Integrated Waste Management Board
State Oversight Role Procedures
2/26/97

INTRODUCTION

The LEA is responsible for enforcement within its jurisdiction regarding solid waste handling and disposal, pursuant to Division 30, Public Resources Code (PRC), § 43209, and Title 14, California Code of Regulations (CCR), § 18081(c) and § 18084. These provisions require the LEA to, among other things, enforce the following:

- Applicable provisions of Division 30, Part 4 of the PRC
- Regulations adopted under Part 4, including 14 CCR, Chapter 3 - State Minimum Standards for Solid Waste Handling and Disposal (SMS), applicable sections of Chapter 5 - Administration of Solid Waste Facility Permits, and any local standards
- Solid waste facility permit (SWFP) terms and conditions

Whenever an LEA identifies permit or SMS violations at a facility, the LEA must take appropriate enforcement action. 14 CCR § 18081(c) requires all facilities and disposal sites within an LEA's jurisdiction to:

- Be in compliance with SMS and the terms and conditions of the SWFP; and
- Be permitted or exempted; or
- Be under appropriate enforcement action(s) pursuant to 14 CCR § 18084 to remedy the violations.

Furthermore, it is the policy of the Board to ensure that LEAs enforce SMS and SWFP terms and conditions consistently and equitably among public and private facilities. Various enforcement options are available to LEAs and are described in Division 30, Parts 4 and 5 of the PRC and 14 CCR, Chapter 5, Article 4. These options are also described in the Board's Enforcement Advisory to LEAs, currently in draft form.

As required by PRC §§ 43101(c)(8), 43215, 43217, 43219(b), 43220, 43302 and 14 CCR § 18350(c), the Board's primary responsibilities regarding an LEA's inspection and enforcement program are to:

- Provide technical assistance, training, support and guidance to LEAs.
- Ensure that LEAs keep the facilities in their jurisdiction in compliance with applicable laws and regulations, by conducting periodic inspections at those facilities and, if necessary, encouraging and assisting LEAs in taking enforcement actions.
- Evaluate the effectiveness of LEA programs to ensure they are fulfilling their responsibility to take appropriate enforcement actions

Secondarily, the Board may take appropriate enforcement actions when the LEA fails to do so. Additionally, it is the Board's responsibility to implement procedures for withdrawal of its approval of a local enforcement agency's designation if it finds that the LEA is not fulfilling its responsibilities. Various statutes and regulations describe the Board's authority, responsibilities and options when an LEA fails to take appropriate enforcement action to remedy documented violations. These include PRC §§ 43214, 43215, 43216, 43216.5, 43219(c&d), 43300, 45012 and 14 CCR § 18350.

Purpose and Goals

The purpose of this document is to lay out a clear process by which the Board can fulfill its statutory mandate to ensure that LEAs are taking appropriate enforcement actions to keep the facilities in their jurisdiction in compliance with applicable laws and regulations. This document is one of six elements outlined in the Board's Enforcement Policy framework. The process set forth in this document must be viewed as it relates to the other five elements and the overall goals of the Enforcement Policy framework.

The primary goal of the Enforcement Policy framework is to maintain facilities in compliance with applicable laws and regulations. It the Board's responsibility and desire to equip the LEAs to succeed in achieving this goal and to develop strong collaborative working relationships between Board and LEA staff. This is accomplished in part by providing technical assistance, training, guidance and support.

LEAs have discretion in determining what enforcement actions to take to remedy violations at solid waste facilities. It is the policy of the Board to encourage and support local enforcement agencies in taking enforcement actions before taking actions itself. One of the goals of the Enforcement Policy framework is for the LEAs to successfully get facilities into compliance so the Board does <u>not</u> have to take enforcement action in an LEA's jurisdiction, or initiate actions related to decertification. Board actions of these types are only considered as a last resort.

This document describes the **criteria** which the Board will apply to determine when an LEA is not taking appropriate enforcement action and the **procedures** the Board will follow to encourage the LEA to take appropriate action and, if necessary, to initiate its own enforcement action and/or take other actions as required by law. Attachment 1 contains a flowchart of these procedures.

Oversight Tracking

Proper documentation by both the LEA and Board staff throughout all stages of the process described below is critical to its success and is an integral part of the State Oversight Role element. As part of this effort, Board staff intends on tracking LEA and Board actions

regarding sites with chronic violations. Although a final decision on the tracking method has not been reached, the following are tentatively being considered:

For sites on the Inventory (chronic state minimum standard violations), the SWIS Inventory data field in the Enforcement Actions module can be used to track LEA and Board actions related to the state oversight role procedures. Although the Inventory is only published every 6 months, the data is updated every two months, making it as "real time" as feasible.

For sites with chronic significant change violations, the spreadsheet list of those sites can be modified to include LEA and Board actions, and periodically updated and presented to the Permitting and Enforcement Committee.

CRITERIA FOR DETERMINING APPROPRIATE ENFORCEMENT ACTION

Board staff monitors LEA inspection and enforcement performance through periodic inspections of solid waste facilities, review of LEA inspection reports, implementation of the Inventory of Solid Waste Facilities Which Violate State Minimum Standards (Inventory), and review of LEA Notice and Orders and other LEA enforcement actions. When chronic violative conditions, as defined below, are identified by Board staff, the criteria listed in this section will be applied to determine if an LEA is taking appropriate enforcement actions.

A **chronic violation** is any violation for which a facility is listed in the Inventory or, a Significant Change permit violation (PRC § 44004) which has remained uncorrected for 5 consecutive months, as documented in the LEAs' monthly inspection reports.

Because the triggering mechanism (chronic violations) for applying the criteria is primarily based on the results of LEA monthly inspection reports, it is important that LEAs consistently call violations when one is warranted. The following Board activities are currently in place to ensure this:

1) Issue LEA advisories on interpretating and applying State Minimum Standards (SMS). LEA advisories 20 and 23 respectively address SMS at Landfills and Transfer Stations.

2) Train LEAs on interpreting and applying SMS. The last one was held in early 1996. The next one is scheduled for Spring, 1997.

3) Review LEA's monthly SWIS inspection reports for discrepancies between the narrative write-up and the determination (compliance, area of concern or violation). SWIS results over the past few months are also reviewed to identify trends in LEA determinations (for example, if an area of concern is identified

repeatedly for the same standard, Board staff will call the LEA to discuss the situation).

4) 18 month inspections of landfills and periodic inspections of other types of facilities conducted by Board staff are used to assess how an LEA identifies and addresses violations.

5) Results from activities #3 and #4 may indicate the need for more frequent inspections of selected facilities as authorized by statute, in order to more accurately assess LEA inspection performance.

6) The results from activities #3, 4 and 5, may be cause for initiating an LEA evaluation, and if necessary, an LEA corrective workplan or other appropriate action to raise the level of inspection performance.

In addition, there has been a continuing concern over what constitutes "significant change". Again it is important to ensure LEAs consistently call a violation of this code section in order to implement these oversight role procedures. This issue is the subject of an EAC subcommittee, partnership 2000, and CCDEH discussions, and will be dealt with in the near future. It is anticipated that a workgroup consisting of representatives from the Board and selected LEAs from the above mentioned groups will be formed to address this longstanding issue.

The following criteria do not apply to unpermitted facilities, because PRC § 44002 requires the LEA to issue a cease and desist order pursuant to PRC § 45005, to stop operations until the facility is properly permitted, and allows the LEA no discretion. In this situation, if the LEA does not issue the required order, Board staff will automatically proceed to the procedures for encouraging LEAs to take appropriate enforcement action.

This section does not attempt to define specific appropriate enforcement actions for specific violative conditions but instead defines two general criteria which, if not met, will result in a determination by Board staff that appropriate enforcement actions are not being taken. The two criteria are:

- Is the operator making timely progress toward compliance?

If the answer is yes, the LEA is taking appropriate action and the second criterion need not be applied.

If the answer is no, the second criterion must be applied:

- Is the LEA increasing its enforcement response accordingly by taking additional action(s)?

If the answer is yes, the LEA is taking appropriate action. Once the LEA has taken its additional enforcement action(s), the criteria may be applied again periodically if no apparent progress toward correction of the violation is observed. This cycle may repeat until the violations are finally resolved or the criteria are not met.

If the answer is no, the LEA is not taking appropriate enforcement action.

Identification by Board staff of a chronic violation initiates the following sequence of events:

- the application of the criteria described above;
- if necessary, the implementation of procedures to encourage and assist the LEA in taking appropriate action;
- if necessary, the implementation of procedures to initiate its own enforcement action.
- if necessary, the initiation of other actions as required by law

Please note that **if a violation, whether chronic or not, presents a threat to public health and safety or the environment,** the sequence of events will be accelerated and altered according to statutory requirements. See the section on page 9 regarding threats to public health and safety or the environment.

Application of the Criteria

The following procedures, as outlined in the Enforcement Oversight flow chart, include some suggested timeframes for LEA responses to Board requests for information or action. However, they do not include specific time frames for implementation of each and every task. It is anticipated that any time frames for LEA or Board actions will be ultimately determined during the necessary regulatory development phase of this element.

For all facilities with a chronic violation, board staff will request the following information from the LEA in a letter pursuant to PRC § 43209(c). The LEA will be required to provide appropriate documentation in writing within 30 days of receipt of the request of:

- The LEA's documentation of how and when the operator was notified of the violation(s).
- The tasks the operator needs to accomplish to correct the violation(s).

- The operator's progress in completing the tasks and correcting the violation(s) since its initial identification and documentation.

- Current and, if applicable, planned enforcement actions designed to cause the operator to correct the violation(s), including a time frame for initiating future LEA actions.

Once Board staff receive the documentation, the criteria can be applied.

Criterion # 1) Determine if the operator is making timely progress toward compliance.

In determining whether or not the operator is making timely progress this initial question should be asked: *Is there a compliance schedule for correcting the violations with reasonable deadlines for the accomplishment of specific tasks?*

a) If there is a compliance schedule with reasonable deadlines, *is the operator meeting the deadlines for compliance with specific tasks?* If the answer is yes, this criteria has been met, and criteria # 2 need not be applied. However, if the operator failed to meet the deadlines, this criteria has not been met and criteria # 2 should be applied. Please note however, in some cases the LEA may present information supporting reasonable deadline extensions where the operator has made a good faith effort to comply, but a delay in compliance has been caused by extenuating circumstances outside of the operator's control.

Note: When extending deadlines, the LEA should document in the amended compliance schedule or N&O as applicable, the operator's good faith efforts, including tasks completed thus far, and the extenuating circumstances. Examples of extenuating circumstances outside of the operator's control might include acts of God such as inclement weather, earthquakes etc, or delays in obtaining discretionary permits or other government agency approvals.

b) If the LEA has issued a compliance schedule and the deadlines seem unreasonably lengthy for the tasks to be performed, Board staff should discuss the situation with the LEA. The LEA may offer clarification on their enforcement strategy or other information supporting the lengthy deadlines. However, if there is nothing to support such lengthy deadlines, the LEA is not taking appropriate enforcement action and the next step would be to proceed to the Board Procedures section.

Note: When initially developing a compliance schedule, LEAs may request Board staff to review and comment on a draft schedule prior to finalization. In this case, reasonable compliance deadlines can be discussed ahead of time, eliminating the need for review after the fact.

c) PRC § 44106 requires the LEA to develop a compliance schedule for facilities included on the Inventory. If there is no compliance schedule, the LEA is not taking appropriate enforcement action as required by PRC §44106 for facilities on the Inventory. In this case the staff would immediately proceed to the Board Procedures section below.

For sites with chronic significant change violations there are no specific required enforcement responses in current statutes or regulations. It is reasonable to expect that, as a minimum enforcement response, the LEA should have the facility under a compliance schedule for correction, the same as for Inventory violations. Lack of a compliance schedule would result in a determination that the LEA is not taking appropriate enforcement action.

Criterion # 2) Determine if the LEA is increasing its enforcement response by taking additional action(s).

If an operator is not meeting the deadlines of an established compliance schedule and there is no information supporting a deadline extension, has the LEA increased its enforcement response by undertaking additional enforcement action(s)? The additional enforcement actions are to be determined by the LEA pursuant to the following:

- the LEA's Enforcement Program Plan or;
- the LEA Enforcement Advisory and;
- if applicable, a previously issued N&O per 14 CCR § 18305.

If the LEA has increased its enforcement response by taking additional enforcement action(s), the LEA is taking appropriate enforcement action. If the LEA has not taken additional enforcement action(s), nor do they plan to, Board staff would proceed to the Board Procedures section below. In cases where the LEA is unable to gain compliance through Notice and Orders or other appropriate actions, the Board is available to provide the LEA with technical enforcement assistance. In this case, LEAs are strongly encouraged to seek such assistance in a timely manner, in keeping with the Board's policy of encouraging LEAs to take enforcement actions before taking actions itself. Other cases may arise where the LEA determines that the next enforcement response should consist of some type of court action and they fully intend to pursue it, but their county counsel will not take the case due to workload constraints or other reasons. In this case, the LEA may request assistance from Board legal counsel or the Attorney General as appropriate. Please refer to the Board assistance section of the LEA Enforcement Advisory for further details.

If the LEA is determined to be taking appropriate action, Board staff will simply continue to monitor the situation through review of subsequent SWIS reports and may reapply the criteria

if no apparent progress toward correction is observed.

Board staff encourage LEAs to automatically include in their SWIS reports the progress the operator is making in correcting the violations and what enforcement actions the LEA is or will be taking. This provides Board staff with a continuous source of information and eliminates the need for additional requests and paperwork in order to determine if the LEA is taking appropriate enforcement action.

BOARD PROCEDURES

Encouraging and Assisting LEAs in taking Appropriate Enforcement Action

As stated in California Code of Regulations (CCR), Title 14, section 18350(b) "It is the policy of the Board to encourage local enforcement agencies to take enforcement actions before taking actions itself, ...".

Generally, Board staff will guide, assist and encourage LEAs to take enforcement action through the following:

- providing information on the most current statutory and regulatory amendments and guidance, including LEA Advisories
- providing and participating in discussion forums for current enforcement issues including LEA Roundtables, EAC, CCDEH, and Partnership 2000
- providing legal counsel and direct enforcement assistance, when requested, as appropriate (refer to the LEA Enforcement Advisory for details)
- providing technical assistance for issues outside the LEA's expertise
- ensuring LEA EPP enforcement procedure updates reflect current statutory and regulatory requirements
- providing assistance in the development of compliance schedules and enforcement orders, when requested
- review and comment on draft enforcement orders
- providing general on-going consultation with P&E Branch contacts
- supporting LEA enforcement action as required until compliance is achieved
- providing specific training seminars and workshops
- acting as facilitator/mediator between LEA and owner/operator, or other regulatory agencies, when requested
- providing an equipment loan program for LEAs

Should Board staff determine that an LEA is not taking appropriate enforcement actions, nor do they intend to do so, a Request for Action letter will be sent to the LEA which:

- documents the lack of appropriate enforcement action; and
- requests the LEA to take further action.

The letter will request a response from the LEA within 30 days of its receipt regarding:

- what action they propose to take; and
- when they propose to take the action

In the letter, Board staff should offer to meet via conference call or in person with the LEA and, if appropriate, the operator, to discuss the violations, site specific circumstances and compliance and enforcement options.

Board Enforcement Action/Other Action as Required by Law

Chronic Violations

Should the LEA refuse to take further enforcement action as requested or fail to respond within the 30 day time period, Board staff will take action according to one or more of the following statutes, depending on the circumstances regarding the violation at a particular site:

○ **Action With Notice to the Local Enforcement Agency and Violator - PRC § 45012(a)**

The Board may take an enforcement action specified in PRC, Division 30, Part 5 (corrective action orders, cease and desist orders and civil penalties etc.) on its own if it provides notice to the LEA and the violator of the Board's intent to take that action. The notice is intended to allow the LEA and the violator a reasonable opportunity to correct the violation and conduct a public hearing on the matter. Board staff will send a Notice of Intent to take Action (NIA) to the LEA and the violator informing them of a scheduled agenda item before the Permitting and Enforcement Committee to gain approval for taking enforcement action. The letter should be sent at least 30 days prior to the Committee meeting. This Committee meeting will serve as the public hearing required by law. The letter would further state that, should the LEA take action on their own, or the violation be corrected prior to the Committee meeting, the agenda item will be pulled.

Note: Transmittal of an NIA will result in a referral to LEA evaluation staff regarding the lack of appropriate enforcement action by the LEA.

○ **Significant Violation - PRC § 43219(c)**

If the Board identifies any significant violation of SMS that were not identified and resolved through previous inspections by the LEA, the Board may notify the LEA of its intent to withdraw approval of its designation or take any other actions which are determined by the Board to be necessary including: conducting more frequent

inspections and evaluations, establishing a schedule and probationary period for improved LEA performance, and assuming partial responsibility for specified LEA duties pursuant to PRC §§ 43215 and 43216.5.

For the purposes of this document, significant violation means a violation (or violations) of SMS which, if not corrected, can reasonably be expected to pose a threat to public health and safety or the environment. Not previously resolved means that the LEA is not taking appropriate enforcement action as determined by applying the criteria discussed previously.

This situation would result in one or more of the following options being initiated by Board staff:

- Issue a Notice of Intent to take Action to the LEA and the operator that the Board will take its own enforcement action against the site pursuant to PRC § 45012.
- Conduct more frequent inspections
- Conduct more frequent evaluations
- Establish a schedule and probationary period for improved LEA performance
- Issue a Notice of Intent to withdraw the Board's approval of the LEA's designation pursuant to PRC § 43215.

Note: Identification by enforcement staff of any significant violation of SMS that were not identified and resolved through previous inspections by the LEA will result in a referral to LEA evaluation staff. The last three options above would be initiated as a result of that referral, if appropriate.

Violations Which Threaten Public Health afd Safety or the Environment

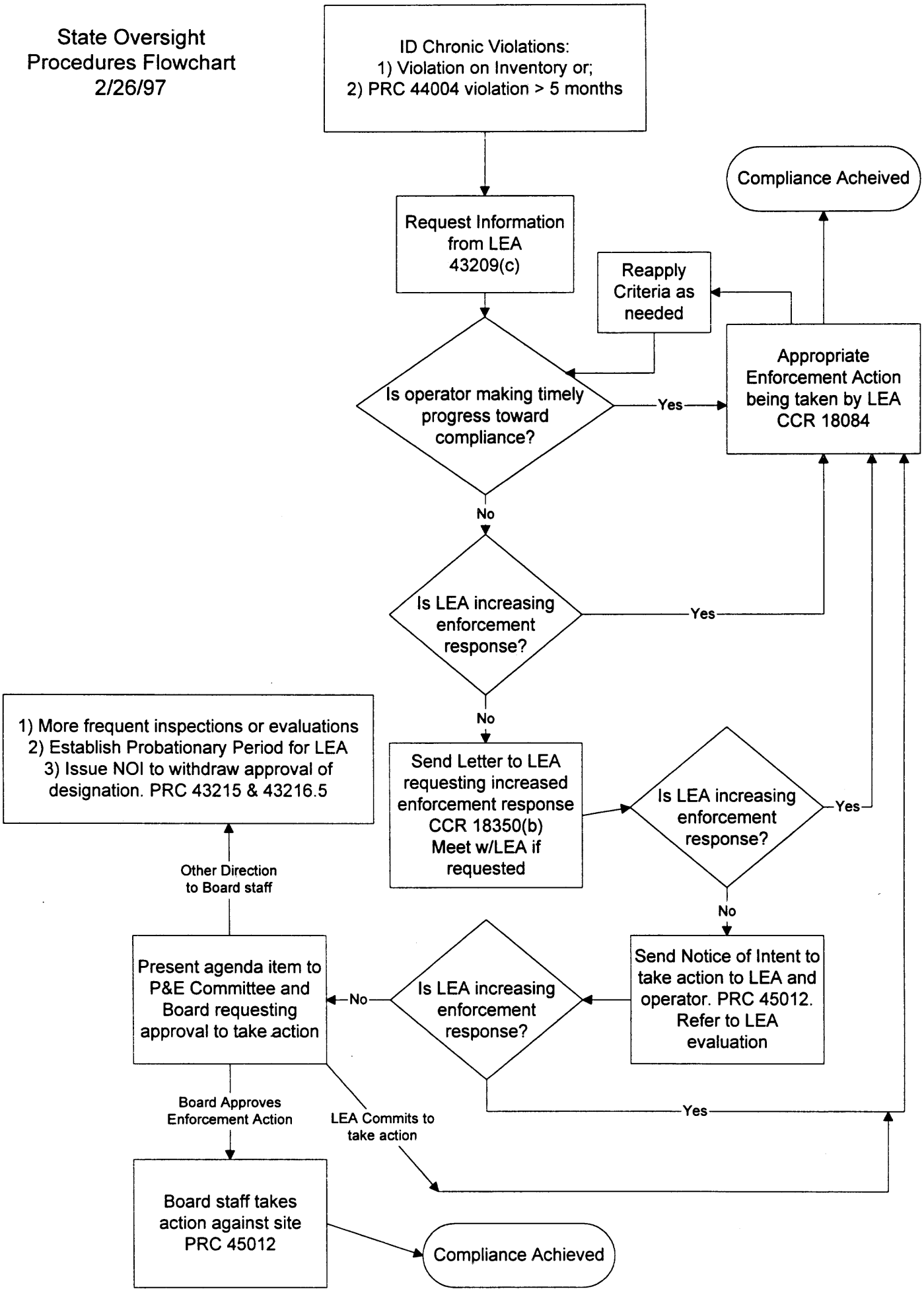
○ **Threat to Public Health and Safety or the Environment - PRC §§ 43214(c) and 43219(d)**

If, as a result of a performance review or Board/LEA joint facility inspection, the Board finds that conditions at a solid waste facility threaten public health and safety or the environment, the Board shall within 10 days of notifying the LEA, become the enforcement agency.

○ **Imminent Threat to Public Health or Safety or the Environment - PRC § 45012(b)**

If the Board finds that a LEA's failure to take an enforcement action constitutes an imminent threat to public health or safety or the environment, the Board may take the

enforcement action, as the Board determines necessary, without prior notification of the LEA and the violator, or conducting a public hearing.

For the purposes of this document, a threat or imminent threat to public health or safety or the environment means a violative condition which is creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the damages to persons, property, natural resources, or the public health or safety.

State Oversight
Procedures Flowchart
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