Session 5A: Enforcement

- THE WHAT, WHO, WHY, WHEN, AND HOW’S
  - Scenarios
  - Resources

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Learning Objectives

- You have the power!
- Action vs Order
- Types of Orders
- Types of Notices
- Putting Ideas into Practice
- 😊
Authority

EA has authority to Issue a Notice and Order:
- Violation of any regulations adopted per PRC, Div 30
- Violation of any terms or conditions of permit
- Causes or threatens to cause condition of hazard or pollution
- Poses a potential or actual threat to PHS&E
- Also applies to notification tier and when not on Inventory

14 CCR 18304, PRC 45000 et seq
What is “Appropriate Enforcement Action”?

- LEA Duties and Responsibilities for Enforcement (14 CCR 18084)
- Enforcement Program Plan (EPP)

14 CCR § 18084
Enforcement Action vs Order

**Action**
- Goal is to achieve compliance voluntarily
- Writing violations on inspection report
- Notice of Violations
- Compliance Meetings
- Compliance Schedule

**Order**
- All elements in 14 CCR 18304 (N&O Checklist)
- Orders
- Penalties (Fines & Corrective Actions)
- Operator can appeal
Enforcement Action vs Order

- Examples of Actions
  - NOVs
  - Compliance Schedules
  - Enforcement Meeting
  - NOIs & Inventory Listing

- Examples of Orders
  - Corrective Action Order
  - Cease and Desist Order
  - Compliance Order

Don’t wait on CalRecycle’s Inventory to carry out Enforcement Actions, you have the authority regardless of Inventory status
Enforcement Actions & Orders

Enforcement “Actions”

Compliance Schedules (compliance milestones)

Enforcement “Orders” AKA “Notice & Orders”

Penalties
Types of Orders

Must order the owner AND the operator to do one or more of the following:

- Corrective Action – PRC 45000
- Cease and Desist -- PRC 45005
- Compliance Order – PRC 45011
Now for Noticing…

**Requirements**

**Prior to issuing a N&O the EA must:**

- Notify operator of the violation
  - Inspection Reports, NOV, etc.
- Hold a compliance meeting, if requested
  - *Strongly recommended*
  - To clarify regulatory requirements
  - To determine what actions the operator may voluntarily take to bring the facility into compliance by the earliest feasible date

PRC 45010.2
Why is it Called Notice and Order?

► “Operator is ordered to comply by (date)”
► LEA required to give notice of the authority, penalties, and appeals process
Failure to comply with order may result in one or more of the following:

- Corrective Action – PRC 45000
- Administrative Civil Penalties – PRC 45001
- Petition the superior court for Civil Penalties – PRC 45023-24
- Petition superior court for an injunction – PRC 45014
- Suspending or Revoking the Permit – PRC 44305-06
## Enforcement Actions

### Types of Notice & Orders

### Order Options

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

<table>
<thead>
<tr>
<th>Corrective Action</th>
<th>PRC 45000</th>
</tr>
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<tr>
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### Noticing Options

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

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The Checklist for Writing Enforcement Actions

- **WHO**
  - from (the EA)
  - to (the Operator/Owner)

- **WHERE**: Site description and o/o addresses *(PRC 18304)*

- **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 (§ 44307, 45030, 45002

  - Date and signature
  - Declaration
  - If stipulated notice and order, operator and LEA signatures
Inventory

- Permitted Facility with two or more consecutive State Minimum Standard Violations
  - Notice of Intent (NOI) to list a site on the Inventory

- After 90 days of issuance of NOI, site is listed on the Inventory

- What are the LEA's requirements?
Requirements When a Facility is Listed on the Inventory

- **Initial Requirements**
  - Compliance Schedule within 15 days
  - Cc CalRecycle within 5 days of issuance

- **Compliance Schedules**
  - Milestones
  - Maybe included in Notice & Order
  - Shall ensure diligent progress is made – PRC 44106

- **Compliance Date Requirements**
  - Final compliance date must be within 1 year from Inventory Inclusion
  - Or 2yr compliance date after notifying CalRecycle
  - Additional year(s) beyond requires CalRecycle approval

14 CCR 18360 et seq
Questions?
Wait... now I’m overwhelmed...

How does this work in real life?
Big Group 1

- Landfill Gas
  - Five consecutive violations for methane levels over 5%
  - Facility is in a rural area, no homes for over a mile
  - CalRecycle added site to Inventory
  - Wells are too close to waste stream
  - Operator wants to move monitoring probe network beyond current permitted boundary
Discussion 1

**Scenario Question:**

1. What are the EA’s next steps?
   - Inventory listing (NOI was sent out after the 2nd violation)
   - Notice and Order
   - Compliance Schedule

2. What type Order would you issue? Corrective Action, Cease and Desist, or Compliance Order?
   - Compliance Order

3. What compliance milestones would you add?
   - Submittal of LFG remediation plan
   - Purchase land (?), Revise permit
   - Quarterly progress updates
   - Etc.
Discussion 1 Continued

4. What factors would you consider to determine what “timely compliance” is in this case?
   - Status reports
   - Downward trend in methane levels
   - Permit applications (think Air District permits, ATC, other regulatory delays, etc)

5. If the operator was requesting a deadline extension, what kind of information would you seek to determine good faith effort?
   - Are they making steps in the right direction?
   - Are they communicating progress?

6. Could there be any legitimate extenuating circumstances?
   - Acts of God (Fire, Flood, etc), Weather
   - Additional time to obtain permit approvals (operator submitted application)
   - Other ideas?
Big Group 2

- “Recycling Facility” operating without a Solid Waste Permit
  - Failed 3 part test
  - Facility refuses to cease operations (too expensive/where will this material go?/County needs diversion credits)
- Cite Violation
- On the next inspection, the facility is still operational
1. What are the EA’s next steps?
   - Cite 44002 “Operating without a Permit…”
   - N&O, C&D, Compliance Meetings with the operator, penalties
   - Because the facility is operating without a permit, a C&D must be issued

2. What factors would you consider to determine what “timely compliance” is in this cases?
   - Not a timely compliance issue. The facility simply needs a permit or cease operations as a solid waste facility
3. If the operator was requesting a deadline extension, what kinds of information would you seek to determine good faith effort?
   - Ceased accepting material?
   - Status updates
   - Operators actions to get a permit
4. Could there be any legitimate extenuating circumstances?
   - No
5. What can the LEA do?
   - Cease and Desist Order
Enforcement Process

“Enforcement Orders”

“Enforcement Action”

Report Writing and Documentation

NOTICE AND ORDER

NOTICE OF VIOLATION (OPTIONAL)

COMPLIANCE SCHEDULE (OPTIONAL)

PENALTY

VIOLATION

AREA OF CONCERN

NOTE/COMMENT

INSPECTION
ENFORCEMENT: BABY STEPS OR HAMMERS?

Inspection

Area of Concern

Note/Comment

Violating a SMS, Urgent, or Threat to Public Health and Safety or Environment

Violation

Compliance Schedule (Optional)

Notice of Violation (Optional)

Notice and Order

Penalty

Consecutive Violations, Illegal (unpermitted), or Imminent threat to PH&S or E
When/Why Take Enforcement Action?

“Appropriate Enforcement Action”

Is the operator making “timely progress” toward compliance (see PRC 45016)?

- CalRecycle must consider:
  - Is the operator currently under a Compliance Schedule or Notice & Order?
  - 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?
Break!

- Real-life scenarios when we get back!
Transition Slide

- Handouts
- Break into groups (5-6 per group)
Small Group 1: Compost Leachate

- Notification Permit
- Quarterly Inspection Reports note leachate running offsite
- No previous violations
- Operator insists that the problem will be fixed by the weekend
  - What are the steps you, as the LEA, would take? Are there any other agencies that should be notified of the issue?
    - Notify the RWQCB
    - Cite violation it may come in contact with public and flows uncontrolled offsite (aka on street, etc)
      - 17867(a)(13) - Leachate Control
      - Focused inspection, aka increase inspection frequency to check compliance
      - Go out monthly or more
Focused inspection Monday – Still leachate

Operator insists the leachate will be addressed by the end of the month

Next steps?

NOV

Compliance Meeting/Schedule

Can this site be placed on the Inventory?

No. Notification tier
Small Group 1 continued... again

- What if it was running off site to a dog park with families and puppies?
- Imminent threat to PH&S
- Notice and Order
Small Group 2: Landfill Litter

- Extremely windy area
- Three violations noted on the last 3 monthly inspections for 27CCR 17408.1– Litter Control, for offsite migration of litter
- The site has implemented a new litter control program including new litter fences and a full time litter crew. Operator provides LEA with photos of cleaned areas of site.
  - What are the next steps?
    - Violation
  - Can the site be put on CalRecycle’s Inventory? Why or Why not?
    - No. Only after three consecutive violations (90 days) after the NOI was sent.
On your 5th monthly inspection with no improvement with the off-site litter, operator suggests buying a new vacuum truck

Violation continued

CalRecycle sends out Inventory Inclusion letter

Once the site is on the Inventory, what are the LEA’s next step?

Compliance Schedule issued

What types of milestones can you use, based on the information provided, in your compliance schedule?

Operator provides evidence that vacuum was purchased

Litter amount decreases

Other measures
Small Group 3: Landfill Cover

- Six violations noted on the last 9 monthly inspections for Alternative Daily Cover for ripped tarps
- Violations have not been consecutive (not on Inventory) because operator covers with soil occasionally
- Operator states coyotes are the cause
- Violations cited but operator is not making progress toward replacing tarps; operator has continued to use the ripped tarps
- Operator is poorly funded and has a history of putting off expensive changes
Small Group 3 continued

- Can the site be put on CalRecycle’s Inventory? Why or Why not?
  - No
  - Not consecutive
- What are the LEA’s next steps?
  - NOV
  - Compliance meeting with the operator regarding the NOV
- Write a Compliance Schedule for the facility including possible milestones (see template)
  - Milestones?
    - Getting bids for tarp repair
    - Ordering tarp repair material
    - Ordering tarps
    - Vector “control” measures
September 6, 2011

Subject: Landfill, Facility Number, Gas Migration Violation and Compliance Schedule

Dear Mr. ___________

Environmental Health Services as the Local Enforcement Agency (LEA) approved the Revised Landfill Gas Remediation Plan on February 11, 2011 (prepared by ____________). The plan was prepared in response to the discovery of explosive levels of landfill gas encountered at gas monitoring probe GMP-11R.

The LEA identified elevated levels of methane in GMP-11R during the routine monthly inspection of the facility on January 21, 2011. The inspection report completed that date documented a violation of California Code of Regulations (CCR) Section 20521, for landfill gas migration. Such elevated gas levels have recurred monthly up to the present, and have been documented accordingly in subsequent monthly inspection reports. Phase 1A of the approved Gas Remediation Plan ended on September 1, 2011. Because the methane concentrations remained above the regulatory limit during the assessment period of Phase 1A the Remediation Plan will now move into Phase 1B.

The proposed work schedule for Phase 1B and Phase 2 of the Gas Remediation Plan was prepared by ___________ on behalf of the City of ________ and was submitted to the LEA on September 1, 2011. The LEA has reviewed the proposed work schedule and find the work schedule to acceptable.

Compliance Schedule:

According to the time line provided, necessary deliverables are scheduled as follows:

- Phase 1B: Install GMP-21R and GMP-22R ………………………September 19, 2011
- Phase 1B: Monthly monitoring GMP-21R and GMP-22R …………… Through April 1, 2012
- Note: If the above gas monitoring results do not provide two consecutive results below regulatory limits then the Remediation Plan will move into Phase 2.
- Phase 2: Design and approval of a Landfill Gas Control System…………April 1, 2013
- Note: Pursuant to Title 14, California Code of Regulations, Section 13365(b), if the final compliance date involves an extension which is greater than two years from the date of the inclusion letter, an approval must be granted by the CalRecycle executive director.

Please continue to keep the LEA informed regarding the status of success in completing each task necessary to abate the ongoing gas migration violation. Your ongoing cooperation has been appreciated.

Regarding the abandonment of the inactive gas monitoring wells GMP-15R and GMP-17R, the LEA does not object to the abandonment of these inactive wells. It is noted that this work is planned to take place concurrent with the well construction work on September 19, 2011.

Sincerely,

Senior Environmental Health Specialist
County Environmental Health Services
Despite issuing a Compliance Schedule, the operator is not making progress and continues to use damaged tarps.

What are the LEAs next steps?

- Good faith effort?
  - No
- Therefore, go directly to Notice and Order
Small Group 4: Transfer Station Removal Frequency

- Site appears to not have a consistent removal frequency, and not removing material within 48 hrs
- 2 consecutive months with some material not removed
- What is the next step?
  - Violation – 17410.1 Solid Waste Removal
- 3rd month material still not removed – market conditions
- What is the next step?
  - Violation
- Inventory?
  - Yes. Consecutive violation for facility
- How many days to write Compliance Schedule?
  - 15 days
Next inspection: More material has piled up (because markets unfavorable, equipment breaking down, etc)

Complaints from neighbors

Has the operator shown a good faith effort?
  - No.

What are the next steps?
  - Notice and Order, Cease and Desist
  - Penalties
LEA determined that unprocessed C&D wood pile has not been processed since their monthly inspection two months ago.

How can you tell the pile is over 30 days old?
- Business Card? Photos? Distinctive material?

What action(s) should the LEA take?
- Violation
  - Unprocessed material is onsite over 30 days

What type of enforcement action(s) must the LEA take?
- Cease and Desist Order
- Unlawful disposal
Small Group 5 continued

- On next inspection, new unprocessed material has been received on site, and all of the “old” unprocessed material has been removed.
  - Has the operator complied with the Order?
    - Yes. ..... Compliance! Yay!
  - What would you write on the inspection report?
    - Inspection report would note compliance with the Order
On next inspection, new unprocessed material has been received on site, and all of the “old” unprocessed material has been removed.

How would you handle the Order?

30 days after final compliance deadline or expiration notify CalRecyle (14CCR 18304.4)

Report compliance with the order, or not, by noting “the order is “completed”, “extended” or “enforced””

...On inspection report or separate correspondence

Include a justification of the determination

How could you ensure operator maintains compliance?

Final compliance date of Order a few months after last milestone.

Other?
Thank you!