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ADMINISTRATIVE CIVIL PENALTIES

One LEA's challenge



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The challenge

- Lack of experience or training in using administrative civil penalties.
 - Compliance through inspection program and Notice and Orders.
 - Our LEA has not had training in administrative or criminal enforcement.
 - Currently, there are no examples of administrative or criminal enforcement on the CIWMB website.
- Lack of CIWMB approved procedure in place.

What is known?

- CIWMB Enforcement Advisory dated March 12, 1997.
- Public Resource Code (PRC), Part 5
 - Chapter 1 Administrative Enforcement
 - Article 1 Corrective Action Orders
 - Article 2 Cease and Desist Orders
 - Article 3 Civil Penalties
 - Chapter 2 Criminal Enforcement (AB 2679)

What's the big deal, other LEAs have done it!

- Sink or Swim, Trial and Error
 - It can be done
- Experience helps build a procedure
 - Develops lessons learned
 - Develops case studies
- Knowledge and experience from other LEAs
 - Another learning tool
- Still some ambiguity and potential challenges

What is unclear?

- Steps required under new regulations to impose civil penalties.
- How to use a penalty matrix?
- When should penalties start accruing?
- How is the civil penalty applied based on the type of site (i.e. existing landfill, CIA, transfer station) or type of State Minimum Standard?

“What’s unclear?”

(continued)

- Are the penalty calculations shown to the operator and if so, at what point?
- PRC, section 45016, which focuses on intent, attitudes, and issues that are subjective and hard to evaluate.

Our belief

- Without an updated guidance document, LEA findings are subject to challenges based on:
 - Issues of fairness
 - Arbitrariness, or
 - Abuse of discretion
- With an updated guidance document,
 - Promotes consistency with all LEAs
 - Lowers chance for appeals or losing an appeal
 - Defensible in hearings or court

Possible solutions

- LEAs need clarification and legal guidance to implement civil and criminal enforcement process
 - CIWMB Training
- CIWMB Enforcement Advisory
 - 80% complete; needs updating
- LEAs using Civil Penalties
 - Share what works & what needs improvement
 - CIWMB/EAC form a workgroup to produce a guidance document.

Possible results

- Spark discussion of issue
- New Enforcement Advisory
 - Additional Enforcement tool
 - Reducing the chance of appeals/challenges
 - Provide consistency throughout the State
- Regulations similar to CUPA model.



The End

Thank you