspections performed by the “enforcement agency”—either the local enforcement agencies or CalRecycle (for seven cities and counties with no designated LEA). During 2012, 12,735 inspections were conducted, which is virtually the same as the last several years.

The overwhelming majority of these regular inspections are conducted by the LEAs, as they perform inspections in 95 percent of the counties. During 2012, LEAs conducted 12,190 inspections and CalRecycle conducted 545.



**Violations at Disposal Facilities (Landfills):** Violations cited during 2012 at landfills were down by 30 percent, largely due to a decrease in violations for Gas Monitoring and Control. The top five most noted violations were similar to the two previous years. (Compliance challenges related to the implementation of these new landfill gas regulations is explained in more detail later in this report.) Of the 363 violations cited in 2012, approximately one-third were for Gas Monitoring and Control, compared to more than 50 percent of the total violations in the previous year. Although gas violations continue to decrease, there were still about twice as many violations for gas monitoring than the second most frequently noted violation: Operator Compliance with Permit Terms and Conditions. The total number of Permit Terms and Conditions violations remained the same as 2011. Two violation types decreased in 2012 compared to previous years: Report of Disposal Site Information and Title 27 Full Permit Review. Daily Cover violations dropped off the list of top five most noted violations in 2012.

Total Landfill Violations	Violation Category
127	Gas Monitoring and Control
55	Operator Compliance with Permit Terms and Conditions
20	Significant Change
18	Report of Disposal Site Information
19	Title 27 Full Permit Review

**Violations at Compost Facilities:** Of the 186 violations at compost facilities, odor impacts dominated the list. Vectors, Odor, Litter, Etc., which ranked fourth in 2010 and second in 2011, moved to the top of the list with a more than 50 percent increase in the number of violations cited in 2012. A related violation, Odor Impact Minimization Plan, moved into the top five for the first time, although the number of violations was relatively small (8). The most frequently cited violation in 2011—Operator Compliance with Permit Terms and Conditions—dropped to number two on the list, but the total number of violations increased by almost 30 percent. Violations related to Fire Prevention decreased significantly in 2012 and dropped to the bottom of the list. In addition to Odor Impact Minimization Plan, new to the 2012 list of top five violations were Leachate Control and General Design Requirements.

Total Compost Violations	Violation Category
33	Vectors, Odor, Litter, Etc.
31	Operator Compliance with Permit Terms and Conditions
11	Leachate Control
10	General Design Requirements
8	Fire Prevention
8	Odor Impact Minimization Plan

**Violations at Waste Transfer and Processing Facilities:** Total violations at these facilities increased by approximately 40 percent in 2012. The majority of the 332 transfer and processing violations, similar to those cited in the past three years, relate to facility permits rather than state minimum standards. Operator Compliance with Permit Terms and Conditions remained the most common violation category, although Operator Authorized by SWF Permit violations increased as well and remained the second most frequently cited violation. Two new violation categories were included in the top five for 2012: Maintenance Program and Load Checking. Vector Control and Record-Keeping dropped off the list of top five violations in 2012.

Total Transfer Station Violations	Violation Category
81	Operator Compliance with Terms and Conditions
31	Operator Authorized by SWF Permit
30	Solid Waste Removal
21	Maintenance Program
16	Load Checking

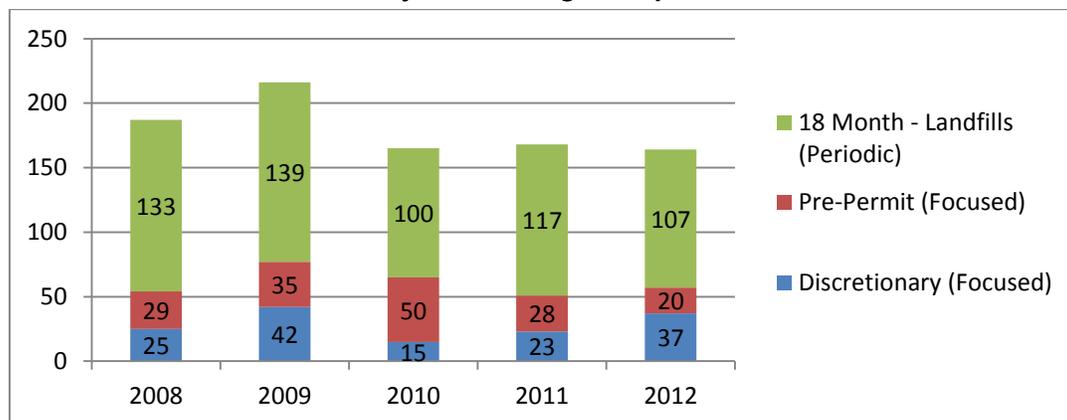
## CalRecycle Only Inspections

CalRecycle conducts three types of oversight inspections to evaluate 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.
- Discretionary/focused inspections at all facility types.

In 2012, CalRecycle conducted a similar number of oversight inspections (158) as the last two years. Approximately 64 percent of those oversight inspections (107) were the 18-month (periodic) inspections of landfills. Pre-permit inspections accounted for 13 percent of the total oversight inspections (20). Fewer facilities required permit actions in 2012, so there were fewer pre-permit inspections. Almost 50 percent more discretionary/focused inspections conducted in 2012 compared to the previous two years. Staff conducted 37 discretionary/focused inspections during 2012. (Note: Inspections of closed facilities are not included in these totals.)

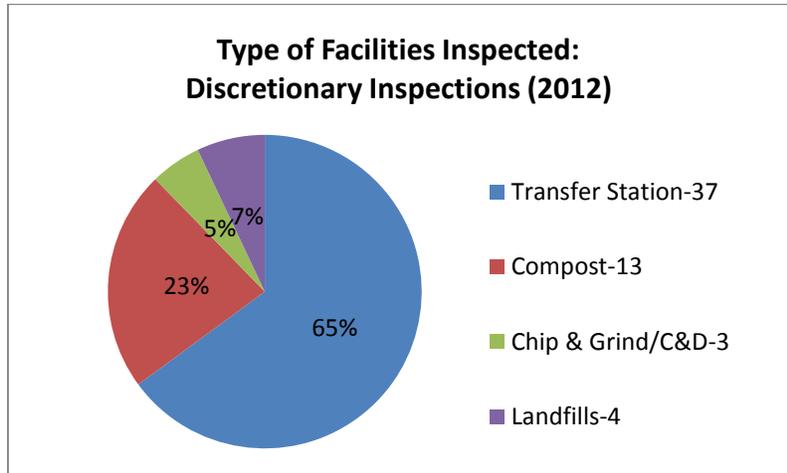
CalRecycle Oversight Inspections



**Discretionary inspections (focused):** In 2008, CalRecycle began conducting 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 57 discretionary inspections in 2012. Approximately one-third were conducted in conjunction with an 18-month inspection, another third were pre-permit inspections, and the remaining third were inspected in response to LEA requests due to compliance concerns or a history of enforcement violations.

In contrast to the 18-month inspections of landfills, the mix of facilities inspected in this category includes all facility types: compost; chip and grind; construction and demolition; transfer stations/material recovery facilities; and landfills. 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.

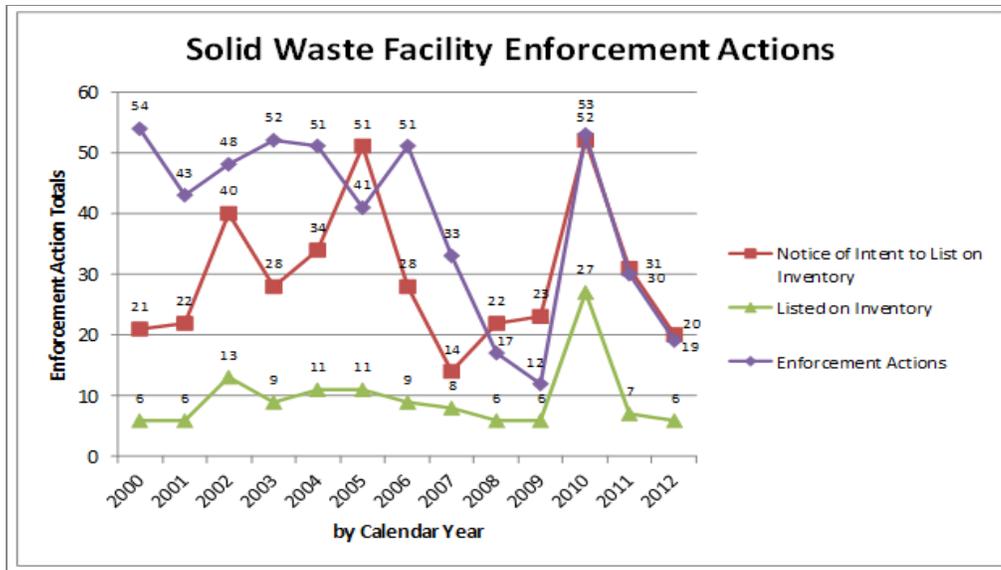
Because transfer stations/MRFs represent the majority of facilities/operations statewide, approximately two-thirds of the discretionary inspections in 2012 were at transfer stations/MRFs. Almost one-fourth of discretionary inspections in 2012 were at compost facilities, which is proportional to the number of compost facilities/operations statewide.



### **Enforcement Action**

Noncompliance with state standards and permit conditions is tracked in several ways by CalRecycle. The “inventory” lists solid waste facilities with chronic violations of one or more state minimum standards for solid waste handling and disposal. Issued enforcement orders are also tracked.

The graph below summarizes enforcement actions taken against facilities that chronically violate state minimum standards and/or permit conditions.



Twenty facilities received Notices of Intent to List on the inventory during 2012 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 consistent 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.

Six facilities were listed on the [Inventory of Facilities Violating State Minimum Standards](#) during 2012. In 2012, the percentage of facilities listed was higher than in 2011, but the number of facilities listed was about the same as the previous year. Changes implemented by the operators generally led to compliance within the 90-day time frame. By the end of December 2012, five facilities listed during the year remained on the inventory.

Another means of tracking compliance is by the number of facilities that are under enforcement orders. Enforcement orders include Cease and Desist Orders, Notices and Orders, compliance schedules, stipulated Notices and Orders, as well as Penalty Orders. During 2012, 19 solid waste facilities, primarily landfills, were under enforcement orders.

Year	Solid Waste Facility Enforcement Action Type		
	Listed on Inventory	Notice of Intent to List on Inventory	Enforcement Orders (various)
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
2012	6	20	19

### Upgrade of Landfill Gas Monitoring and Control Systems

In 2012, violations related to landfill gas monitoring and control regulations (effective February 2009) steadily decreased. 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 for explosive gas methane migration (greater than 5 percent methane by volume in probes). The number of gas monitoring and control violations and enforcement orders declined as operators implemented their landfill gas plans. Most new violations were for excessive gas levels at recently constructed probes, although some were for failure to implement approved monitoring plans.

### LEA Evaluations: Significant Improvement Continues

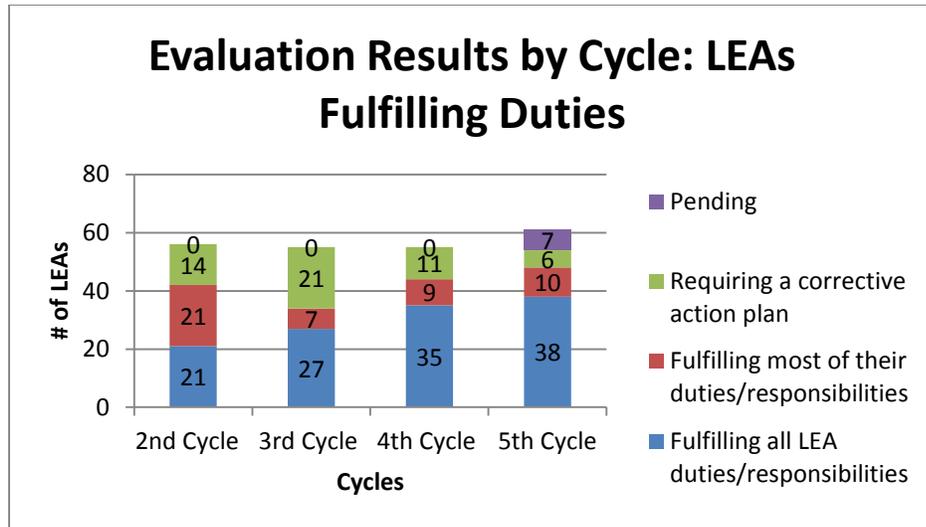
Each LEA is evaluated by CalRecycle every three years. Staff members apply standards outlined by the statute to ascertain whether the LEA has:

- Consistently enforced statutes and regulations pertaining to solid waste handling and disposal.
- Implemented its CalRecycle-approved Enforcement Program Plan, or EPP.
- 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 plan.
- 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.
- Failed to take appropriate enforcement actions.
- Failed to comply with, or taken actions that are inconsistent with or unauthorized by, statute or regulations.

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 nearly 80 percent of the LEAs (48) fulfilling most or all of their duties. This is the highest number for the program, although seven evaluations are not yet completed at the end of 2012. LEAs are evaluated every three years and evaluation cycles generally take three years to complete. The number of LEAs requiring a corrective action plan increased with six LEAs on a work plan by the end of 2012.



The 5<sup>th</sup> cycle began in 2010. The multi-year cycle was not yet completed by the end of 2012, although nearly 90 percent of the 60 reports are final. As shown in the chart, for the 54 reports that were completed by 2012, 38 LEAs were fulfilling all their responsibilities during the 5<sup>th</sup> cycle. This represents the highest number of LEAs fulfilling all responsibilities during the last decade.

Six LEAs required corrective action work plans during the 5<sup>th</sup> cycle. Of those, two LEAs corrected their deficiencies by the end of 2012, three moved forward with their work plans, and one is correcting deficiencies per an administrative conference agreement.

LEA Evaluation Findings/Results	2 <sup>nd</sup> Cycle 56 LEAs 2000-2003	3 <sup>rd</sup> Cycle 55 LEAs 2003-2006	4 <sup>th</sup> Cycle 55 LEAs 2006-2010	5 <sup>th</sup> Cycle (54 of 60 LEAs) 2010-2013
Fulfilling all LEA duties/responsibilities	21	27	35	38
Fulfilling most of their duties/responsibilities	21	7	9	10
Requiring a corrective action plan	14	21	11	6
Withdrawal of designation De-certification	0	0	0	0

# Local Government Diversion Enforcement

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## ***Program Highlights***

- Staff continued compliance evaluation reviews for the first group of local government diversion programs referred for compliance reviews under the new per capita disposal goal law.
- Compliance rates for local government diversion program implementation continue to improve. Statistics for 2012 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. Of the three compliance evaluations, two were completed and the local governments were found to have made a good-faith effort; the third compliance evaluation continued into 2013.

## ***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; and
- 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.
- 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 it 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 a local government fails to meet the compliance order requirements, a public hearing is held to determine whether it is 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 2012 there were 414 local governments subject to these requirements.

## ***Enforcement Activity Data***

### **Compliance Evaluation Reviews**

Staff began compliance evaluation reviews for the first group of local government diversion programs referred for compliance reviews under the new per capita disposal goal law. 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. Of the three compliance evaluations conducted in 2012, Mammoth Lakes and Mendota were found to have made a good-faith effort; Calaveras County's compliance evaluation continued into 2013.

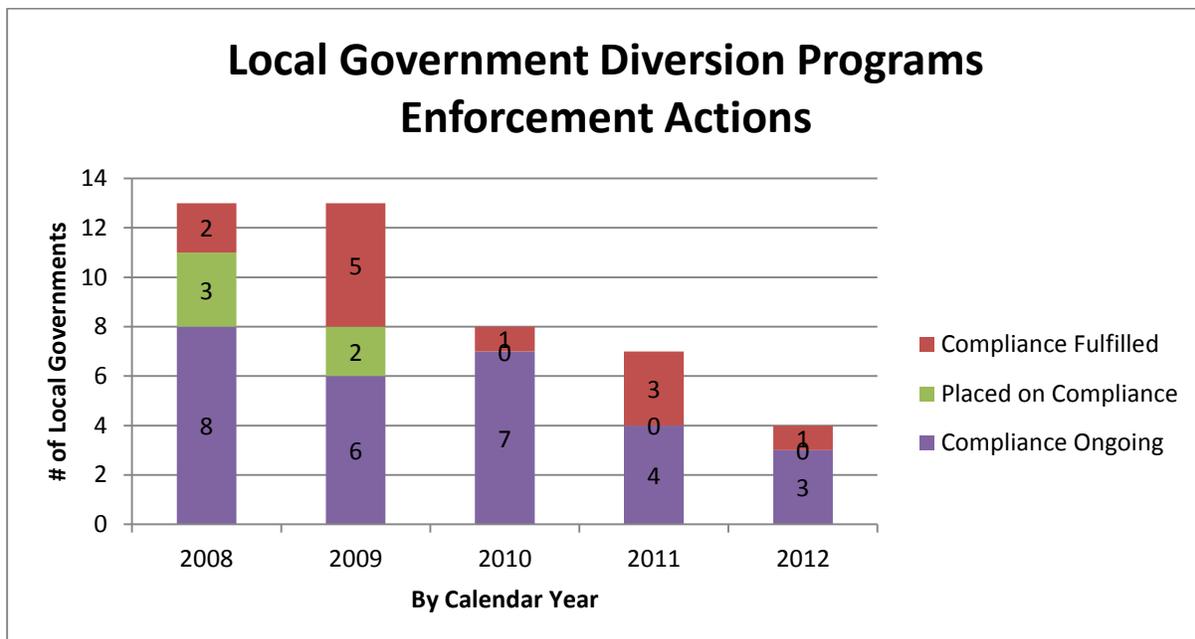
## Compliance Orders

Four local governments were on active compliance orders during 2012. However, by the end of the year, only three remained on compliance orders: Clearlake, Ridgecrest, and Santa Paula. These local governments were still fulfilling the terms of a compliance order from a previous year. The fourth, Downey, fulfilled the terms of its compliance orders and was removed from compliance status. Because there were no local governments referred for a compliance evaluation during the year, no new compliance orders were issued. No penalty hearings were held in 2012.

Regardless of what approach was used to report compliance, there was significant improvement in 2012. Statistics for 2012 show a compliance rate of 99 percent. Both the total number of local governments under compliance orders during any point during the year and the number of ongoing compliance orders at the end of the year continued to decrease compared to 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 five years, dropping from a high of nine in 2008 to a low of three in 2012. This represents a compliance rate of 99 percent.



## **Penalty Hearings**

Penalty hearings are held for local governments that do not make a good a good-faith effort to implement their diversion programs. In 2012, 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 Containers

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## ***Program Highlight***

- The Rigid Plastic Packaging Container, or RPPC, revised regulations were approved in June 2012 with an effective date of Jan. 1, 2013.

## ***Program Description***

California's RPPC 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, such as food, drugs, or 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. One 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 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 2012 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 the types of containers that are regulated.
- Establish a process to allow product manufacturers to obtain advisory opinions early in the process.

The formal rulemaking began in February 2011. The final rulemaking package was submitted to the Office of Administrative Law (OAL) on Feb. 10, 2012, for approval. CalRecycle resubmitted the package on May 25, 2012, in response to OAL's request for clarification. On June 28, 2012, the Office of Administrative Law (OAL) approved the proposed revised regulations for the RPPC program. The revised regulations took effect Jan. 1, 2013.

# Beverage Container Recycling Enforcement and Fraud Prevention

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## *Program Highlights*

- The largest case settled in 2012 was an accusation against American National Recycling. The operator agreed to pay \$500,000 in restitution/civil penalties and was banned from future participation in the program. Violations included 589 purchase transactions of containers in excess of the allowable consumer limit and claims not supported by consumer purchase records. Several employees were arrested for redeeming out-of-state beverage containers.
- Accusations totaling \$1,030,552 were filed against three certified recycling centers for various violations. Resolution of these claims is pending, but these cases are expected to be closed out in 2013.
- CalRecycle formally executed an interagency agreement with the California Department of Food and Agriculture (CDFA) to survey and monitor all vehicles importing empty beverage container materials in excess of the statutory thresholds established by AB 1933 (Gordon, Chapter 540, Statutes of 2012). With the statutory changes and contracted resources in place at all 16 CDFA plant quarantine inspection stations, CalRecycle will be developing regulations with stringent reporting and inspection requirements for all vehicles importing empty beverage container material into California.

## *Program Description*

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

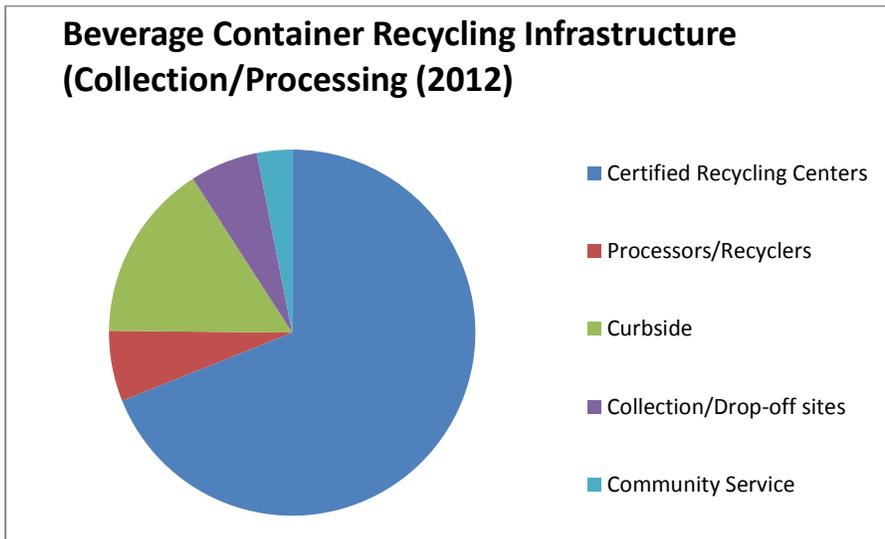
Consumers play a key role in this program and receive a refund for recycling beverage containers. They pay CRV at the checkout stand — a nickel on containers less than 24 ounces and a dime for containers 24 ounces or larger. Consumers receive CRV reimbursement when the empty beverage container is returned 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 CRV 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. More than 41,720 invoices are

submitted by processors annually. If processors submit fraudulent or improperly documented claims, CalRecycle can deny or reduce payments.

### Statewide Infrastructure for Convenient Beverage Container Recycling

California’s beverage container recycling infrastructure has developed in response to this program. Californians recycled an average of more than 47.3 million beverage containers each day in 2012—or about 17.2 billion beverage containers for the year. The network of regulated businesses that make this possible includes:

- Retailer Beverage Dealers 30,000 (approximately as not required to register)
- Certified Recycling Centers 2,578
- Beverage Manufacturers 1,473
- Distributors 1,709
- Curbside 588
- Collection/Drop-off 225
- Processors 233
- Community Service 116



### Enforcement Focus on Fraud Deterrence, Prevention and Mitigation

CalRecycle’s enforcement efforts focus on identifying and investigating certified entities and/or registered entities identified as potentially operating in violation of the law or regulations. 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 Fund. Enforcement is supported by data and information gathered through a combination of the following activities:

- Probationary review of recycling centers.
- Annual inspections of recycling centers.
- On-site inspections of processor loads.
- Risk assessment and data analysis.

- On-site investigations leading to various administrative remedies including accusations for restitution, administrative penalties, revocation of certification, or criminal prosecution, as warranted.

Given the large volume of data managed by the program, the data management system known as DORiis, or Division of Recycling Integrated Information System, is an essential tool. This system integrates various data and tracking systems to pinpoint reporting anomalies and target suspect claims. Using DORiis, CalRecycle can place anomalous claims for program payments 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 mitigate loss to the Fund and identify potential fraud.

CalRecycle currently works with state law enforcement agencies including the Department of Justice (DOJ) and the state Attorney General's (AGs) Office because they have the authority to conduct criminal investigations and prosecute such cases. 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. CalRecycle is actively working to establish partnerships with other local enforcement and state agencies.

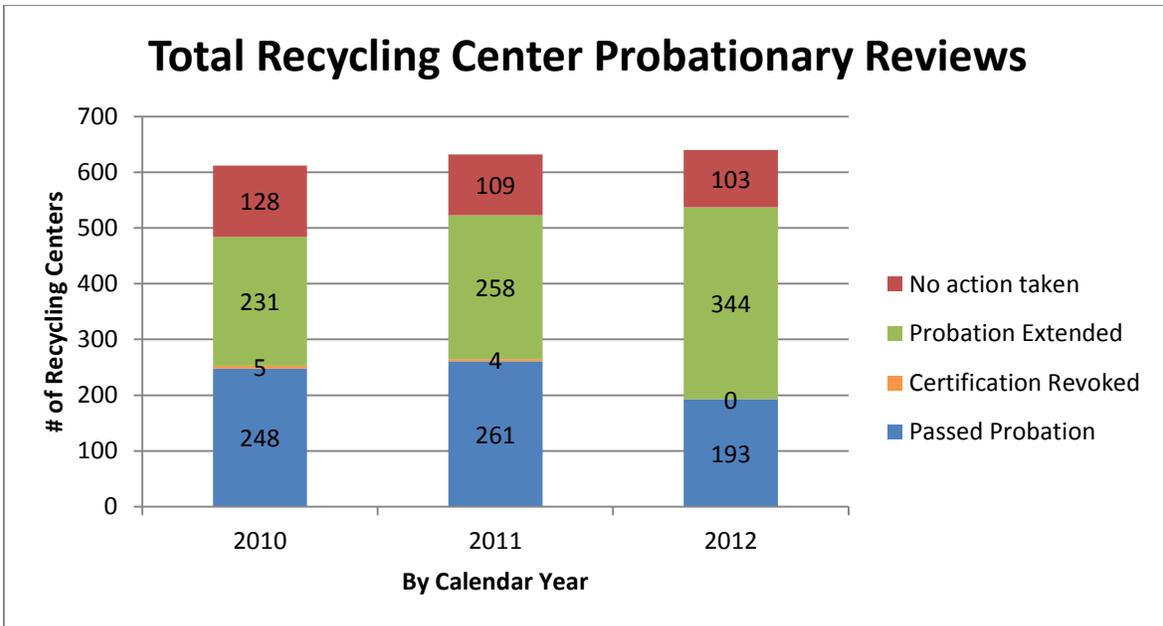
Program fraud associated with the illegal redemption of used beverage containers imported into California is a significant threat to the solvency of the Fund. In June 2011, CDFA began a three-month, no-cost pilot project to monitor imported beverage containers at all 16 border inspection stations. That successful pilot led to a two-year interagency agreement beginning in Fiscal Year 2012/13 to continue the monitoring. Now that CDFA officials are reviewing vehicles at border inspection stations, CalRecycle will develop regulations to establish stringent reporting and inspection requirements for all vehicles importing empty beverage container material into California.

## ***Enforcement Activity Data***

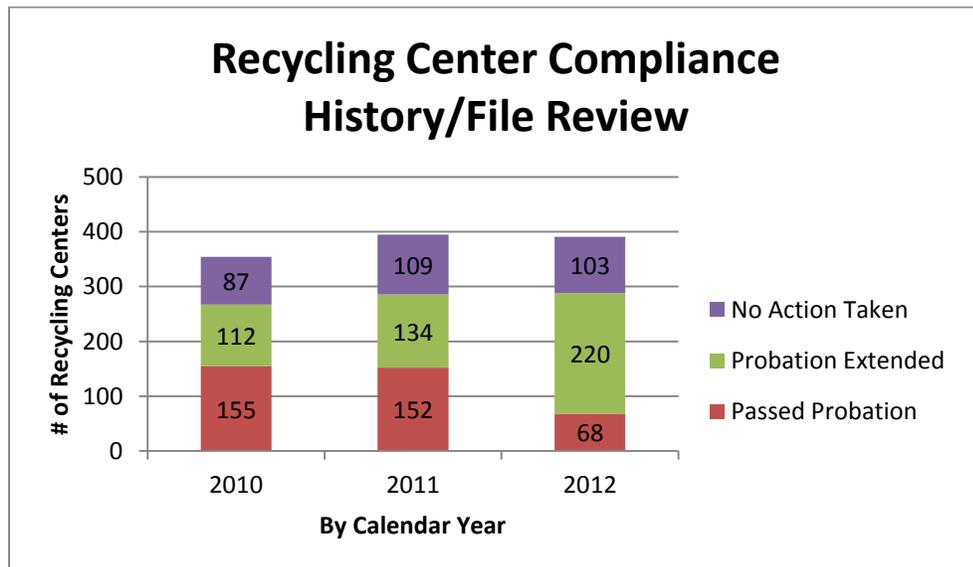
### **Recycling Center Probationary Reviews**

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 recycling center’s probationary certification status, approve a non-probationary certification, or revoke a participant’s probationary certification.

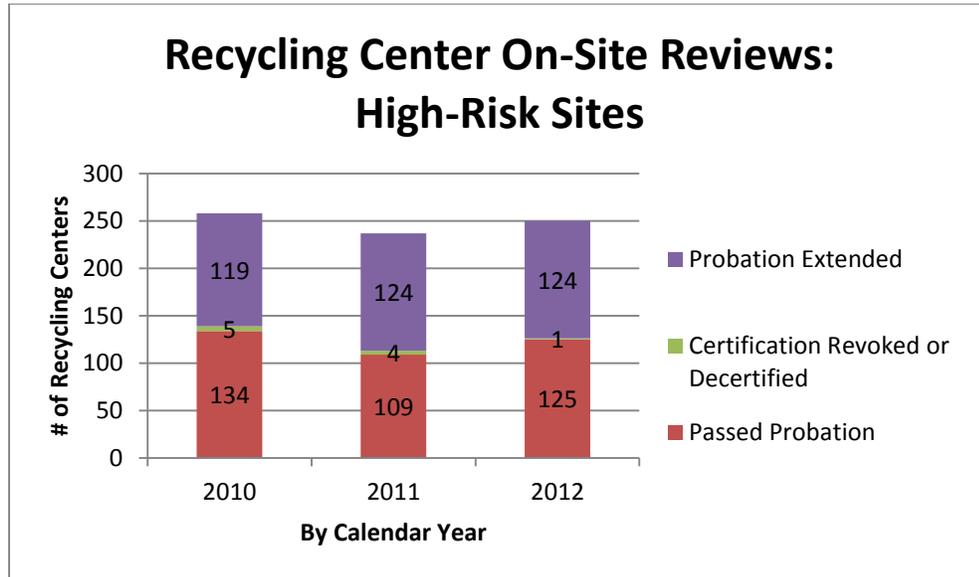
CalRecycle reviewed 640 probationary certificates during 2012. Based upon a standard risk assessment, staff determines whether a compliance history/file review is sufficient or a site visit is warranted. The number of recycling centers with probationary certificates expiring has been similar for the last three years.



- Compliance History/File Review (391):** More than half of recycling centers had their probationary certificates extended for another year (220 recycling centers or 56 percent); 68 recycling centers passed probation (17 percent), and 103 recycling centers had no action taken (26 percent) because they were decertified, abandoned, or not recycling centers (i.e., processors, curbside programs, collection programs, or community service programs). No centers had their certification revoked as a result of probationary reviews in 2012.



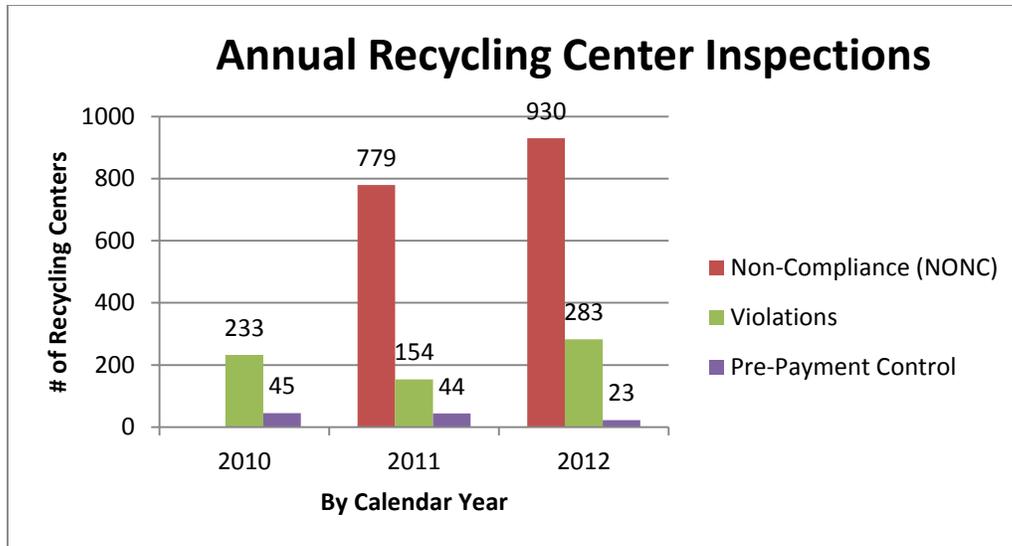
- On-Site Review of High-Risk Sites:** For the 250 recycling centers that were deemed high-risk and warranted an on-site review. Of those, half passed probation (125 recycling centers) and the other half had their probationary certificates extended for another year (124 centers). One recycling center was decertified and none had their probationary certificates revoked. As a result of these site reviews, auditors assessed \$392,072 in restitution, civil penalties, and/or interest. Of that, the vast majority was restitution (94 percent).



### Recycling Center Inspections

CalRecycle inspects each certified recycling center at least once annually to ensure compliance with program requirements. The inspection typically 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 such as signage that support consumer convenience. If the program participant is not in compliance, the inspector issues a Notice of Noncompliance, or NONC. If the recycler fails to achieve compliance, a Notice of Violation (which includes a fine) is issued. In areas where there is no certified recycling center, retail beverage dealers (dealers) may be required to serve as the recycling center. Dealers are also inspected to ensure compliance with signage and CRV shelf-labeling requirements.

Recycling center inspections remained at a similar level in 2012 with 3,613 conducted during the year. There were 930 Notices of Noncompliance issued in 2012, which is approximately 20 percent more than in 2011. In 2012, there were 283 violations issued, which was an increase compared to the previous two years, and 23 recycling centers were placed on prepayment controls in 2012. CalRecycle assessed civil penalties of \$55,300 on noncompliant recycling center operators as a result of the inspections.



### Processor Load Inspections

CalRecycle inspected approximately 3,099 recycler loads as part of the 2012 processor/recycler inspection program. Investigators inspect recycling center shipments to processors to verify the eligibility of the material and review the accuracy/completeness of the claim for reimbursement. In comparison to previous years, 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.

### Risk Assessment and Data Analysis

Risk assessment and data analysis tools and techniques identify high-risk participants based on anomalies in reported data. Anomalous claims, and the program participants who submit them, are subject to further investigation or review by CalRecycle or the DOJ. Given that approximately 2,600 shipping reports valued at \$1.5 million to \$3 million per day are submitted, automated analysis is an essential tool for preventing potential fraud. In 2012, processors submitted 41,721 invoices, and there were 967,402 shipping reports valued at more than \$1.05 billion.

On a daily basis, all shipping reports are reviewed using an automated claimed volume report which is built into DORiis. The 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 for further follow up or investigation. Using prepayment controls within DORiis, CalRecycle can stop the processing of a shipping report for payment shortly after a determination is made. Staff can then place suspect shipping reports on hold for further review, reduce the amount claimed, deny the claim for reimbursement, or allow the shipping report to be processed for reimbursement.

### Investigations, Accusations, and Criminal Prosecution

After high risk participants are flagged, administrative investigations are conducted to evaluate the validity and eligibility of reimbursement claims, look for possible document falsifications, or investigate potentially fraudulent claims. CalRecycle's forensic document reviews can lead to the recovery of unsubstantiated and/or illegal payments. Findings can result in administrative civil penalties, restitution,

and/or revocation of the recycler's certification. It should be noted that although many investigations result from risk analysis or inspections, a significant number are initiated based on hotline or email tips.

In 2012, CalRecycle conducted a significant number of recycling center investigations and closed a number of cases as well; 97 investigations were opened and 49 were closed. Results from completed investigation cases include issuance of three accusations filed against certified recycling centers at an assessed value of approximately \$1.03 million in restitution and civil penalties. In addition, 23 recycling center certifications were revoked, 24 certification applications were denied and 14 cases were referred to DOJ.

Although a large number of investigations were closed in 2012, there are currently six accusations filed before 2012 that have not yet been resolved. A particularly large case with an assessment of \$75 million in penalties against Mission Fibers/Burbank Recycling was filed in early 2009, and although it remains open, significant progress was made toward resolution of this case in 2012.

Five accusations filed between 2008 and 2012 were resolved in 2012. The final resolution totaled \$683,142. As stated previously, the largest case settled in 2012 was an accusation against American National Recycling in April 2011. Several American National Recycling staff was arrested for redeeming out-of-state beverage containers. CalRecycle settled the case and the operator agreed to pay \$500,000 in restitution/civil penalties and was banned from future participation in the program.

As stated previously, 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 DOJ for further investigation and subsequent prosecution, if warranted, by the AG. In Northern California, DOJ closed six cases in 2012 resulting in six arrests, and 26 cases remained open. In Southern California, DOJ closed 13 cases resulting in 29 arrests, and 12 cases remained open.

# Electronic Waste Enforcement

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## ***Program Highlights***

- In 2012, 211,987,292 pounds of covered e-waste were claimed for reimbursement—approximately 6 percent more than in 2010.
- Recyclers continue to submit properly documented claims. CalRecycle adjusted approximately 2.7 percent of requests for payments due to noncompliant or significantly inconsistent documentation. The compliance rate was 97.3 percent.
- CalRecycle entered into a contract with the Department of Justice to ensure effective enforcement and deterrence of illegal activities that threaten the integrity of the Electronic Waste Recycling and Recovery Account, or EWRA.
- CalRecycle was authorized to administratively impose civil liability against a person who makes a false statement or representation in any document filed, submitted, maintained, or used for purposes of compliance with the Act (per amendments in Senate Bill 1018).

## ***Program Description***

E-waste is an informal term for unwanted electronic products such as computers, televisions, and DVD players 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 to cover the average cost of managing discarded covered electronic devices.

To finance the program, consumers pay a fee 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**

Compliance and enforcement responsibilities are largely shared between CalRecycle and the Department of Toxic Substances Control; however, the Department of Justice and the Board of Equalization also play vital roles in ensuring program integrity.

At CalRecycle, recyclers and collectors are reimbursed at standard rates per pound of covered electronic waste recycled. If recyclers do not submit properly documented claims, or if they make false statements in their documentation, CalRecycle can deny or reduce payments. Additionally, for claim review or other compliance-related matters, CalRecycle can suspend or revoke approval for collectors or recyclers to participate in the program, or in some instances impose civil penalties.

CalRecycle's compliance and enforcement activities include:

- Reviewing 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.
- Reviewing annual net-cost reports and adjusting 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.
- Suspending or revoking participant approval for false statements or representation, significant noncompliance, or a pattern of operation in conflict with the Act.
- Imposing civil liability up to \$25,000 per violation against any person, including an authorized covered electronic waste collector or recycler, that makes a false statement or representation in any document used for purposes of compliance with the Act.

Due to the hazardous characteristics of electronic waste, CalRecycle works closely with DTSC to ensure all participants are in compliance with all applicable DTSC requirements. Hence, DTSC's primary focus is on enforcing standards for the physical management of electronic waste through inspections of e-waste storage, collection, and recycling facilities and handlers to ensure their compliance with regulations.

Bestowed with a responsibility to safeguard the integrity of the e-waste fund, CalRecycle teams with the BOE to ensure the proper fees are collected to fund the program, and with the DOJ to prevent financial crimes against the fund. 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.

DOJ's enforcement role is to provide focused assistance to CalRecycle in detecting, investigating, and prosecuting criminal activity by persons operating under e-waste collection, processing, and recycling program provisions specified under the Act.

### **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 2012, there were 607 approved collectors and 58 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

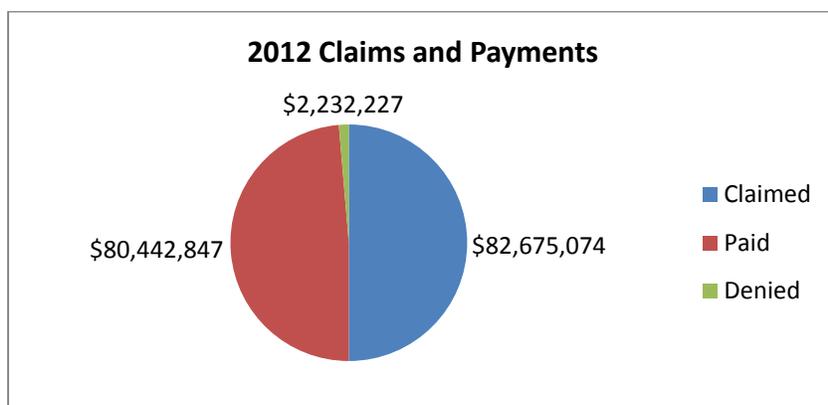
Enforcement actions taken by CalRecycle fall into two main categories: adjustment or denial of payment claims, and suspension or revocation of approval to participate.

### Payment Claim Reviews

Recyclers (and collectors) are reimbursed by CalRecycle at a standard payment rate per pound of covered electronic waste recovered and recycled. If recyclers do not submit properly documented claims, CalRecycle can deny or reduce payments. In 2012, recyclers submitted 314 reimbursement claims for 211,987,292 pounds of covered e-waste processed.

The level of payment claim adjustments remained very low, consistent with the past two years. Although more than half of the claims submitted incurred some degree of adjustment, payment adjustments as a percentage of total dollars requested were very minor: approximately 2.7 percent. On average, collectors and recyclers attained a 97.3 percent overall compliance rate on total dollars claimed. This represents a very slight, less than 1 percent, decline compared to 2011.

- Total Dollars Claimed in 2012 \$82,675,074
- Total Dollars Paid in 2012 (estimated) \$80,442,847



### Revocations and Suspensions

In 2012, only one certification for collectors and recyclers was revoked. This is a particularly significant change compared to 32 in 2011 and 121 in 2010. The participant failed to notify CalRecycle of changes to information contained in its application. Revocations, unless successfully appealed, prevent a participant from reapplying to the program for at least six months.

In contrast, total suspensions are increasing, with 19 suspensions in 2012. Suspensions typically result from a material management violation detected by DTSC during an inspection and are imposed until the participant is determined to be back in compliance. Ten failed to operate in conformance with DTSC requirements; seven failed to notify CalRecycle of changes to their application; and two engaged in a prohibited activity.

## **Civil Penalty**

Legislation was recently signed into law authorizing CalRecycle to administratively impose civil penalties under specified circumstances. Staff is developing emergency regulations to implement this new authority.

## IV. Future Directions

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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. The following are staff plans for 2013 program adjustments based on previous successes include.

**Surveillance Partnerships for Waste Tire Enforcement:** Interagency agreements will be pursued with the California Highway Patrol for surveillance and the California Air Resources Board for surveillance cameras. Adding these surveillance tools and partners helps enforce waste tire regulations more efficiently.

**Compost Facilities Rulemaking (Informal):** The focus of stakeholder workshops will be on draft regulatory text in 14 issue areas. CalRecycle will draft informal text based on comments. The formal regulatory process may begin in late 2013.

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

**RPPC Regulation Implementation:** CalRecycle will move forward to implement the new regulations efficiently and effectively. Webinars are planned to educate affected producers about changes in the program.

**Beverage Container Program Rulemaking (Formal):** California's cost-effective beverage container recycling program continues to be one of the most successful programs in the United States, 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 2013, CalRecycle plans to develop regulations based on strategies suggested by stakeholders to ensure program integrity and address the structural deficit of the fund.

- **Daily Load Limits:** 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 submitted to the Office of Administrative Law.
- **Importing Out-of-State Containers for Redemption:** Many investigations have revealed fraud resulting from importing. The topic was addressed in stakeholder workshops, and regulations will be drafted in 2013 and submitted to OAL.

**Refining E-Waste Data Analysis:** CalRecycle will focus on expanding online reporting and documentation capabilities in 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.

**Civil Penalty Regulations for E-Waste (Formal):** With recent legislation authorizing CalRecycle to administratively impose civil penalties under specified circumstances, staff has begun developing emergency regulations to implement this new authority. CalRecycle plans to pursue regulatory development for the imposition of administrative civil penalties upon a person, authorized covered electronic waste collector, or recycler. CalRecycle will convene public workshops to assure transparency in the solicitation and assessment of stakeholder input and in the department's decision-making during the regulatory development process.

## LIST OF ACRONYMS

Acronym	Full Name
AG	Attorneys General Office
Cal/EPA	California Environmental Protection Agency
CalRecycle	Department of Resources Recycling and Recovery
CDFA	California Department of Food and Agriculture
CRV	California Redemption/Refund Value <ul style="list-style-type: none"> <li>• Redemption is paid when container purchased</li> <li>• Refund is paid when the container is recycled</li> </ul>
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
LEA	Local Enforcement Agency—solid waste
MRF	Materials Recovery Facility—solid waste
NOI	Notice of Intent (to list on Inventory)
NONC	Notice of Noncompliance—beverage container
NOV	Notice of Violation—beverage container, solid waste and tire
PRC	Public Resources Code—state
RPPC	Rigid Plastic Packaging Container
TEA	Tire Enforcement Agency
SWIS	Solid Waste Information System
WTMS	Waste Tire Manifest System