

These materials were developed under the auspices of CalRecycle for specific technical training presentations and are posted as reference documents for the local government and CalRecycle staff who attended this technical training series. They are not intended to stand alone as informational or training materials.

If you require assistance in obtaining access to this presentation, call the Public Affairs Office at (916) 341-6300 or Glenn Young at (916) 341-6694.

# CIA Enforcement FAQs

## Solid Waste Enforcement Section

Georgianne Turner, Manager

916-341-6429

[Georgianne.turner@calrecycle.ca.gov](mailto:Georgianne.turner@calrecycle.ca.gov)



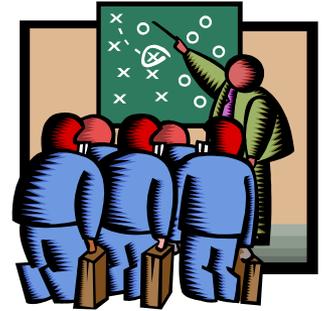
Zane Poulson, Supervisor

[Zane.Poulson@CalRecycle.ca.gov](mailto:Zane.Poulson@CalRecycle.ca.gov)

916-341-6337

# Enforcement Process for CIA Sites

## Develop and Follow Your Enforcement Program Plan



### ➤ What should be in the EPP?

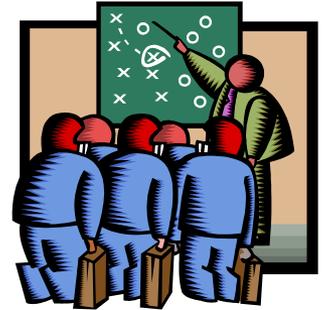
- Enforcement Steps
- CIA Inspection Program or Refer to CalRecycle's Guidance  
<http://www.calrecycle.ca.gov/SVFacilities/CIA/>

### ➤ Items to consider in setting priorities and developing an EPP: Prioritize violations/enforcement:

- Threat to PH&S
- Compliance with SMS
- Sensitive receptors or frequent public access
- Encroaching development
- Based on physical evidence, Phase I or good facility record – i.e. we know the type and extent of waste

# Enforcement Process for CIA Sites

Develop and Follow  
Your Enforcement Program Plan



## Is the Site an Illegal Site?

**Yes - Take Immediate Enforcement**

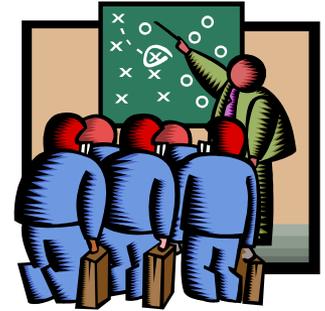
### ➤ **Cease and Desist N&O**

- Required for operating w/o a SWFP or proper authorization
  - PRC 44002, 14 CCR 18304.3

**No - Follow a Phased Approach**

# Enforcement Process for CIA Sites

## Develop and Follow Your Enforcement Program Plan



### Is there a significant public health and safety threat?

#### **Yes - Take Immediate Enforcement**

- Go to Stage 3 and 4, depending on nature of violation
  - e.g. explosive levels of LFG found in residential structures

#### **No - Follow a Phased Approach**

Increasing Enforcement when Little or No Progress

- **Stage I – Prerequisites to Enforcement Efforts:**
  - Inspection Reports - clearly note violation(s)

# Enforcement Process for CIA Sites

## ➤ Stage 2: (Notice without Consequence)

### **Goal:**

Achieve Voluntary Compliance

Explain Requirements

Assess Realistic Compliance Timelines

### ➤ Notice of Violation

- Clearly note Violation and Expectations

### ➤ Office / Compliance Meeting with RPs

- This is required prior to N&O

# Enforcement Process for CIA Sites

## ➤ Stage 3: (Notice with Consequence)

### Is the Operator Making Progress?

#### ➤ No - Issue Notice and Order

- According to EPP, PRC 45000 et. seq. and 14 CCR 18304.
  - Type of Order
    - Compliance Order, Corrective Action, Cease and Desist
  - Notice Options (Consequences)
    - Corrective Action, Penalties, Injunction

#### ➤ Yes - This may be Enough

- **Documented** on inspection reports or other means

# Enforcement Process for CIA Sites

## Stage 4: (Consequence)

### Is the Operator Making Progress?

- No - Enforce Notice and Order
  - Corrective Action
  - Penalties
  - Injunction
  
- Yes - This may be Enough
  - **Documented** progress on inspection reports, etc.
  - But the N&O is out of date?

# When should I issue a Notice and Order for a violation?

- Immediately if significant PH&S threat
- Otherwise:
  - Only after a written request is not complied
  - Only after you have had a compliance meeting
    - If requested
  - Operator is not making “timely” progress toward compliance

# What's Timely Progress

- EA is required to take appropriate enforcement.
  - *(14 CCR 18081 (c), 18084, 18350)*
- Considerations for “appropriate enforcement” are described in regulation *(14 CCR 18350)*
- Two “criteria” must be used by DRRR when considering “appropriate enforcement” *(14 CCR 18084 (d))*

# Timely Progress

## ➤ Criteria I Considerations:

Is the **operator making *timely* progress** toward compliance?

- Is the operator currently under a CS or N&O?
- Is there **information supporting deadline extensions**?
- Has the operator made a **good faith effort**?
- Is the delay in compliance been caused **by extenuating circumstances** outside the operator's and LEA's control
- Is it a **landfill gas migration violation**, where problem is of larger magnitude than expected?

# Timely Progress

## ➤ Criteria 2 Considerations:

- If the EA is **increasing** its enforcement response by **taking additional action** pursuant to **its EPP** and, if applicable, a previously issued N&O, then the EA is considered to be taking appropriate action.
- If the EA is not increasing its enforcement response by taking additional action, then the EA is not considered to be taking appropriate action.

# What Type of Notice and Order ?

## Notice & Orders Options

### Order Options

Must order o/o to do one of the following actions:

#### **Corrective Action**

*PRC 45000*

#### **Cease and Desist**

*PRC 45005*

#### **Compliance Order**

*PRC 45011*

### Noticing Options

Failure to comply with order may result in one or more of the following:

**Corrective Action** *PRC 45000*

**Administrative Civil Penalties** *(PRC 45011)*

Petition superior court for **Civil Penalties.** *(PRC 45023-24)*

Petition superior court for an **Injunction.** *(PRC 45014)*

**Suspending or Revoking the Permit.** *(PRC 44305-06)*

# What type of Notice and Order should I issue?

- **Cease and Desist Order:**
  - Requires immediate action
  - Situation which threatens to cause a hazard pollution or nuisance.
  
- **A Compliance Order**
  - Establishes a schedule for compliance
  - For any PRC, Div 30, Part 4 or 14 CCR and 27 CCR violation
  - For any corrective action order or cease and desist order

# What type of Notice and Order should I issue?

## **Corrective Action Order *PRC 45000***

- Requires o/o to take corrective action or LEA can
  - EA may contract for the corrective action
  - O/O is responsible to reimburse the EA
- Must create a hazard, pollution or nuisance
- For State Managed Cleanup, Reference:
  - PRC 48023 (Cost Recovery)
  - PRC 48023.5 (Ability to lien property)

# What Evidence do I need to Justify Enforcement Actions?

- Depends on the situation and severity of the violation
  - More or less detailed information may be necessary.
- Routine Evidence
  - Notification of the code section(s) in violation,
  - Description of the violation(s)
  - Photographic evidence
  - Inspections
  - Investigation documents
  - Sampling results, i.e. LFG results
  - Declaration(s)

# What Evidence do I need to Justify Enforcement Actions?

## ❑ WHO

- ❑ from (the EA)

- ❑ to (the Operator/Owner)

## ❑ WHERE:

 Site description and o/o addresses

## ❑ WHEN:

 Dates violation(s) occurred

## ❑ HOW:

 Authority

## ❑ WHY:

 Violation description, and citation

- ❑ (statutes, regulations or terms and conditions)

## ❑ WHAT TO DO: **THE ORDER**

- ❑ Compliance Order with milestones, C&D or CAO.

## ❑ CONSEQUENCES: **THE NOTICE** - The Penalty

## ❑ RIGHTS:

 Notice of Right to Appeal and Request for Stay

- ❑ Date and signature

- ❑ Declaration

- ❑ If stipulated notice and order, operator and LEA signatures

# What Evidence do I need to Justify Enforcement Actions?

## Notice and Order Process

- ❑ **10 days before**, notice other Agencies (*PRC 45019*)
- ❑ **Within 5 days** of issuance serve o/o: (*14 CCR 18304 (d)*)
  - ❑ Send certified mail for permitted, or authorized sites
  - ❑ **Post on property and send, for non-permitted sites**
  - ❑ Send to DRRR
- ❑ **Order is Final** (*CCR 18304.2*)
  - ❑ 15 days after receipt
  - ❑ After final decision on a request for hearing
- ❑ **Notice to DRRR on status** (*PRC 18304.4 and CCR 18304.5*)
  - ❑ **5 Days After Action Taken to Enforce Order**
  - ❑ **30 Days After Final Compliance Deadline or Expiration**
    - ❑ Compliance with order: Completed, or extended, or enforced
    - ❑ Justification of determination
    - ❑ May use inspection report as DRRR Notification

# Enforcing Against Property Owner(s)

- Current Solid Waste Regulations and Statutes
  - specify the current **property owner as the responsible party**
  - only the current owner and/or operator is subject to enforcement action under Statute
- If responsible party (RP) is unable or unwilling to correct a violation, the CalRecycle Cleanup Programs has statutory authority to pursue cost recovery from **past owners and operators.**

# How do I Enforce Against Multiple Property Owners?

- If a former landfill or disposal site is subdivided and has multiple owners
  - A **single N&O should be issued** by the LEA
  - N&O should **address all property owners.**
  
- Helpful Hints
  - Meet as a group
  - Use carrot of Board Managed Investigations to develop a Workplan and Cost Estimate
    - Cost Estimates can help RPs attorney to recover costs through civil lawsuit
  - Use Workplan to develop a Compliance Schedule N&O