

2010 CalRecycle
Enforcement Report



California Department of Resources Recycling and Recovery

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

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Executive Summary

On Jan. 1, 2010, California's recycling and waste diversion efforts were consolidated into the new Department of Resources Recycling and Recovery — CalRecycle. CalRecycle manages programs created through two landmark initiatives — the Integrated Waste Management Act and the Beverage Container Recycling and Litter Reduction Act — that were formerly part of the California Integrated Waste Management Board (CIWMB) and the Department of Conservation (DOC). Initially housed in the Natural Resources Agency, CalRecycle merges the duties of the DOC's Division of Recycling and the CIWMB to best protect public health and the environment by effectively and efficiently managing California's waste disposal and recycling efforts. This report covers CalRecycle's enforcement activities for 2010.

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 2010 for CalRecycle's enforcement activities.

- **WASTE TIRE:** The Streamlined Penalty Program for waste tire haulers enables CalRecycle staff to focus on more complex cases and promptly pursue violations. Since the implementation of this program, late renewal violations have decreased by 79 percent and there have been no repeat offenders. Building on this successful approach, regulatory changes were proposed to make the streamlined penalty process easier to implement at tire facilities, too.
- **SOLID WASTE:** LEA performance improved significantly over the past three evaluation cycles. Eighty percent of the LEAs 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.
- **LOCAL GOVERNMENT DIVERSION:** To ensure consistency in its evaluation and treatment of local governments, CalRecycle updated its enforcement policies to reflect changes in the law to reflect the new, actual per capita disposal measurement system. The original policy was adopted in February 1995, updated in 2001, and updated again in June 2010.
- **MINIMUM CONTENT:** CalRecycle undertook revisions to the Rigid Plastic Packaging Container regulations to clarify requirements and level the playing field prior to undertaking the next compliance certification process.

- **BEVERAGE CONTAINER RECYCLING:** The California Department of Justice shut down three high-volume recycling fraud rings that imported out-of-state beverage containers and illegally claimed refunds. Thirty-one people were arrested in connection with these activities that are estimated to have defrauded the state of more than \$3.5 million. Similarly, prosecution is pending on Perris Valley Recycling for illegally claiming reimbursement for as much as \$7 million. These actions were based on CalRecycle investigations and referrals.
- **ELECTRONIC WASTE RECYCLING:** 193,538,088 pounds of covered e-waste was claimed for reimbursement. The total reduction of money claimed due to non-compliant or significantly inconsistent documentation was reduced to only 2 percent in 2010. This compares to a high of 12 percent in 2009.

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 2010 calendar year even though solid waste enforcement is no longer under the jurisdiction of CalEPA. Prior to legislative changes effective January 2010, solid waste enforcement was included in the annual CalEPA enforcement report. Accomplishments related to solid waste for previous year are provided at <http://www.calepa.ca.gov/Enforcement/Publications/EnforceRpt.htm>.

I. Purpose and Scope of Report

This report summarizes CalRecycle’s wide-ranging enforcement activities for 2010, describes program elements, and highlights future directions for program improvements. On Jan. 1, 2010, California's recycling and waste diversion efforts were consolidated into the new Department of Resources Recycling and Recovery — CalRecycle. CalRecycle manages programs created through two landmark initiatives — the Integrated Waste Management Act and the Beverage Container Recycling and Litter Reduction Act — that were formerly part of the California Integrated Waste Management Board (CIWMB) and the Department of Conservation (DOC). Initially housed in the Natural Resources Agency, CalRecycle merges the duties of the DOC’s Division of Recycling and the CIWMB to best protect public health and the environment by effectively and efficiently managing California’s solid waste disposal and recycling efforts.

II. 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 that 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 that 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 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, 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

During 2010, 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.

III. 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 1,316 registered waste tire haulers in California. Highlights from 2010 include:

- CalRecycle **redirected staff to tire enforcement positions** and provided them with extensive training during late 2010. Although the number of tire facility inspections continues to increase each year, there is a backlog of inspections for “never inspected” tire businesses in jurisdictions where there is no local tire enforcement agency. In 2011, CalRecycle inspectors will work to reduce the number of “never inspected” businesses.
- 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 79 percent, and there have been no repeat offenders.

- **Credit Card Payment for Tire Fines.** Since the establishment of the credit card payment alternative, approximately 31 percent of the streamlined penalty cases (25 of 80 cases) have used this form of payment. This alternative provides CalRecycle with a prompt, more efficient, low-cost collection option.
- **Regulatory Changes** are being discussed to 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 2010, the regulated community included approximately 27,933 waste tire-related businesses, including:

- 26,585 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;
- 1,316 registered waste tire haulers; and
- 32 permitted waste tire facilities (24 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 be a registered waste tire hauler with CalRecycle. Those who are unaware of the program are sent letters informing them of the requirements.

Registered haulers display a decal in the lower right hand 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. Approximately 31 percent of offenders used the credit card payment option to settle their fines with CalRecycle.

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 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 the 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, cease and desist 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. In May 2010, CalRecycle began discussing regulatory changes to replicate the successful waste tire hauler streamlined penalty process for waste tire facilities. 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

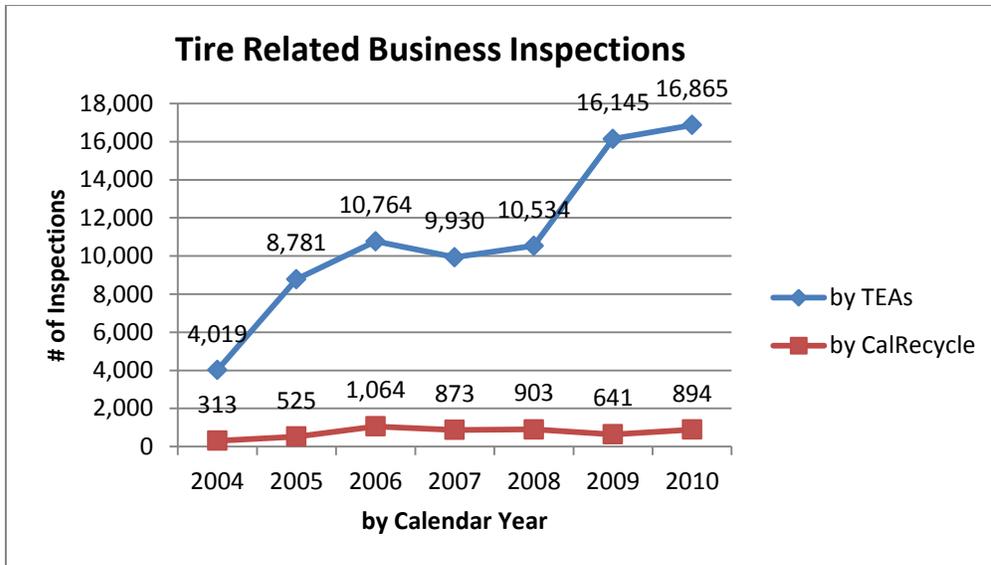
Prior to 2002, most tire enforcement was conducted by five CalRecycle field staff and focused on cases identified through complaints and referrals from other agencies. To more effectively provide statewide enforcement coverage, CalRecycle now provides funding for local tire enforcement agencies (TEAs) 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 43 cities/counties for waste tire enforcement — a 10 percent increase in local agencies compared to 2009. 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 17,759 inspections performed by TEAs and CalRecycle during 2010. TEAs conducted 95 percent of the inspections (16,865). Seventy-eight percent of permitted tire facilities (25 out of 32) were inspected.



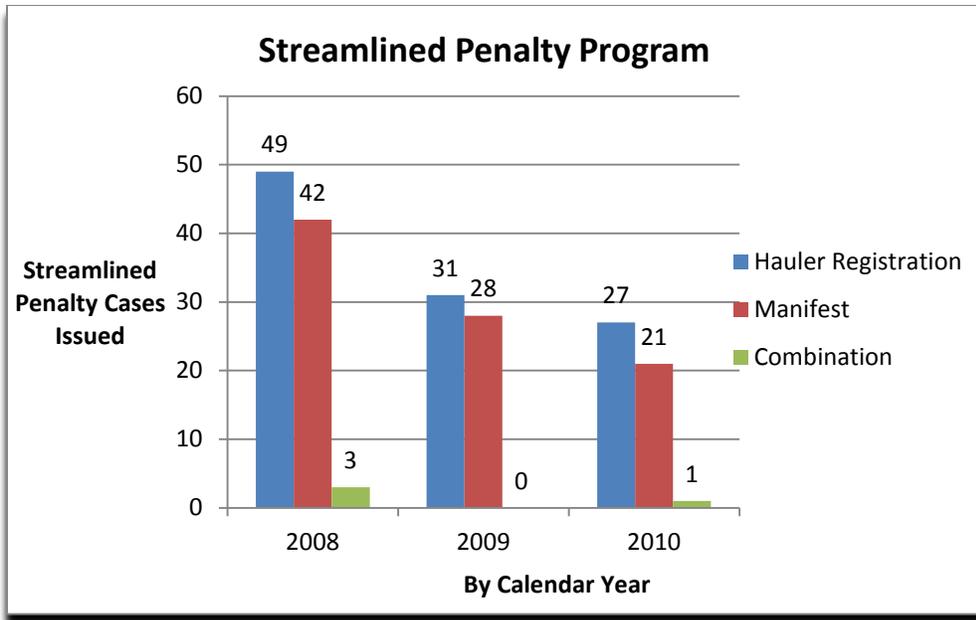
Although inspections continue to increase each year, there is still a backlog of more than 8,000 “never inspected” tire businesses. To most effectively and efficiently reduce the number of never-inspected facilities, CalRecycle redirected staff and trained the new tire inspectors during late 2010. In 2011, CalRecycle will send inspection teams into counties with large numbers of those never-inspected businesses. With this approach, CalRecycle will be able to cost-effectively and efficiently inspect numerous businesses in a single trip.

Enforcement Action: Waste Tire Hauler Registration and Manifest

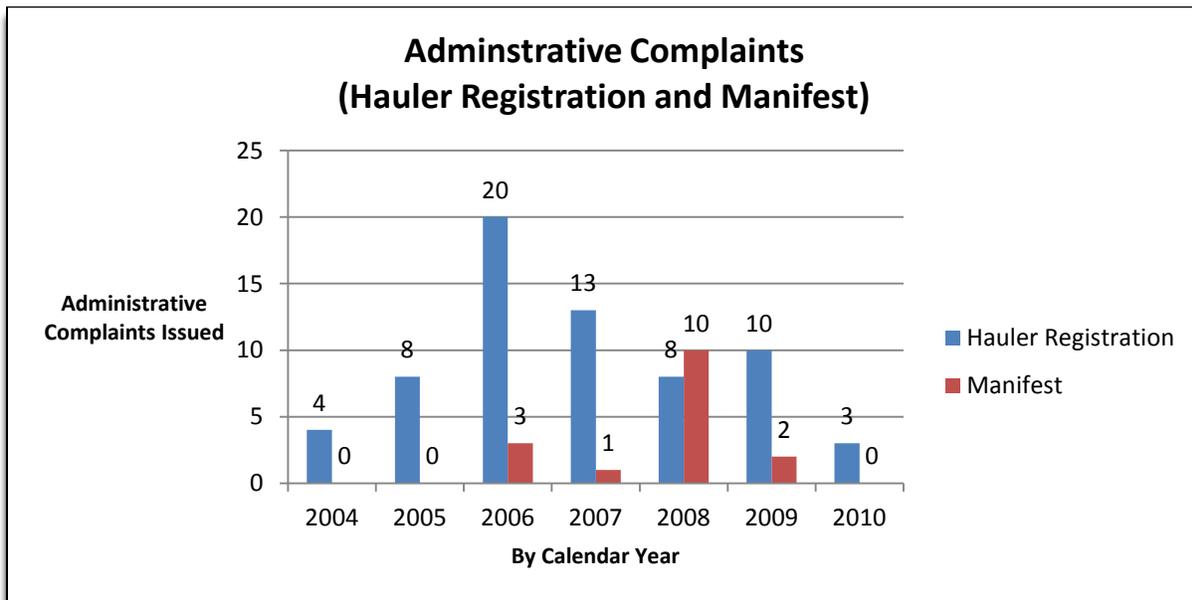
Enforcement actions for waste tire haulers include both the streamlined penalties and administrative hearings. Since the streamlined penalty program began in 2008, the number of repeat violations and administrative complaints has been reduced. The effectiveness of this streamlined approach helps ensure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

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 charts on the next page compare enforcement cases resolved using both processes.



The **streamlined penalty process** was used for 27 hauler registration penalty cases, 21 manifest cases, and one combination in 2010. These figures continue a three-year decline in the total number of cases.



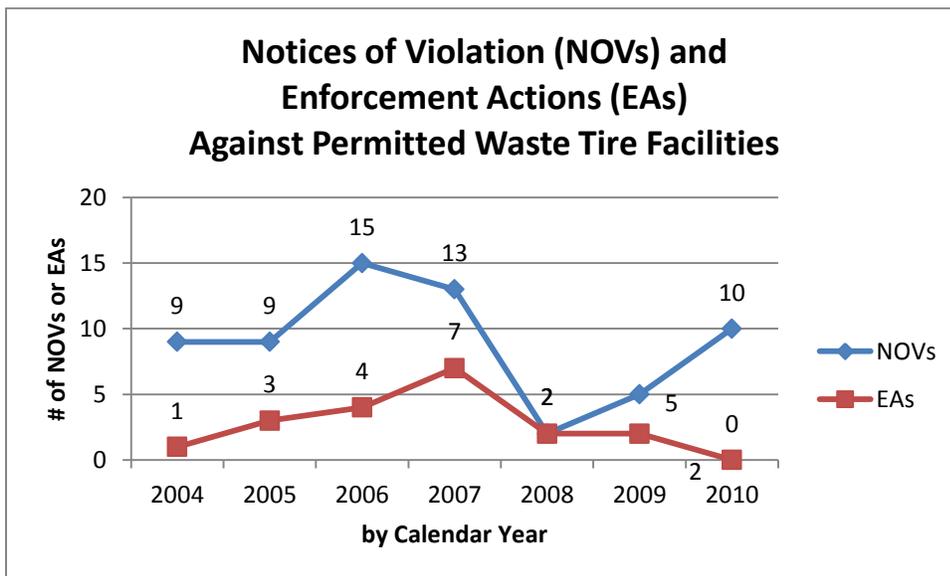
In 2010, the number of administrative complaints decreased to the lowest level yet, with only three hauler registration complaints, compared to 10 the previous year. That 70 percent decrease is in part attributable to improved compliance by the regulated community in response to enforcement actions taken in 2008 and 2009. There were no manifest administrative complaints in 2010.

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 2010, there were ten NOVs issued. Although the number of violations is higher than in the last two years, the compliance rate was 100 percent. As a result of follow-through by operators in response to those notices, no significant enforcement actions (EA) were taken in 2010.



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 2010 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 chose 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 that state programs are effectively implemented, 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 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 2010, California’s solid waste disposal infrastructure included 527 permitted, active solid waste facilities and 611 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. 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 (527)
 - 287 waste transfer and processing facilities;

- 96 composting facilities;
 - 141 disposal facilities (or landfills); and
 - 3 waste-to-energy (transformation) facilities.
- Authorized Operations (611)
 - 631 waste transfer and processing facilities;
 - 243 composting facilities; and
 - 24 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 2010, 13,325 inspections were conducted, compared to 13,683 the previous year. The total number of inspections conducted remained relatively constant over the last two years. However, 20 percent more inspections were conducted compared to the year 2000.

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. LEAs conducted 12,783 inspections and CalRecycle conducted 542 in 2010.



Violations at Disposal Facilities (Landfills): The violations cited changed significantly during 2010 as a result of new landfill gas regulations taking effect to protect against explosive landfill gas migration. (Compliance challenges related to the implementation of these new regulations is explained in more detail

later in this report.) Of the 686 violations cited in 2010, more than 50 percent were for gas monitoring and control. Considering there are only 141 active, permitted landfills, this 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: noncompliance with permit terms and conditions. Those two alone accounted for almost-three quarters of the total violations in 2010.

Total Landfill Violations	Violation Category
350	Gas Monitoring and Control
80	Operator Compliance with Permit Terms and Conditions
37	Report of Disposal Site Information
34	Daily Cover
15	Grading of Fill Surfaces
15	Drainage and Erosion Control

Violations at Compost Facilities: Of the 208 violations at compost facilities, the most frequently cited violation in 2010 related to vectors, odor, litter, etc. That standard was cited in about 15 percent of the total violations.

Total Compost Violations	Violation Category
31	Vectors, Odor, Litter, etc.
20	Inspection of Records
18	Chip & Grind Storage Limit Time
15	Operator Compliance with Permit Terms and Conditions
13	Fire Prevention
10	Physical Contamination Refuse Removal

Violations at Waste Transfer and Processing Facilities: The majority of the 300 violations cited in 2010 relate primarily to the permit terms and conditions rather than state minimum standards as compared to the other facility types listed above. Almost one quarter of violations were for unauthorized operations, compliance with permit terms and conditions, and significant changes in operation.

Total Transfer Station Violations	Violation Category
34	Operator Authorized by SWF Permit
22	Compliance with Permit Terms and Conditions
13	Significant Change
11	Solid Waste Removal
10	Cleaning
9	Maintenance

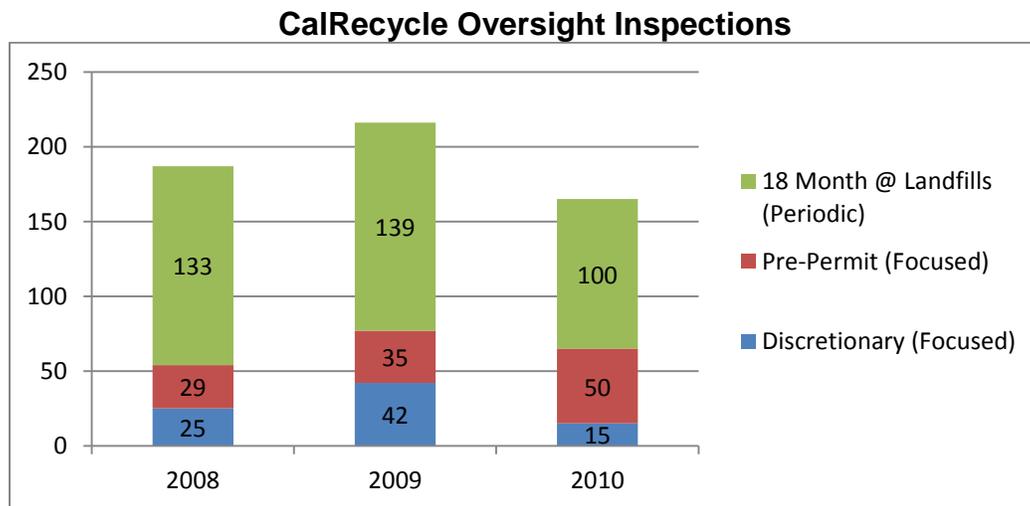
Oversight Inspections (CalRecycle only)

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 2010, CalRecycle conducted 165 oversight inspections, somewhat less than in either of the previous two years due to staffing limitations. Approximately 60 percent of the oversight inspections conducted in 2010, or 100 inspections, were the 18-month inspections of landfills. In 2010, the 50 pre-permit inspections accounted for 30 percent of the total oversight inspections. There were 15 discretionary/focused inspections conducted in 2010. They are discussed in more detail below the chart. (Note: Inspections of closed facilities are not included in these totals.)

The chart below compares the three types of oversight inspections over the past three years.

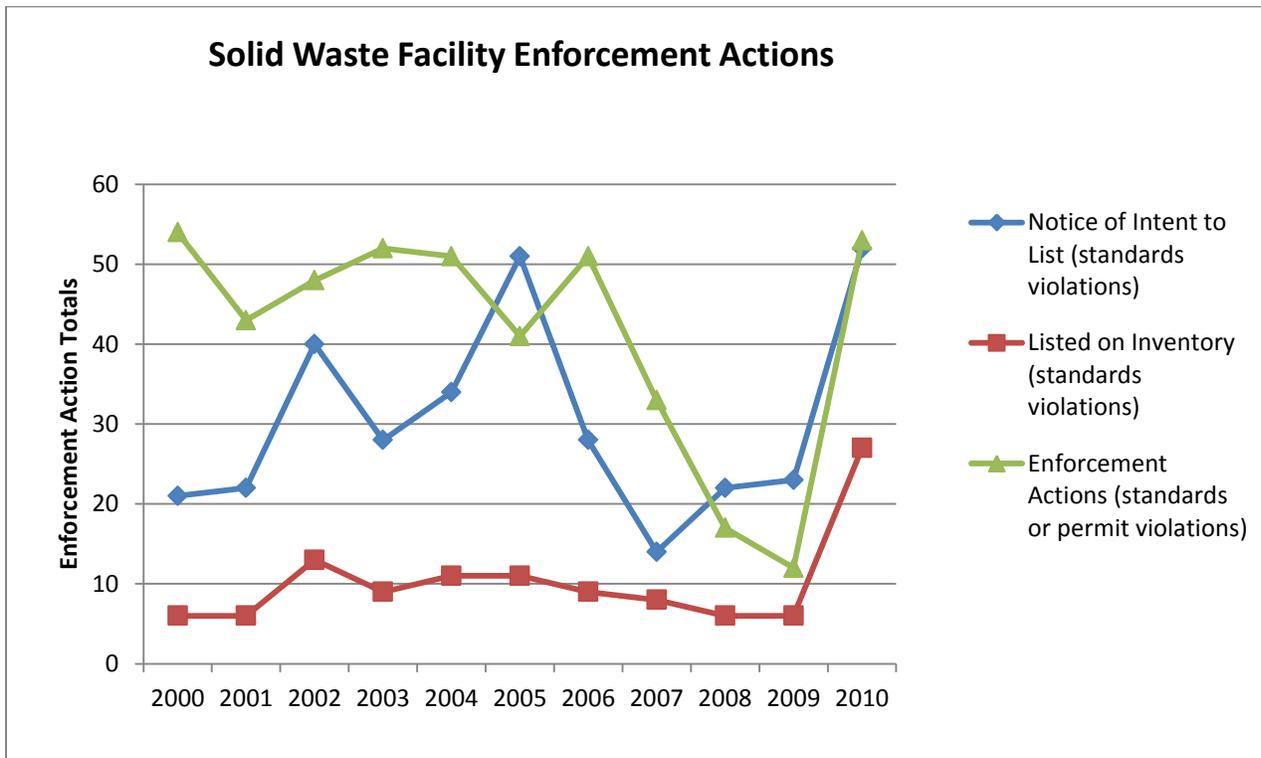


Discretionary inspections (focused): In 2008, CalRecycle conducted additional inspections beyond the 18-month and pre-permit inspections. These discretionary inspections address other mandates associated with effectively evaluating the LEAs and ensuring that state minimum standards are met. CalRecycle conducted 15 discretionary inspections in 2010. Of those, nearly half were selected because they received temporary permits. One quarter were facilities that CalRecycle inspectors had not visited before. The remaining quarter 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: transfer stations and material recovery facilities (MRFs); compost facilities; and landfills. However, nearly three-quarters of these inspections were at transfer stations/MRFs. Staffing limitations impacted this category of inspections significantly as CalRecycle conducted only one-fourth as many number of discretionary inspections as it did the previous year.

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



Fifty-two facilities received **Notices of Intent to List** on the Inventory during 2010 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 are a significant increase from 2009 and most previous years 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.

Twenty-seven facilities were listed on the [Inventory of Facilities Violating State Minimum Standards](#) in 2010, and 70 percent of those (19) were for landfill gas violations. Only half of the 52 facilities notified of the intent to list were eventually listed on the Inventory. Changes implemented by the operators generally led to compliance within the 90-day timeframe. By the end of 2010, compliance was even better — the majority of those listed were in compliance, and only 18 facilities remained on the Inventory.

	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

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 2010, 52 solid waste facilities 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.

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) was a major part of the compliance monitoring and enforcement workload in 2010. 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 five percent methane by volume in probes). More than half of all violations during 2010 were related to landfill gas monitoring and control. 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 that LEAs are fulfilling their duties. Staff members apply standards outlined by the statute to ascertain that 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:

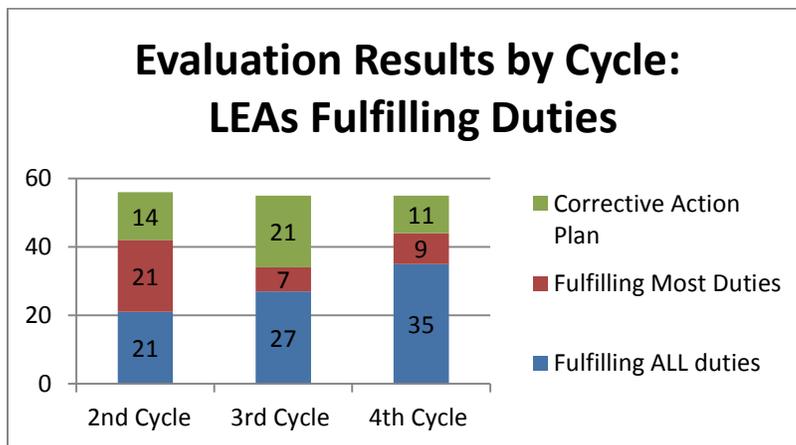
- Failed to exercise due diligence in the inspection of solid waste facilities and disposal sites;
- Intentionally misrepresented the results of inspections;
- Failed to prepare, or cause to be prepared, permits, permit revisions, or closure and post-closure

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 a LEA. However, quality is addressed to a limited extent in the evaluation of the last bullet above to the extent that a 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 shown by the three evaluation cycles. As the graph shows, the number of LEAs fulfilling all of their duties is steadily increasing. In the most recent cycle (4th), 80 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 since 2000. Of those requiring corrective action, the overwhelming majority, or 75 percent, had corrected those deficiencies by the end of 2010. The three LEAs remaining on corrective action at the end of the 2010 were evaluated late in the cycle and are making satisfactory progress toward compliance.



The 4th Cycle ran from 2006-2010. The evaluation process took an additional year due to CalRecycle staff reductions as a result of the state hiring freeze and furloughs. As shown in the chart, 35 LEAs were fulfilling all their responsibilities during the 4th Cycle. Compared to the 3rd Cycle, that represents nearly 30 percent more LEAs (8) fulfilling all of their duties. It is even more significant in comparison to the 2nd Cycle. No LEAs were decertified during this cycle.

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

LEAs that required corrective action work plans decreased by 50 percent from the 3rd Cycle (21 LEAs) to the 4th Cycle (11 LEAs). During the 4th Cycle, 20 percent of the LEAs were on corrective action work plans, compared to 38 percent in the previous cycle. Of those on correction action during the 4th Cycle, the overwhelming majority (eight LEAs) corrected their deficiencies by the end of the cycle.

Local Government Diversion Enforcement

Program Highlights

- Compliance rates for local government diversion program implementation continue to improve. Statistics for 2010 show a compliance rate of 98 percent.
- To ensure consistency in its evaluation and treatment of local governments, CalRecycle updated its enforcement policies to reflect changes in the law to reflect the new, actual per capita disposal measurement system. The original policy was adopted in February 1995, updated in 2001, and updated again in June 2010. The policy is incorporated into statute by reference (PRC Section 41850).

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. Referrals for compliance reviews will be 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 2010 there were 414 local governments subject to these requirements.

Enforcement Activity Data

Compliance Evaluation Reviews

No local governments were referred for a compliance evaluation review in 2010.

Compliance Orders

Eight local governments were on active compliance orders during 2010. However, by the end of the year, only seven remained on compliance (Hawaiian Gardens fulfilled the terms of its compliance order 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. The local governments with active compliance orders at the end of 2010 were: Clearlake, Compton, Downey, Firebaugh, Greenfield, Ridgecrest, and Santa Paula. No penalty hearings were held in 2010. Statistics for 2010 show a compliance rate of 98 percent.

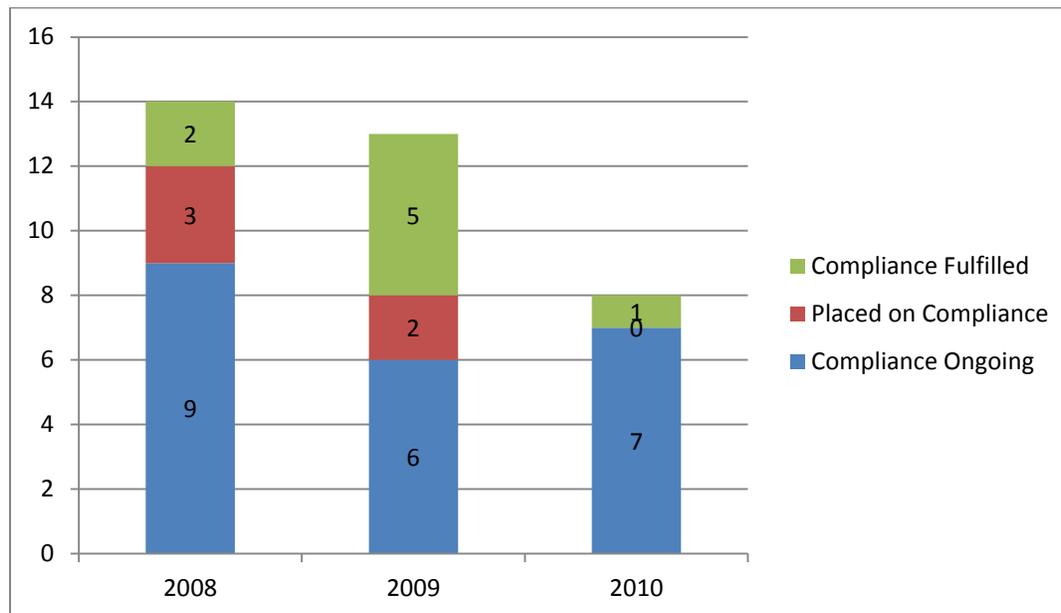
Compliance continues to improve. The total number of local governments under compliance orders during the year decreased significantly in 2010. Compared to local governments on compliance orders during the previous two years — 14 in 2008 and 13 in 2009 — there were only eight in 2010. That represents approximately 40 percent improvement. However, given that there are 414 local government programs, the total number of local governments under compliance orders during the last three years was still relatively small.

In addition to summarizing the number of local governments under compliance orders at some point during the year, the totals can also be reported as a snapshot at the end of the year. At the end of 2008, there were 12 local governments on active compliance orders — that is, they were either placed on compliance during the year or fulfilling the terms of a compliance order from a previous year. That snapshot decreased to eight local governments on compliance orders at the end of 2009 and seven in 2010.

Regardless of what approach is used to report compliance, there was improvement in 2010. The chart below provides more detail regarding the compliance orders for the past three years. 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.

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 2010, there were no penalty hearings as compared to one in each of the previous years. In 2008, Cerritos was subject to a penalty, as was Ridgecrest in 2009.

Minimum Content Program: Rigid Plastic Packaging Container

Program Highlights

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

Program Description

In keeping with the goal to minimize waste and maximize diversion of materials from landfills, CalRecycle programs support market development for recycled materials. CalRecycle regulates product manufacturers that use regulated RPPC to contain products that are sold or offered for sale in California. The law was enacted as part of an effort to increase the demand for postconsumer plastic materials, which would in turn reduce the amount of plastic waste disposed and encourage recyclers to divert more plastic materials that would otherwise go to landfills. California's RPPC law supports new and expanded infrastructures for collecting and reprocessing of plastic resins into containers produced in California and around the world.

Defining What Products Are Included

CalRecycle has direct authority to enforce requirements for recycled content in RPPC. The law applies to manufacturers, producers, and generators of products sold or offered for sale in the state of California in regulated rigid plastic containers as defined by law. When a company's name (or any of its brand names or subsidiaries or affiliates) appears on the container label of such a container, then that company is subject to the requirements of the California RPPC law.

Several types of containers are exempt from the RPPC requirements. These include rigid plastic containers used for shipping:

- Drugs, medical devices, cosmetics, food, medical food, or infant formula as defined by the Federal Food, Drug, and Cosmetic Act;
- Toxic or hazardous products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act; and
- Hazardous materials that are prohibited by federal law from being manufactured with "used material" (postconsumer resin) by federal packaging material specifications, or are subject to specified federal testing standards, or to which recommendations of the United Nations on the transport of dangerous goods are applicable.

Compliance Options Promote Collection and Reprocessing

The law is enforced through a compliance certification process for regulated companies. Compliance can be achieved in several ways, with each option promoting particular goals. Some compliance options were designed to encourage source reduction (waste prevention), recycling, and reuse/refilling of rigid plastic containers. The recycling compliance option promotes the use of more postconsumer resin in the manufacturing process for RPPCs, and reduces the amount of virgin resin required.

During the certification process, 100 companies are selected each year from a pool of known companies that produce or generate covered RPPC products. They are required to submit forms containing data required by statute and regulations. 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.

The RPPC law supports California's recycling infrastructure and supports greater collection and reprocessing of plastic resins to increase the amount of recycled content in new plastic containers.

Enforcement Activity: Clarifying Regulations

No enforcement actions were taken during 2010 as the RPPC regulations were being revised. Due to the regulatory revision process, 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 is scheduled to begin in February 2011.

Beverage Container Recycling Enforcement and Fraud Prevention

Program Highlights

- Confronted with increasing numbers of individuals importing used beverage containers into California to illegally redeem them for California Redemption Value (CRV), CalRecycle strengthened its partnership with the California Department of Justice (DOJ) and the state Attorney General's Office (AG) to identify, investigate, arrest, and prosecute individuals and entities engaged in fraudulent activities. As a result, several arrests were made that prevented significant ongoing losses to the program.
- After three years in development, CalRecycle launched the DORIIS in late July. This extensive computerized system was designed to convert multiple and disparate systems into a single reporting system. It integrates the management and tracking of revenue collection and distribution processes in near real time. DORIIS also provides case management for all enforcement-related work.
- CalRecycle also inspected approximately 12,500 recycler loads delivered to processors for reimbursement in 2010. Payment reductions and denials associated with inaccurate or fraudulent claims resulted in a net savings of \$865,799.

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 million beverage containers each day in 2010. The network of regulated businesses that make this possible include:

- Beverage Manufacturers 1,435
- Distributors 1,722
- Certified Recycling Centers 2,464
- Retailer Beverage Dealers 29,506
- Processors 214

Enforcement Focus on Fraud Prevention

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. Enforcement is based on information gathered through a combination of audits, inspections and investigations:

- Probationary review of recycling centers;
- Annual inspections of recycling centers;
- 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, DORIIS is an essential tool. This near "real time" system substantially enhanced functionality to integrate various data and tracking systems and support beverage container recycling enforcement efforts. Baseline data in DORIIS includes approximately 60,000 cases and 500,000 interactions with participants.

CalRecycle also works with other state agencies including the DOJ and the state Attorney General's Office. 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.

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 612 probationary certificates during 2010. Based upon a standard risk assessment, staff determine if a compliance history/file review is sufficient or if a site visit is warranted.

- **Compliance History/File Review (354):** The majority of these recycling centers, 155 (43.8 percent) passed probation, 112 (31.6 percent) had their probationary certificates extended for another year, and the remaining 87 (24.6 percent) had no action taken because the centers had been decertified, abandoned, were subject to ongoing investigations, or were not recycling centers (i.e., processors, curbside programs, collection programs, or community service programs).
- **On-Site Review (258):** For the 258 recycling centers that were deemed high-risk and warranted an on-site review, 134 (51.9 percent) passed probation, 119 (46.2 percent) had their probationary certificates extended for another year, and five (1.9 percent) had their probationary certificates revoked. As a result of these site reviews, auditors assessed \$303,140 in restitution, civil penalties, and/or interest.

CalRecycle denied five applications for certification during 2010. These applications were denied as the applicants had a history of program noncompliance/violations, or were associated with individuals or operators with such a history.

Recycling Center Inspections

Annual inspections are conducted at every certified recycling center to ensure compliance with program requirements. Each 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 that support consumer convenience. If the program participant is out of compliance, the inspector issues a Notice of Noncompliance (NON). If the infraction is not corrected, a Notice of Violation (NOV) is issued. In areas where there is no certified recycling center, retail beverage dealers serve as the recycling center and are also inspected to ensure compliance with signage and product labeling requirements.

Facility Type	Total Inspections	NON	NOV
Recycling Center	2,476	777	245
Retail Beverage Dealers	2,497	243	59

Processor Load Inspections

CalRecycle inspected approximately 12,500 recycler loads as part of the recycler inspection program. In contrast to the inspections of consumer loads described above, these inspectors are reviewing loads delivered to processors to verify eligibility for reimbursement. As a result, 70 claims were reduced due to inaccuracy or excessive ineligible containers in the load. Another 56 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 \$865,799.

In addition, inspection findings can lead to further investigations such as at Paper Rush Recycling and Recycle Today Recycling. Those two recycling centers were suspended, preventing an estimated potential loss of at least \$1 million. CalRecycle investigations also resulted in revoking the certification of 15 recycling centers/retail beverage dealers and four accusations, and \$207,801 was assessed in restitution, penalties, and/or interest as a result of these investigations.

Risk Assessment and Data Analysis

Risk assessment and data analysis identify “at risk behavior” of suspected participants for further investigation or review by CalRecycle or DOJ agents. Given that approximately 1,500 shipping reports valued at \$1.5million 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

Investigations are conducted to prevent and recover unsubstantiated and/or illegal payments. Although most investigations are initiated as a result of risk analysis or inspections described earlier in the report, a significant number are initiated from hotline or email tips.

When recyclers are investigated, records are reviewed to determine if documents have been falsified, if reimbursement claims are accurately and completely supported by source purchase documents, or if fraudulent claims have been made. Findings can result in administrative civil penalties, restitution, and/or revocation of the recycler’s certification.

As noted earlier, CalRecycle does not have statutory authority to conduct criminal investigations or to criminally prosecute. When CalRecycle investigations reveal potential criminal activity, referrals are made to DOJ for further investigation and subsequent prosecution, if warranted, by the state Attorney General’s Office.

DOJ, working closely with and based upon referrals from CalRecycle, shut down three high-volume recycling fraud rings that imported out-of-state material from Arizona and Nevada to illegally claim refunds. The 31 people arrested in connection with these activities are estimated to have defrauded the state of more than \$3.5 million.

Similarly, in October, the owner and two employees of Perris Valley Recycling were arrested on recycling fraud, grand theft, and conspiracy charges. Investigators estimated they imported 4.4 million pounds of aluminum cans from Arizona, resulting in illegal claims of as much as \$7 million. Prosecution of the individuals involved is pending.

Electronic Waste Enforcement

Program Highlights

- In 2010, 193,538,088 pounds of covered e-waste were claimed for reimbursement.

- Reductions in payment claims decreased significantly as more recyclers submitted properly documented claims. The total reduction due to non-compliant or significantly inconsistent documentation was only two percent in 2010. This compares to a high of 12 percent in 2009.

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

Due to the hazardous characteristics of electronic waste, program administration and enforcement is shared between CalRecycle and the Department of Toxic Substances Control (DTSC). CalRecycle works closely with DTSC on the material handling compliance and enforcement portion of the program. The departments currently have an MOU that delineates fraud investigation responsibilities.

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.

The Board of Equalization ensures 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. 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.

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 2010, there were approximately 560 approved collectors and 55 approved recyclers. 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 2010, 193,538,088 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 adjustment decreased significantly in 2010 compared to 2009. Although more than half of the 251 payment claims submitted in 2010 incurred some degree of payment adjustment, this resulted in only a two percent reduction in the total 2010 payment amount claimed. This represents a compliance rate of 98 percent for total dollars claimed. This is a significant improvement compared to 2009 when approximately 12 percent of all total dollars claimed were denied.

- Total Dollars Claimed in 2010: \$75,479,024
- Total Dollars Paid in 2010: \$74,020,446

Revocations and Suspensions

In 2010, 121 certifications for collectors and recyclers were revoked. Nearly all of those (119) were for failure to submit the annually required Net Cost Report. Two were revoked 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.

Five participants were suspended 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. This was the case with four of the suspensions; in the fifth, the party remains under indefinite suspension pending the outcome of a fraud indictment.

IV. 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 2011 program adjustments based on previous successes include:

Waste Tire Inspections: Budget and staffing challenges at both the state and local level within the tire program resulted in a growing backlog of never-inspected tire businesses in California. In late 2010, CalRecycle redirected staff positions to carry out tire inspection and enforcement work. New tire enforcement and tire hauler staff completed comprehensive training and are now focused on decreasing the number of never-inspected sites. To most cost-effectively inspect those sites, CalRecycle inspection teams will target counties without a local TEA.

Waste Tire Facility Enforcement Rulemaking: CalRecycle proposes to revise regulations to expand the streamlined penalty program to include tire facility violations and clarify enforcement penalty criteria. Two workshops were held during 2010 to set the stage for informal rulemaking.

Waste Tire Storage, Disposal, and Permitting Rulemaking: Existing waste tire storage and disposal standards are not consistent with the State Fire Marshal's new fire regulations (effective Jan. 1, 2011). CalRecycle began informal rulemaking to clarify applicable standards to comply with the new fire code provisions and proposed consistent, enforceable tire regulation changes. Key proposed changes would allow for five-year permit reviews and exempt common carriers that deliver waste tires to port terminals from maintaining manifest forms.

Landfill Gas Monitoring: Emphasis in 2011 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 Informal Rulemaking: Stakeholder workshops to clarify issues and discuss potential changes to composting regulations will begin in 2011. The topics currently being discussed include some related to violations observed during 2010, particularly odor complaint reporting.

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 Formal Rulemaking: The formal rulemaking begins in February 2011. Revisions are proposed to improve the effective and efficient implementation of the law.

Beverage Container Formal Rulemaking: CalRecycle will pursue potential regulatory changes to the daily consumer transaction load limits and development of implementing regulations related to the importation of used beverage containers into California.

Partnerships for Criminal Prosecution and Border Control: CalRecycle will renew interagency agreements with DOJ and the state Attorney General's Office to conduct criminal investigations and prosecutions, particularly related to materials imported from neighboring states. In addition, CalRecycle will pursue a new agreement with the California Department of Food and Agriculture to survey, monitor,

and report individuals and/or vehicles that are importing used beverage containers through Border Protection Stations.

Refining Beverage Container Data Analysis to Detect Fraudulent Claims: CalRecycle will initiate a contract for building a statistical model(s) to 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). The patterns identified will be used to identify candidates for administrative review.

Refining E-Waste Data Analysis and Fraud Investigation: CalRecycle staff will focus on expanding online reporting and documentation capabilities in 2011, allowing for more real-time monitoring of activity within the industry, and enhancing early intervention to prevent small problems from becoming a compliance crisis. Additionally, CalRecycle will seek to transition resources currently allocated to DTSC to bolster its fraud detection, investigation, and prosecution efforts. This will allow DTSC to focus on fundamental material handling compliance matters through their on-site inspections.

LIST OF ACRONYMS

Acronym	Full Name
AG	Attorney General’s Office
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