



*Air Resources Board*

*Report of*

**Enforcement Activities**

*for*

*January 1 – December 31, 2003*

*July 2004*

## REPORT OF ENFORCEMENT ACTIVITIES FOR 2003

### AIR RESOURCES BOARD ENFORCEMENT DIVISION JULY 2004

#### ACKNOWLEDGEMENTS

##### Primary Authors:

*Marivel De La Torre  
Carl Brown  
Paul E. Jacobs*

##### Contributing Authors:

*Brad Cole  
Gregory H. Binder  
Michele Burns  
Victor Espinosa  
David Faulkner  
Darryl P. Gaslan  
Steve Giorgi  
Judy Lewis  
Hortencia Mora  
Mary Rose Sullivan*

##### Reviewed by:

*Diane M. Johnston, General Counsel/Deputy Executive Officer, Air Resources Board\**  
*James R. Ryden, Chief, Enforcement Division, Air Resources Board*  
*Paul E. Jacobs, Chief, Mobile Source Enforcement Branch*  
*Robert Leonard, Chief, Stationary Source Enforcement Branch*  
*Chuck Beddow, Chief, Fuels & Consumer Products Enforcement Branch*  
*Victor Espinosa, Manager, Heavy-Duty Diesel Enforcement Section-North*  
*Darryl P. Gaslan, Manager, Heavy-Duty Diesel Enforcement Section-South*  
*Gregory H. Binder, Manager, Mobile Source Enforcement Section*  
*Steve Giorgi, Manager, Consumer Products Enforcement Section*  
*Mark Stover, Manager, Fuels Enforcement Section*  
*Carl Brown, Manager, Stationary Source Enforcement Section*  
*R.C. Smith, Manager, Strategic Environmental Investigations & Enforcement  
Section*

This report has been reviewed by the staff of the California Air Resources Board and approved for publication. Approval does not signify that the contents necessarily reflect the views and policies of the Air Resources Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use. To obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 322-8168.

\*The legal staff in the Air Resources Board's Office of Legal Affairs has also reviewed this report, in addition to the Enforcement Division Management and their staff.

**TABLE OF CONTENTS**

<b>Preface</b>	<b>4</b>
<b>Introduction</b>	<b>6</b>
<b>Mobile Source Enforcement</b>	
<b>General Enforcement</b>	<b>8</b>
<b>Mobile Source Enforcement</b>	<b>8</b>
<b>Heavy-Duty Diesel Vehicle Enforcement</b>	<b>9</b>
<b>General Mobile Source Enforcement</b>	<b>13</b>
<b>Fuels Enforcement</b>	<b>15</b>
<b>Consumer Products Enforcement</b>	<b>18</b>
<b>Stationary Source Enforcement</b>	<b>20</b>
<b>Strategic Environmental Investigations and Enforcement</b>	<b>23</b>
<b>Enforcement Goals for 2004</b>	<b>26</b>
<b>Appendices</b>	<b>29</b>

**2003 APPENDICES**

<b>A: Enforcement Case Summary Tables</b>	<b>30</b>
<b>B: Significant Case Settlements</b>	<b>31</b>
<b>C: Mobile Source Enforcement Inspection Activity</b>	<b>42</b>
<b>D: Fuels/Consumer Products Enforcement Inspection Activity</b>	<b>43</b>
<b>E: Stationary Source Enforcement - Air District Oversight Activity</b>	<b>45</b>
<b>F: Enforcement Program Contacts</b>	<b>48</b>

## PREFACE

The primary mission of the Air Resources Board (ARB, Board) is to protect public health and the environment. This is done through the adoption and implementation of regulations and programs to reduce emissions of and exposure to air pollutants from a variety of mobile and other statewide sources. Fair and effective enforcement of these far reaching efforts is critical to the successful accomplishment of this mission. This goal is reflected in the mission statement adopted by the Enforcement Division that reads as follows:

*“To protect public health and the environment by maximizing reductions in emissions of air contaminants and exposure to air contaminants through the fair, consistent and comprehensive enforcement of statutory and regulatory requirements for sources of air pollution under ARB jurisdiction.”*

To meet the challenges that this mission imparts, the Enforcement Division (ED) was significantly reorganized in 2001/2002. The restructuring, which was started in early 2001, was completed in August 2002. The effectiveness of the restructuring is seen in increased enforcement actions during 2002, which continued in 2003. The total number of cases opened, cases referred for further action, cases settled and penalties collected all significantly increased in 2003. The following is a partial listing of the ARB's Enforcement Program's 2003 highlights:

- 1,237 cases closed
- \$6,209,001 total penalties collected
- Five significant motor vehicle case settlements totaling \$1.14 million; \$1.0 million; \$750,000; \$557,500 and \$550,500 respectively
- Implemented school bus/delivery vehicle idling prohibition enforcement program
- Started on development of an Enforcement Strategic Plan
- Over 18,000 heavy-duty vehicles inspected
- Over 900 cargo tanks inspected
- Over 603 million gallons of gasoline represented in sampling
- Over 156 million gallons of diesel fuel represented in sampling
- Over 23,000 red-dyed diesel fuel inspections
- Over 1,100 consumer product inspections

- Over 900 portable fuel containers and spouts inspections
- Implemented the SB 527 Administrative Hearing Program

The true measure of the effectiveness of the enforcement program is the emissions reductions achieved. The Enforcement Division estimates that the enforcement actions undertaken in 2003 resulted in excess emissions reductions of well over 100 tons per day. Plus, the enforcement program insures that the ARB's regulations are achieving their designated emissions reductions. We continue to work on the development of this metric of success. An additional indicator of effectiveness is the number of cases investigated and closed during each year. In 2003, 1,237 cases were closed for \$6,209,005 in penalties compared to 1,535 cases closed in 2002 for \$11,293,173 and 645 cases closed in 2001 for \$2,509,725 in penalties. Please note that in 2002, there was one significant case of \$7.9 million settled with Toyota. To provide a different perspective to how effective the enforcement program is, if you were to spread out the unusually large multi-million dollar case settlements over the number of years it takes to bring them to completion, in combination with the other settlements and penalties collected on a year-by-year basis, you would see a steady climb of collections during the past decade. To illustrate this point, in 1991 collections reached \$500,000 per year and by the mid 1990s consistently exceeded \$1 million per year. In the past few years, collections have exceeded \$2 million per year and presently collections are averaging between \$6 to \$8 million annually.

The following report includes a discussion of the enforcement programs, as well as statistics relating to inspections, investigations and activities in each of the program areas. More detailed information relating to case status and local air district enforcement activities is included in the appendices. Please note that it is the ARB's practice to keep confidential the names of entities involved in pending enforcement actions, and this convention will be observed in any pending case summary information. Specific case settlements can be viewed at the ARB's Enforcement Program web site at [www.arb.ca.gov/enf/enf.htm](http://www.arb.ca.gov/enf/enf.htm).

## **INTRODUCTION**

The Air Resources Board (ARB or Board) is charged with coordinating efforts to attain and maintain health-based air quality standards statewide. The ARB is specifically directed to address the serious problem caused by motor vehicles – cars, trucks and buses, off-road vehicles and equipment, and the fuels that power them – a major source of air pollution in many parts of the state. ARB is also responsible for controlling emissions from statewide sources of air pollution including other types of mobile sources (e.g., non-road engines such as lawn and garden equipment, and utility engines) as well as consumer products. Additionally, ARB is charged with overseeing the efforts of local air pollution control and air quality management districts in controlling air pollution caused by stationary sources.

To carry out this charge, the ARB has undertaken a multifaceted program of planning, regulation, and enforcement. This is a complex process that weaves together air quality research, modeling and assessment; the development and adoption of regulations through a process that allows for public input; and program implementation through active outreach to regulators and regulated industries through training and compliance assistance. The final component – enforcement – serves to ensure that these efforts do achieve the anticipated emissions reductions and a level playing field for all participants. This report focuses on ARB's enforcement efforts – both direct enforcement and oversight of district enforcement programs.

Within the ARB, the Enforcement Division is responsible for these activities. The Enforcement Division is structured to address the various source categories: the Mobile Source Enforcement Branch keeps a watchful eye on heavy-duty vehicles including commercial diesel trucks, passenger vehicles and other light-duty on-road vehicles, off-highway vehicles, and non-road engines such as lawn and garden equipment and small utility engines; the Fuels and Consumer Products Enforcement Branch investigates and develops cases related to motor vehicle fuels and consumer products; and the Stationary Source Enforcement Branch provides oversight of and assistance to local air district enforcement programs, and provides investigative and surveillance services to assist in the development of air quality and multi-media cases.

Integral to the success of the enforcement program in the Enforcement Division's close working relationship with ARB's Office of Legal Affairs (OLA). Division staff develops the cases, many of which are settled directly between the division and the violator, who come into compliance and pay appropriate civil penalties. For cases that can not be handled through this informal process, OLA attorneys are brought in to work with the enforcement staff to negotiate settlements or prepare cases for referral for civil litigation or criminal prosecution to the Office of the Attorney General, local District Attorneys, or the U.S. Attorney's Office.

Violations of California's air quality laws and regulations span a wide gamut that extends from deliberate, criminal actions through serious, albeit accidental infractions, to nominal breaches of the state's statutes or regulations. And while varying degrees of

pollution are created by way of these violations, what remains constant in each is the unfair economic disadvantage suffered by those members of the industries that do comply. To address these varying degrees of violation and their effects on the state's health and economic welfare, the Enforcement Division of the Air Resources Board has adopted as its mission statement:

*“To protect public health and the environment by maximizing reductions in emissions of air contaminants and exposure to air contaminants through the fair, consistent and comprehensive enforcement of statutory and regulatory requirements for sources of air pollution under ARB jurisdiction.”*

The report that follows includes a discussion of the enforcement programs currently administered by the ARB, as well as some summary statistics relating to inspections, investigations and activities in each of the programs. More detailed information relating to case status, local air district enforcement activities and other relevant information is included within the set of appendices. Please also note that it is the ARB's practice to keep confidential the names of entities involved in pending enforcement actions, and that this convention will be observed in any pending case summary information.

For more information on the ARB's Enforcement Division or its programs, please contact James R. Ryden, Chief, at (916) 322-7061 or [jryden@arb.ca.gov](mailto:jryden@arb.ca.gov). For questions or comments relating to this report, please contact Marivel De La Torre, Enforcement Case Coordinator at (916) 323-1362 or [mdelator@arb.ca.gov](mailto:mdelator@arb.ca.gov). Questions relating to specific program areas may be directed to the appropriate section or branch manager, listed on the contact sheet found in Appendix F. Please also refer to the Enforcement Division's web page, located at the following link: <http://www.arb.ca.gov/enf/enf.htm>.

## **GENERAL ENFORCEMENT**

In December 2002, the ARB adopted amendments to the administrative hearing procedures, which became effective on October 9, 2003. These procedures allow the ARB to assess and collect Administrative Penalties for violations of the ARB's adopted rules and regulations. The ARB modified the hearing procedures found under title 17, California Code of Regulations sections 60065 et seq., and 60075 et seq. at their December 2002 Public Hearing. The modifications were done in order to comply with the directives of Senate Bill (SB) 527 of 2001. The Administrative Penalties may be sought as an alternative to civil penalties for less severe, clear-cut violations. During 2003, Enforcement Division staff implemented these regulations into their enforcement programs.

Also, in 2003 the ARB began developing a Strategic Plan. A representative from each section within the Enforcement Division met regularly to identify goals and objectives to maximize ARB's enforcement effectiveness and to coincide with the Governor's vision statement. The Enforcement Strategic Plan is expected to be complete in 2004.

## **MOBILE SOURCE ENFORCEMENT**

California has long been a world leader in combating air pollution emitted from motor vehicles and other mobile sources. Because of the state's severe air quality problems, California is the only state authorized under the Federal Clean Air Act to set its own motor vehicle emissions and fuels standards. The ARB has used this authority to establish an aggressive program to reduce emissions from millions of sources ranging from heavy-duty diesel trucks, to passenger cars, motorcycles, jet skis, and lawn mowers and chain saws.

The Board's mobile source program is structured to ensure that vehicles (and other applicable sources, such as the small off-road engines found in lawn and garden equipment) meet California's standards from the design phase through production, from the point of sale, through the vehicle's useful life, and finally to its retirement from the fleet.

This is an intricate process, and as might be expected, there are numerous ways that it may be, wittingly or unintentionally, subverted. To guard against the illegal entry, sale and operation of non-complying vehicles/engines within California, the Board's regulations include provisions to assure compliance, and when that fails, to initiate appropriate enforcement action. The ARB's mobile source enforcement program is administered on two fronts: heavy-duty diesel vehicle enforcement, and programs to address all other on-road and non-road mobile sources.



## **HEAVY-DUTY DIESEL VEHICLE ENFORCEMENT**

### *Program Overview*

The ARB, in cooperation with the California Highway Patrol (CHP), tests heavy-duty trucks and buses for excessive smoke emissions and tampering of emission control systems. Every heavy-duty vehicle traveling in California, including those registered in other states and foreign countries (i.e. Mexico or Canada) is subject to inspection and testing. Although heavy-duty vehicles comprise only two percent of California's on-road fleet, they produce about thirty percent of the oxides of nitrogen and sixty-five percent of the particulate emissions attributed to motor vehicles. The sooty exhaust emissions from these vehicles are of special concern, particularly in residential areas, because of the toxic nature of the particles found in the diesel exhaust.

To tackle the problem of excessively smoking heavy-duty diesel vehicles, the ARB conducts two companion programs: the roadside Heavy-Duty Vehicle Inspection Program (HDVIP); and the annual fleet Periodic Smoke Inspection Program (PSIP). These programs are designed to reduce smog forming and particulate matter emissions by approximately 25 tons per day.

The HDVIP is administered by field inspection staff that performs smoke opacity tests at CHP weigh stations, random roadside locations, fleet locations, and at two California/Mexico border ports of entry (Otay Mesa and Calexico). To conduct a smoke opacity inspection, the ARB inspector selects a vehicle for testing based on a visual assessment of its exhaust opacity. With the assistance of the CHP, the vehicle is directed to the inspection area, and with the wheels secured for safety and the transmission in neutral, the driver rapidly depresses the accelerator while an opacity meter evaluates the resulting plume of smoky exhaust. (The test protocol, SAE J1667, was developed by the Society of Automotive Engineers specifically for this type of program.) If the smoke opacity exceeds California's standards of 55% for older vehicles and 40% for those manufactured in 1991 or later years, the vehicle owner receives a citation.

Citations carry a civil penalty of \$800 for the first offense, however \$500 of this penalty is waived if within 45 days the vehicle is repaired, set to manufacturers' specifications and is demonstrated to meet the appropriate opacity standard. Any driver or owner whose vehicle receives an additional citation within 12 months of the first issuance is assessed a penalty of \$1,800. If an older vehicle (model year prior to 1991) is found to have smoke opacity between 55% and 69%, the ARB issues a Notice of Violation (NOV) that carries no civil penalty as long as corrective action is demonstrated within 45 days; if this is not accomplished, the NOV is converted to a citation. The owner of a cited vehicle may appeal the citation through a hearing with an ARB Administrative Law Judge.

The companion PSIP requires that California fleet owners of two or more heavy-duty diesel vehicles perform an annual smoke inspection on each of their vehicles. (Vehicles

with new – not rebuilt – engines that are less than four years old are exempt from annual testing.) Fleet owners are required to maintain their records for two years, and the ARB staff perform follow-up inquiries to assure that the requirements are being fulfilled (i.e., staff request to see copies of smoke test results, demonstrations of correction, etc.) Recalcitrant fleet owners are audited, their vehicles are tested and citations are issued for those vehicles that exceed opacity standards. Additionally, staff develops enforcement cases against non-compliant fleets. These cases are prosecuted by the State Attorney General or local District Attorney.

For 2003 enforcement statistics of these programs, please refer to Appendix C.

### Program News

Focused Environmental Inspections – The ARB has participated in an on-going program of multi-environmental media vehicle inspections in mixed residential/industrial locations (i.e. Environmental Justice areas). During these events, inspection personnel from a variety of agencies (e.g., CHP, U.S. Coast Guard, Department of Toxic Substances Control, local law enforcement and hazardous materials agencies, Internal Revenue Service, etc.) assemble to examine vehicles passing through these neighborhoods to detect violations of air quality regulations, illegal transport of hazardous wastes, illegal use of tax-exempt red diesel fuel, safety concerns, and other related issues. In 2003, ARB staff conducted over 25 of these inspections throughout California.

California-Mexico Border Programs – The California Environmental Protection Agency, in conjunction with the ARB and the Bureau of Automotive Repair established a partnership with the City of Tijuana to develop pilot programs for light-duty and heavy-duty vehicle emissions testing. These programs, modeled after California's HDVIP and Smog Check Programs, will set the stage to minimize vehicular emissions in the border cities.

With the forthcoming implementation of the North American Free Trade Agreement (NAFTA), it is crucial to ensure that the vehicles travelling back and forth across the border do not adversely impact air quality in either California or Mexico. The ARB maintains full-time HDVIP inspection sites at both Otay Mesa and Calexico. The ARB met with representatives of the federal government's General Accounting Office to discuss programs currently in place that help to mitigate environmental and safety concerns related to NAFTA. The ARB also participates in periodic conference calls with the Northeast States for Coordinated Air Use Management (NESCAUM) and the Ontario, Canada based Commission for Environmental Cooperation (CEC). The ARB, NESCAUM and CEC sponsored a conference in March of 2002 to discuss coordination issues for heavy-duty vehicle smoke emissions programs for the three North American countries. The proceedings from this conference are available on our web site at [www.arb.ca.gov/enf.enf.htm](http://www.arb.ca.gov/enf.enf.htm).

CCDET – It is important that individuals or firms that perform smoke opacity testing related to the ARB's HDVIP and PSIP, have a clear understanding of the program

regulations and be able to correctly administer the SAE J1667 opacity test. To this end, the California Council on Diesel Education and Technology (CCDET) was established as a partnership between the ARB, the diesel trucking industry, and the California Community Colleges. There are currently 6 colleges within California (College of Alameda, San Joaquin Delta College, Santa Ana College, Los Angeles Trade Tech., Palomar College, and San Diego Miramar College) that offer low-cost training in the proper application of SAE J1667, as well as smoke-related engine repairs and maintenance practices.

*Smoking Vehicle Complaint Program* - Smoking vehicles can have a very significant effect on our air quality. Everyone has a responsibility to maintain their vehicles so that air emissions are minimized. A well-maintained vehicle is a cleaner running, lower emitting vehicle. This one small effort on your part will help to keep the air healthy for all of us.

Unfortunately, not everyone is aware that their smoking vehicle is such a problem. A number of air districts, along with the Air Resources Board, have implemented programs for contacting the owners of smoking vehicles. Under this program, citizens report excessively smoking vehicles and the owners are sent notices asking that they check (and repair as needed) their vehicles. This program generates 34% response rate - See Appendix C.

*Enforcement Actions for PSIP* – An investigation by the ARB showed that Irish Construction of Rosemead, California failed to properly self-inspect their diesel trucks to assure the trucks met state smoke emission standards. The ARB documented 96 counts of violations as they relate to the PSIP. The ARB presented investigation results to its Office of Legal Affairs and a settlement of \$10,000 was agreed to, in addition to the company bringing all of its fleet vehicles into compliance with the PSIP.

An investigation by the ARB showed that Valley Environmental Services (VES) of Imperial, California failed to properly test their engines annually for smoke opacity compliance, to repair those engines failing the annual smoke test, to provide receipts of repairs completed, to retest those engines that initially failed, and keep adequate records of these activities. By not complying with these regulations, VES has enjoyed an unfair business advantage over its competitors by not having to incur those inspection and repair costs. The ARB documented 76 counts of violations as they relate to the PSIP. The ARB presented investigation results to the Imperial County District Attorney's Office and the California District Attorney's Association. A settlement of \$15,000 has been agreed to, in addition to the company bringing all of its fleet vehicles into compliance with the PSIP.

*Other items of interest –*

- The ARB has worked with the CHP during the year to establish policies and procedures to enforce the portion of the HDVIP statutes that allows the CHP to remove a heavy-duty vehicle from service when a recalcitrant vehicle owner fails to

clear a citation or notice of violation. This authority is granted to the CHP under the California Vehicle Code Section 27159.

- In an on-going effort to provide the regulated community with current, accessible information regarding the smoke inspection programs, the ARB produced, in consultation with the California State Polytechnic University, Pomona, (CalPoly-Pomona) an outreach video that details the HDVIP, its operation and its benefits to air quality and fuel conservation. This video replaces an earlier production, and represents the latest relevant information. This video may be viewed on the ARB's Enforcement Program page at <http://www.arb.ca.gov/enf/enf.htm> or copies may be obtained by calling ARB staff listed on Appendix F.
- The ARB staff completed a demonstration of the new Heavy-Duty Diesel Engine (HDDE) reflash program for board members and other interested parties at the December 11, 2003 Board Hearing. The Board heard staff's proposal and public testimony regarding this program but deferred a vote on it until March of 2004 in compliance with the Governor's Executive Order governing regulatory review of state agencies. The staff's next steps will be to secure necessary test equipment and training for the field enforcement of this program, which will commence subsequent to these program regulations being promulgated. This is expected to take place in 2004 or early 2005. In the interim, staff will conduct a non-penalty voluntary compliance program to alert vehicle owners of these pending requirements.
- The Enforcement Division staff, working with Mobile Source Control Division staff, submitted seven transit bus fleet cases to ARB's Office of Legal Affairs regarding settlement for notices of violation as they relate to Title 13 of the California Code of Regulations for the transit bus fleet regulation. These seven cases include: City of Chico case settled for \$3,500; City of Commerce case settled for \$4,000; City of Gardena case settled for \$10,000; Los Angeles Department of Transportation case settled for \$2,500; Alameda-Contra Costa Transit case settled for \$60,000; South County Area Transit case settled for \$1,000; and City of Folsom case settled for \$2,500.
- Also during 2003, ED staff launched a web-site for the public to report school buses and delivery vehicles believed to be in violation of the ARB ATCM governing school bus and delivery vehicle idling.
- The facility for conducting the pilot smog check in Tijuana has been completed. Three classes for training technicians to perform smog check and opacity tests have been conducted. The lead Cal/EPA staff for the project is targeted to apprise the Secretary of the California Environmental Protection Agency Terry Tamminen at a date to be specified.

## **MOBILE SOURCE ENFORCEMENT**

### Program Overview

The Air Resources Board has direct enforcement authority for all regulated mobile sources in California. For legal sale in California, all regulated mobile sources must be annually certified by their manufacturer as meeting California emission standards. The Mobile Source Enforcement Section is responsible for ensuring that all regulated mobile sources, both on-road and non-road, comply with ARB certification requirements. The ARB's enforcement program vigorously enforces these laws through inspections and investigations that result in corrective actions and substantial civil penalties.

For on-road sources, the primary focus of enforcement is to ensure that all new vehicles sold, offered for sale, or used in the state are certified for sale in California. Under California's regulations, a new vehicle – defined as a vehicle that has fewer than 7,500 odometer miles, that is not certified to California's standards cannot be sold within or imported into the state. If such a vehicle visits a Smog Check station, the owner is issued a Notice of Noncompliance (NoN) and a copy of the NoN is sent to the ARB. If the NoN is issued to a dealer or fleet, an ARB field inspector will make a follow-up visit to the dealership or fleet and issue a Notice of Violation. The NOV requires that the vehicle(s) be removed from the state along with a civil penalty of up to \$5,000 per vehicle as authorized under Health and Safety Code Section 43151 et seq.

Enforcement statistics for this program may be found in Appendix C. It is worth noting that staff settled many significant cases in this area during 2003 and a discussion of these cases can be found in Appendix B and a summary of case statistics in Appendix C, Table C-3.

Another area of focus for enforcement resources has been in the non-road categories. This includes off-road motorcycles and all terrain vehicles; Small Off-Road Engines (SORE) such as lawn and garden equipment - scooters - generators, Large Spark Ignition engines (LSI) which include fork lifts - sweepers - quads - generators, and Compression Ignition engines over 175bhp which include generators and construction equipment.

### Program News

Aftermarket Parts Outreach -- Staff continues to develop a positive working relationship with the Specialty Equipment Marketing Association (SEMA). These efforts help to ensure that all aftermarket parts that might effect emissions or emissions control systems are issued an ARB Executive Order that allows for their legal sale in California. Mobile source enforcement staff provided outreach at the SEMA International Auto Salon, which is a trade show for import vehicles and parts held in Los Angeles in April 2003.

Street Racing Enforcement Assistance -- Mobile source enforcement staff have provided assistance to California Highway Patrol and local law enforcement agencies

throughout California in their efforts to eradicate street racing. Often the vehicles involved in these unlawful activities are equipped with illegal engine modifications and aftermarket parts, which significantly impact air quality. As these types of modifications can cost thousands of dollars, citing the vehicle owners for tampering (under Vehicle Code section 27156) has proven to be a powerful deterrent because the owner must show that the offending equipment has been removed, in addition to paying the related penalties. The training by ARB mobile source enforcement staff assists peace officers in writing solid tampering citations that will support resulting court cases. During 2003, the ARB staff conducted various training seminars for law enforcement personnel. Law enforcement personnel conducted hundreds of street racing strike forces resulting in the issuance of citations. These enforcement actions have had a significant impact on reducing excessive emissions from these modified vehicles.

*Small Off-Road Engines (SORE) & Off-Highway Vehicles (OHVs)* -- SOREs and OHVs (which include off-road motorcycles and all-terrain vehicles) continued to receive additional enforcement efforts during 2002. Mobile source enforcement staff continued to expand their enforcement program to include illegal lawn mowers, trimmers, generators, scooters, and other SORE products, and a number of cases were opened and settled. In addition to these activities, staff supported the industry by assisting new manufacturers into the certification process. Staff also completed a Board item in July 2003 to ensure that the OHV red and green sticker program is being properly implemented by the Department of Motor Vehicles and enforced in the field by California State Parks, the BLM, and the U.S. Forest Service. Staff also continued our enforcement efforts to ensure that all off-road motorcycle manufacturers and dealers introduce and sell only products that meet California certification requirements. For 2003, these efforts have expanded to include the rapidly emerging catalog and internet retail markets. These cases resulted in the assessment and collection of over \$327,000 in penalties and these non-complying manufacturers are now complying with the ARB's certification requirements. Aggressive enforcement of these regulations is critical because the SORE and OHV regulating programs are designed to reduce smog forming emissions by approximately 200 tons per day.

*Aftermarket Catalysts on On-Board Diagnostics II (OBD II) Vehicles* – Staff continues its ongoing investigation program of muffler shops that install illegal aftermarket catalytic converters (catalysts) on OBDII vehicles. During 2003, the aftermarket industry started to introduce catalysts approved for some OBDII applications. However, these applications are still very limited, and the practice of installing illegal catalysts is still prevalent. The cost differential between a legal OEM catalyst and an illegal aftermarket part can often run into the hundreds of dollars. This creates a huge inequity for repair facilities that follow the law and use only legal replacement parts. Our enforcement efforts are targeted at leveling the market for all repair facilities, and enforcement actions have been initiated against shops that install illegal catalysts, with many new cases opened and settled in 2003, and a successful prosecution through a referral to the Los Angeles City Attorney's Office.

*Non-Certified Motorcycles and Emission Control Tampering by Dealers* – Investigations have been completed against eight manufacturers of non-California certified “Harley clone” motorcycles and two mainstream dealers that were removing required emissions controls at the time of sale. In 2003, a total of three settlements were finalized for well over \$1 million in penalties.

## **FUELS ENFORCEMENT**

### *Program Overview*

The Air Resources Board is authorized to set standards and adopt regulations to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources. Mobile sources of emissions are responsible for approximately 55 percent of air pollution emissions statewide and approximately 90 percent of the carbon monoxide emissions.

The ARB's Fuels Enforcement Program enforces motor vehicle fuels and cargo tank vapor recovery regulations. Through inspections, sampling and analysis of fuels, investigation and research into violations, and the development of cases, the fuels enforcement staff enforces regulations specifying the composition of motor vehicle fuels and ensures compliance with cargo tank vapor recovery regulations. The Fuels program also works with the regulated industry and the public to assist in the understanding of complex regulations and alternative compliance options. The ARB's gasoline fuels regulations are designed to reduce smog forming (nitrogen oxide and hydrocarbons) by approximately 300 tons per day and carbon monoxide emissions by approximately 1,200 tons per day. Additionally, the ARB's diesel fuel regulations are designed to reduce nitrogen oxide, sulfur oxide and particulate emissions in total by approximately 85 tons per day.

*Field Investigations* -- A primary component of the ARB fuels enforcement program is the inspection of CARB gasoline and diesel fuel at refineries, import vessels, distribution and storage facilities, service stations, and bulk purchaser/consumer facilities. Fuels inspectors gather samples of the fuels which are then analyzed in the Enforcement Division's mobile fuels laboratory for compliance with Phase 3 California Reformulated Gasoline (CaRFG3) regulations and diesel fuel regulations.

Gasoline samples are analyzed for Reid vapor pressure (RVP), T50 and T90 distillation temperatures, total aromatics, olefins, and oxygen (including MTBE and ethanol), benzene, and sulfur contents. Lead, phosphorus, manganese, and gasoline additives are also regulated. Diesel fuel is analyzed for sulfur, aromatic hydrocarbon, and polynuclear aromatic hydrocarbon content. In the case of alternative diesel fuel formulations, nitrogen, cetane number, and additives are also regulated.

*Mobile Fuels Laboratory* – The original mobile fuels laboratory, built in 1987, was replaced this year with a new more reliable vehicle. Much of the instrumentation and equipment from the old mobile laboratory was incorporated into the new mobile

laboratory. The new platform also includes many improvements. All support systems were upgraded and some new analysis equipment was added. The new equipment includes a Selerity supercritical fluid chromatography instrument, for analyzing olefin and diesel aromatics, an Antek sulfur and nitrogen analyzer, two Varian gas chromatographs for analyzing aromatics and oxygenates, and two Petrospec screening analyzers for gasoline and diesel. Safety improvements were also included in the new mobile laboratory, including an emergency rear exit door and new hydrocarbon vapor detectors. The new mobile laboratory is much cleaner in its operation than the previous vehicle and was recently retrofitted with diesel particulate filters on the main propulsion system and exhaust filters on the two electrical generators to further reduce emissions.

In 2003, the use of the new mobile fuels laboratory increased sampling and analysis capability and speed. The mobile fuels laboratory now contains all the analysis instruments and support equipment necessary to test for the parameters of gasoline and diesel fuel, which are regulated by the ARB. At the lab, ARB chemists conduct the testing in accordance with approved American Society for Testing and Materials (ASTM) test methods. The results are then recorded into an ARB test log and reviewed for violations. When a violation is discovered, a notice of violation is issued and a case is developed.

*Phase 3 Reformulated Gasoline* -- On March 1, 1996, Phase II Reformulated Gasoline, otherwise known as Cleaner Burning Gasoline, was introduced into the California market. This revolutionary fuel has reduced fuel-related emissions to their lowest levels to date. (The reported result of RFG use in California motor vehicles is a 300 tons per day reduction in smog forming emissions, which is equivalent to removing approximately 3.5 million cars from our roads and freeways.) Emissions reductions have been accomplished by lowering previously regulated components such as RVP and sulfur, requiring the use of oxygenates year round, and regulating additional components such as benzene, total aromatics, olefins, and distillation temperatures.

On December 31, 2003, the Phase III Reformulated Gasoline Regulations (CaRFG3) regulations became effective. The CaRFG3 regulations were created primarily to ban the use of MTBE oxygenated gasoline. As a result of the MTBE ban, other changes were made to the regulations. Ethanol oxygenate specifications were added along with a phase-out schedule of de minimus levels of MTBE. Changes to the maximum limits were implemented to give flexibility to producers who may use a Predictive Model for their final gasoline. A model was also created to allow the producer to project the final parameters of the gasoline after all components are blended.

Governor Davis extended the original date of implementation of December 31, 2002, to December 31, 2003. However, many companies opted to begin producing Phase 3 before the effective date of the regulation.

*Alternative Compliance Options and Self-Reporting* -- In 2003, many gasoline and diesel fuel producers and importers chose to use alternative compliance options in order to comply with the motor vehicle fuels regulations. These options include predictive



model limits, designated alternative limits, and certified fuel formulations. By choosing an alternative compliance option, a company is allowed more flexibility. To use one of these alternatives, the company must fulfill certain reporting requirements.

Fuels enforcement program staff monitors, evaluates, and oversees the data submitted by companies to ensure accurate reporting and compliance with company protocols. Staff also samples and tests fuel to verify that what producers are reporting is correct. If a company reports incorrectly and recognizes the error before the ARB is aware of it, the company may self-report the violation order to reduce the risk of incurring costly penalties.

This practice of disclosure and increased communication between regulated companies and the ARB has encouraged a more cooperative relationship between the two. It's no longer uncommon for a fuel producer to notify Fuels staff of a violation, whether it is simply a reporting error or whether it is a more extensive violation involving the sale of illegal gasoline.

*Fuel Distributor Certification Program* -- In 2003, staff continued its work in the Fuel Distributor Certification Program. This program had begun in response to the involvement of organized crime in the fuel distribution business. Before a list of legally certified distributors was available, fuels retailers had no means by which to choose only reputable and complying companies. Moreover, the ARB had no way to check the records of companies who did not comply or cooperate and, in many cases, companies who were involved in criminal activity. Since the legislation was passed, which instituted the program, all motor vehicle fuel distributors in the state must now be "certified."

To be placed on the list of certified distributors, a company must submit an application to the ARB, which includes its principal place of business and the location of its records. The ARB issues this list of certified distributors to gasoline and diesel fuel retailers. We are using this program in conjunction with special investigation and routine inspection activities.

*Red-Dyed Diesel Fuel Enforcement* -- Diesel fuel, which is used to power a vehicle on the California roadways, is subject to motor vehicular fuels tax; diesel fuel used for off-road or stationary equipment is not subject to motor vehicular fuels tax. Non-taxed diesel is required to be dyed red so trained inspectors may easily recognize it. In the 1990s, the IRS estimated that the national revenue lost from the illegal use of non-taxed diesel exceeded one billion dollars annually. When the IRS contract with the Air Resources Board to sample red-dyed diesel expired in 1999, the state Board of Equalization (BOE) contracted with the ARB to conduct field inspections for red-dyed diesel fuel, red-dyed analysis, and diesel fuel investigations. The current contract with the BOE is effective until June 2005. See Appendix D for 2003 enforcement statistics for this program.

*Cargo Tank Enforcement and Certification Program* -- The objective of the Cargo Tank Vapor Recovery Program is to reduce volatile organic compound (VOC) emissions from gasoline cargo tanks. Vapor recovery systems on cargo tanks capture the gasoline vapors produced during the transportation and delivery of gasoline. These systems are required under the Health and Safety Code to be annually certified by the ARB.

To certify a cargo tank, the owner or operator must submit an application along with test results to the ARB. Fuels enforcement staff issues a decal and an ARB-certified copy of the application to the cargo tank operator. Cargo tanks must also be maintained throughout the year in accordance with ARB certification procedures.

The Cargo Tank Program staff conducts statewide random inspections of cargo tanks at terminals and loading racks. Staff also conducts random inspections of ARB certified testers to ensure that leak tests are being conducted properly. When a leak is discovered, the cargo tank owner/operator is issued a notice of violation and must refrain from reloading until the cargo tank is brought back into compliance. If a cargo tank is found without a current decal or certification, or if the cargo tank is not maintained in accordance with ARB emission standards, the owner/operator is in violation and may be subject to penalties. Staff also conducts random inspections of ARB certified testers to ensure that leak tests are being conducted properly. Enforcement activity for 2003 for these programs may be viewed in Appendix A and D.

*Case Development* -- After violations of the motor vehicle fuels and cargo tank regulations are documented by inspectors, further investigation is conducted by inspectors and case development staff. Enforcement staff prepares cases by evaluating the field data and documents provided by companies, analyzing company records, and determining the cause and severity of the violation.

These cases are either resolved through the ARB's mutual settlement program or referred outside the ARB for settlement or litigation.

## **CONSUMER PRODUCTS ENFORCEMENT**

### *Program Overview*

The Consumer Products Enforcement Section is responsible for ensuring that consumer products (such as hairsprays, household cleaning products, aerosol coatings, air fresheners, etc.) meet the standards established in ARB's statewide regulations throughout all points of the distribution chain – from manufacturer to filling plants to distributor to point of sale. To accomplish this, Consumer Products Enforcement staff travels throughout California to conduct inspections at retail and commercial establishments to verify that products available for sale to household and institutional consumers in California comply with the regulations.

For portable fuel containers, CPES continued to purchase samples of spill-proof

systems and spouts from retail outlets and submitted the samples for laboratory compliance testing. Staff also investigated the sale of non-complying products, settled cases where violations were found, and monitored corrective actions. In addition, enforcement staff worked with distributors and retailers to advise them of the portable fuel container regulations and assisted in the testing of manufacturer supplied containers and spouts.

Consumer products such as hairsprays, household cleaning products, automotive chemicals, and air fresheners available for sale in California must meet the volatile organic compound (VOC) limits established in the statewide regulations. In addition, aerosol coatings sold and used in California must meet separate reactivity based limits. To enforce the regulations, CPES staff purchases products from various locations in California and submits the samples to ARB's Monitoring and Laboratory Division for VOC content or reactivity limits testing. As violations are discovered, enforcement staff works with the Office of Legal Affairs to investigate and develop the case, attempt to reach mutual settlement agreements with the violator, and monitor corrective actions.

### Program News

Portable Fuel Container & Spouts – ARB enforcement staff continued to sample and test spill-proof systems and spouts, investigate non-complying products, ensure corrective actions, and settle cases where violations were found. We investigated several cases of “knock-off” spill proof systems manufactured in China to look like complying product that did not meet the performance standards. We settled enforcement cases against several major retail chains that continued to sell non-spill proof systems after the effective date of the regulation. A major manufacturer was required to conduct an exchange and rework program and pay a monetary penalty because their spill-proof systems and spouts leaked when tested under pressure. Staff participated in several workshops with regulatory developmental staff to ensure that additional enforcement provisions are adopted into the portable fuel container regulations. This program is designed to reduce smog-forming emissions by approximately 87 tons per day.

New limits and categories – New VOC limits became effective at the beginning of this year for several categories of consumer products including multi-purpose lubricants, penetrants, rubber and vinyl protectants, sealant and caulking compounds, tire sealants and inflators, and non-selective terrestrial herbicides. In addition, lower VOC limits became effective in several additional categories that were already subject to existing VOC limits. Staff began sampling products in these new VOC limits and continued to evaluate new products to determine the appropriate category under the regulation.

Automotive Windshield Washer Fluids – Consumer Product Enforcement staff also focused on automobile windshield washer fluids this year due to the large amount of VOC emission reductions anticipated in 2003 for this category. The VOC limit was decreased from 10% to 1% for windshield washer fluids sold in the majority of California (“non-type A” areas, i.e. non-mountain areas). Through our investigations, we found

that a significant quantity of windshield washer fluids did not comply with the existing 10% VOC limit due to the failure of retailers, distributors, and manufacturers to adequately control the distribution of the products. Several enforcement actions are pending.

*Modifications to the Consumer Products Regulations* – During 2003, enforcement staff participated in the process to develop amendments to the Consumer Products regulations. Assisting in gathering of survey data, suggested concepts to enhance the enforceability of the regulations, proposed regulatory language, and defended these concepts during the workshop process.

## **STATIONARY SOURCE ENFORCEMENT**

### **Program Overview**

The Stationary Source Enforcement Section provides the ARB's oversight responsibilities to local air district programs. The section's important and varied program areas include:

- Asbestos – The section oversees implementation of and compliance with the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), and investigates all related complaints. Of the 35 air districts in California, nineteen of these districts do not have an asbestos program in place. For these (“non-delegated”) districts, the section receives and reviews all demolition/renovation notifications from these districts for compliance with the Asbestos NESHAP.
- Complaint Investigation – The section conducts special investigations of air pollution complaints emitted by stationary sources that are referred to us by districts, ARB's Office of Legal Affairs and Executive Office, and by other agencies. The section conducts compliance inspections to assist other enforcement sections with case development, and special projects to ensure compliance with all Health and Safety Code (H&SC) requirements concerning stationary sources.
- Variances – The H&SC allows air districts to issue variances to stationary sources that may be or become out of compliance with their rules and regulations. A petition for a variance must be brought before an air district hearing board, which allows or denies the petition, based on a set of criteria defined by the H&SC. The section reviews all variances for compliance with H&SC requirements, issues corrective action letters to those that do not comply, and maintains a database to monitor the activity related to all variances. It coordinates and conducts hearing board training workshops. Both the Beginning and the Advanced Hearing Board Workshops offer Minimum Continuing Legal Education (MCLE) credits to attorneys who attend the courses. Government and industry lawyers alike often take advantage of this great opportunity to obtain these required credits. Staff also performs audits to evaluate the effectiveness of district variance programs.

- Air Facility System (AFS) – The section oversees the collection and input into the AFS database of compliance/inspection data on major sources and on high priority violators (HPVs) in 26 of the 35 air districts, and generates reports to both the United States Environmental Protection Agency (U.S. EPA) and these air districts. The section conducts mini-audits of the districts' AFS/Compliance and HPV programs to ensure complete and accurate input of the appropriate data, and assists U.S. EPA in training district personnel to effectively use the AFS database.
- Continuous Emission Monitoring (CEM) Program – The H&SC requires that the operator of any stationary source (for which a district is required to install and operate a CEM) report violations of emission limits noted by the CEM to the air district, and that the local districts, in turn, report these to the ARB. The section collects, stores, analyzes and reports this information.
- Complaint Hotline – This toll-free telephone number -- (800) 952-5588 -- provides a medium for citizens throughout the state to call and voice their concerns regarding air pollution problems. Citizens call to alert the ARB to persistent odors, emissions from industry and vapor recovery equipment, smoking vehicles and to ask questions regarding air pollution. When a call is received it is recorded, assessed, and either referred to the appropriate air district or appropriate agency, or investigated by the ARB. The ARB's Public Information Office also maintains a toll-free contact number at: 800-END-SMOG (800-363-7664).
- Agricultural Burning Program – The section reviews air district smoke management plans and burning rules. The staff also conducts aerial surveillance on agricultural burning practices in the Sacramento Valley.
- Rule Review – The ARB works cooperatively with local air pollution control districts to ensure regulations are adopted to achieve the most effective air pollution control program and obtain maximum emission reductions. The Rule Review Program accomplishes this by reviewing rules for clarity and enforceability, specifically for accuracy and completeness of definitions, presence of test methods, control emission device efficiencies and record keeping requirements. The district is notified verbally of deficiencies which is followed-up by a formal written comment along with suggestions for ensuring the rule is enforceable. Thorough review of draft rules has proven vital in reducing the need for changes of subsequent adopted rules and nearly eliminating the need for ARB to identify rule deficiencies at public hearings. The Enforcement Division reviews 90% of all rules submitted to the ARB.
- Student Assistant Contract Support - The SSES staff also administers ED's student assistant program. The program is coordinated through CSUS's Hornet Foundation. SSES staff handles contract writing, timesheets, budgeting, accounting, and the hiring process.

Program News

Amador Annual Inspections - The Stationary Source Enforcement Section was contacted by the Amador Air Pollution Control District (APCD) to request help in their annual source inspections. The section responded by inspecting 42 gasoline dispensing facilities, 10 paint spray booths, and 3 dry cleaning facilities. These inspections were completed over a two-month period. All violations and minor observations were submitted to the district in a report for follow up.

Gasoline Storage Tank Inspections - The Stationary Source Enforcement Section (SSES) was contacted by the Sacramento AQMD, Placer APCD, and the Imperial APCD to conduct gasoline storage tank inspections. The SSES inspected 43 tanks and all of the tanks were in compliance except one in Imperial County, where the district issued a notice of violation. The inspection results were documented and submitted to the districts.

**Special Projects**

SB 527 – Administrative Penalty Program

Stationary Source staff continues to be involved in Division and CAL/EPA special projects. Staff completed the Administrative Penalty board item from workshop to Board action. This program implements provisions of SB 527. It allows ARB to pursue an administrative penalty as an alternative to a civil or judicial civil penalty. After the Board adopted the regulation, staff arranged training for all enforcement staff through the Office of Administrative Hearings (OAH). OAH is charged with hearing the cases in any ARB administrative hearing action brought under this program. The training was conducted by two Administrative Law Judges from OAH and included a mock hearing. It was designed to train staff on how to prepare for an administrative hearing.

Enforcement Division's Strategic Plan

Staff participated on the team that developed the Draft version of ED's Strategic Plan. Staff conducted numerous interviews to glean opinions, strategies and ideas on the effectiveness and efficiency of ARB's enforcement program. After months of meetings and data review, the draft plan was submitted to Executive Office and CAL/EPA.

CAL/EPA Enforcement Assessment Project

Under direction of the Assistant Secretary for Law Enforcement and Counsel for CAL/EPA, staff began leading a thirteen member inter-departmental team for CAL/EPA's Enforcement Assessment. A team was developed from each Board within CAL/EPA, with SSES staff leading the team. By project end, approximately 150 enforcement staff from each department as well as local enforcement agencies will be interviewed as to what makes a successful and efficient enforcement program. It is anticipated that this project will be completed in 2004.

Variance Program Database

In 2003, SSES staff worked with Reginald Guanlao to develop and implement a new variance tracking database. After numerous meetings, modifications and testing, it looks like we may have the new database up and running by the end of 2004.

Statistics relating to the SSES's enforcement activities may be found in Appendix E.

**STRATEGIC ENVIRONMENTAL INVESTIGATIONS AND ENFORCEMENT SECTION**Program Overview

The Strategic Environmental Investigations and Enforcement (SEIES) Section conducts special investigations of cross-media environmental cases (i.e., cases involving one or more of air, water, toxic wastes, regular waste, or pesticides) that involve the other agencies within Cal/EPA, as well as assisting air district enforcement staff and local law enforcement agencies. The section works under a Memorandum of Understanding with the California Environmental Protection Agency (Cal/EPA) to provide investigative services necessary to fulfill Cal/EPA's statutory enforcement responsibilities.

A major function of the SEIES is to provide enforcement assistance (inspection, investigation, and case preparation) to local air pollution control districts and other local and regional environmental agencies such as the county departments of environmental health and the regional water quality control boards. The section also works with ARB's Heavy-Duty Diesel Enforcement inspectors on focused environmental inspections in mixed residential/industrial areas. The section also supplies surveillance services in support of multi-media cases, and, as necessary, to support investigations by local air districts and other state and local agencies. The section's staff actively participates in environmental task force meetings throughout the state.

Program News

Asbestos Cases – The ARB assists smaller air quality districts in investigation and pursuing cases involving illegal asbestos (“rip and tear”) removal. A number of cases that were referred to local district attorneys were closed during 2003 and resulted in misdemeanor convictions or civil penalties.

Incinerator Case – The Communities for a Better Environment community group brought this case, involving a medical waste incineration facility, IES, in a mixed residential/industrial area (also known as an “Environmental Justice” or EJ area) to the attention of the ARB and the Bay Area Air Quality Management District (BAAQMD). While multiple issues were involved (e.g., odor nuisance, potential permit violations), the ARB was called upon to support the BAAQMD by installing and monitoring surveillance equipment to determine if burning activities exceeded smoke opacity standards. The

facility is now out of business.

La Montaña Dumping Site – Subsequent to the 1994 Northridge earthquake, rubble was removed from fallen freeways and stored at the La Montaña dumping site next to a residential area in Huntington Park, California. The rubble was stored for many years as the site owner sought, unsuccessfully, to dispose of the material in a constructive way (i.e., to be recycled for use in new freeway construction.) Concerns of potential permit violations and particulate matter emissions brought this matter to the attention of the ARB. To date, the pile of rubble has been crushed with particulate control measures enacted, and the ARB is assisting in the process of identifying a use for the material.

ARCO Underground Storage Tanks – At the request of Cal/EPA, the ARB provided investigative support on the ARCO case to the SWRCB. The Attorney General's Office settled the case with ARCO for a record \$45.8 million in 2002. The settlement required ARCO to pay \$25 million in penalties to the State of California and an additional \$20.8 million in improvements to its service stations above what is required by law. The settlement was the largest for this type of case ever recorded.

Environmental Strike Force Investigative Assistance – Throughout 2003, SEIES staff provided investigative assistance to local districts and other local governmental environmental agencies in the investigation of crimes against the environment where air inspection, sampling, or other services are needed. Two such cases, which are in progress, involve fugitive dust arising from cement manufacturing operations in Southern California. The section also provided investigative work in the wood-burning cogeneration industry and in various other issues raised at local environmental crimes task force meetings and in response to citizen's complaints.

Surveillance Cases – The SEIES surveillance unit assists state and local agencies, including air pollution control districts, in their investigations of environmental criminal activity of all kinds throughout the state. The unit works closely with investigators specifically to provide covert video, either digital or analog, to the investigating teams for the various agencies. This video is then used by investigators as evidence to support their cases. Video evidence is a highly effective tool in environmental crime enforcement and its use by state and local agencies continues to grow.

During 2003, SEIES assisted several state and local agencies across the state in many ways to support civil and criminal case development. The section conducted surveillance for DTSC on two separate cases involving improper disposal of hazardous waste. The section's surveillance tapes were also instrumental in the settlement of a wheel manufacturer's illegal waste disposal case in Orange County. As well, SEIES has assisted and continue to provide valuable video surveillance to the office of the Attorney General working with asbestos regulation and other violations. In addition, the section provided covert video surveillance of an aggregate facility to the state Attorney General and a local air pollution control district. Recently, SEIES entered into a mutual assistance program directly with CIWMB to help them handle the growing problems of illegal



disposal of numerous hazardous wastes, specifically tires. The surveillance unit has assisted a number of other state and local agencies with video evidence, technical support, and case development.

Aggregate Operations and Quarries. SEIES staff assisted two air districts in inspection of quarrying operations and aggregate production. In addition, the section provided covert surveillance at one of the sites. In both cases, enforcement matters are in the hands of the respective districts. The section provided surveillance and inspection information for the Attorney General's case against one facility in federal court.

Multiple Violations at Cogeneration Facilities. SEIES staff and staff from several air districts developed a strong case against a major forest products corporation that operates sawmills with cogeneration plants at several locations in the state. In the spring of 2003 the Attorney General opened enforcement activities against the company. The company initially rejected outright the allegations of hundreds of violations at many of its facilities. After patient explanation of the means by which SEIES staff became aware of and determined violations, the company has gotten beyond denial and is now inclined toward settlement and is participating in settlement negotiations. Section personnel have also assisted in the preparation of a lengthy complaint to be filed if negotiations fail.

Cement Plant Inspections. In 2003 SEIES personnel conducted inspections of several Portland cement plants and batch plants. The inspections grew out of complaints and requests for assistance from other Cal/EPA agencies for assistance in the investigation of cross-media pollution. Other agencies are handling the enforcement of violations observed, with support from the section's personnel when needed.

Special Projects In 2003 SEIES personnel participated in several special projects. Section personnel made presentations on environmental crime scene investigation and crime scene surveillance to classes and to employees of other governmental agencies. Section personnel manned a booth at the Cross-Media Environmental Symposium in San Diego. Section staff participated in the (continuing) preparation of the Enforcement Division's Strategic Plan. At the request of the Amador County Air Pollution Control District, SEIES personnel provided training in inspection techniques to District staff and conducted several inspections with District staff.

**ARB ENFORCEMENT GOALS FOR 2004:**

- Continue inspections at points of distribution and retail outlets.
- Increase enforcement audits of heavy-duty diesel vehicle fleets and refer cases for litigation or settlement where violations are found.
- Continue multi-media inspection events in mixed-use (industrial/residential) neighborhoods for the Environmental Justice Program.
- Continue improvement of environmental quality at the California-Mexican border through enhanced enforcement and compliance assistance. Specific goals include increased heavy-duty diesel vehicle inspections due to increased traffic under the North America Free Trade Agreement, and continued participation in the Tri-National Heavy-Duty Vehicle Inspection and Maintenance Working Group.
- Continue aggressive enforcement of ARB's Off-Highway Vehicle regulations.
- Focused enforcement of illegal motor homes.
- Continue aggressive enforcement of ARB's Large Spark-Ignited Engine and Non-Road regulations.
- Continue implementation of a program to enforce ARB's marine pleasure craft regulations.
- Continue working with the California Highway Patrol to remove vehicles from service for repeat offenders of the Heavy-Duty Vehicle Inspection Program, as provided in statute under the California Vehicle Code section 27159.
- Continue aggressive enforcement of the 49-state vehicle program.
- Revisit high concentration used car dealer areas to ensure vehicles offered for sale have all of the required emissions control systems.
- Continue work with the California Department of Motor Vehicles, California Highway Patrols, local law enforcement agencies toward improving compliance with ARB's regulations (49-state vehicles, gray market vehicles, off-road motorcycles, gas-powered scooters, pocket bikes, street racers, etc).
- Continue aftermarket parts enforcement and peace officer training to discourage emission control system tampering and street racing.
- Implement programs to prevent the sale of illegal engines and vehicles through mail order and internet venues.

- Continue to improve and enhance the ARB enforcement program web page (<http://www.arb.ca.gov/enf/enf.htm>).
- Maintain the frequency of inspections at retail and commercial points of distribution of consumer products while focusing on the VOC limits that became effective January 1, 2003.
- Focus on categories of consumer products and aerosol coatings with newly effective limits and categories where the sell-through period has expired.
- Ensure that enhanced enforcement provisions are adopted into the Consumer Products and Portable Fuel Container regulations by continuing to work with regulatory development staff.
- Continue to implement the enforcement program for portable fuel containers.
- Continue aggressive enforcement of the Asbestos NESHAP.
- Continue aggressive investigation of citizen complaints.
- Conduct at least two Air Facility System (AFS) audits of non-grantee districts.
- Conduct at least two Asbestos NESHAP Task Force Meetings.
- Conduct at least two Hearing Board workshops related to stationary sources of air pollution to train hearing board members, industry and district staff on variance issuance requirements.
- Update the stationary source variance database to improve ARB's management of reviewing and monitoring variances for the 35 air districts.
- Include the status of stationary source complaints on ARB intranet.
- Continue vigorous enforcement of motor vehicle fuels regulations by conducting frequent inspections of production, distribution and retail facilities.
- Continue enforcing the Cargo Tank Vapor Recovery regulations with inspections of cargo tanks.
- Continue to investigate violations and resolve cases of motor vehicle fuels regulations and cargo tank regulations.
- Settle fuels reporting cases by consulting with counsel from the ARB's Legal Office and determining settlements vs. referral of all cases to Legal.

- Continue to develop and update the Enforcement Division's Fuels and Cargo Tank web pages (<http://arb.ca.gov/enf/fuels/fuels.htm>.)
- Conduct workshops of the Cargo Tank Advisory Committee and make meeting notices available to the public through the Enforcement Division's list serve and Cargo Tank Vapor Recovery web page.
- Continue coordination with the IRS and BOE on the red dye diesel program and with BOE on imported diesel and gasoline fuels.
- Continue working with refiners, producers, importers, and SSD to resolve severe problems that continue to come up with the MTBE ethanol transition and to plan for future potential problems.
- Maximize reformulated gasoline reporting efficiency by requiring all refiners to use new ARB standardized reporting forms.
- Install two additional fume hoods in the New Mobile Fuels Laboratory to increase testing capability and as an additional safety measure.
- Continue to enforce the School Bus Idling Air Toxic Control Measure.
- Assist in the development of regulations for the control of emissions from Transportation Refrigeration Units (TRUs) and enforce these regulations upon adoption.
- Continue to assist with regulations requiring the upgrading (“reflashing”) electronic on-road heavy-duty diesel engines that exhibit high NOx emissions in-use and enforce these regulations upon adoption.
- Continue to assist in the development of regulations for the control of diesel particulate emissions from on-road heavy-duty residential and commercial solid waste collection trucks and gasoline cargo tank trucks and implement enforcement of these regulations in 2005.
- Continue to develop a unified enforcement case tracking database and upgrade current enforcement program databases for better functionality and efficiency. Additionally, the smoking vehicle complaint database and web sites will be updated and a new web site and complaint database will be added for the school bus idling enforcement program.

# **2003 APPENDICES**

**Appendix A****ENFORCEMENT ACCOMPLISHMENTS FOR 2003**

<b>Program</b>	<b>Settled/Closed</b>	<b>Penalties*</b>
Mobile Sources	1,139	\$5,315,037
Fuels	18	\$156,164
Consumer Products	9	\$396,500
Portable Fuel Containers	7	\$221,800
Cargo Tanks	63	\$44,500
Stationary Source/Other	1	\$75,000
Totals	1,237	\$6,209,001

\*= Includes supplemental environmental projects, early compliance costs, etc.

**CASE DISPOSITIONS**

<b>Category</b>	<b>Number Cases/Penalties</b>
Civil	6/\$655,000
Administrative	1,231/\$5,554,001
Criminal	0
Totals:	1,237/\$6,209,001
Restitution/Investigative Costs	\$81,000
Supplemental Environmental Projects (SEPs)	3/\$175,500

**Key:**

*Civil or criminal cases* are cases that are referred to the Attorney General's Office or a local District (DA) or City Attorney's (CA) Office or the U.S. Attorney's Office and are filed in Superior Court or U.S. District Court.

*Administrative cases* are cases settled in house via informal staff/violator settlements (used for small violation cases), the Mutual Settlement Program or through an administrative hearing in front of an ARB Administrative Law Judge (ALJ) (this applies to Heavy-Duty Vehicle Inspection Program cases only), or through an administrative hearing before a State Office of Administrative Hearings ALJ.

*Restitution/Investigative Costs* are monies received for ARB investigative costs for cases that are referred to a DA/CA.

*Supplemental Environmental Projects (SEPs)* are programs under which case settlement monies are used for environmental research, education or technology projects (e.g. research on the effects of new gasoline additives, lawn mower exchange programs to promote the use of electric lawn mowers, etc.)

*Settlement Agreements* are formal signed agreements between the ARB and the violator for major cases settled under the Mutual Settlement Program.

## ***Appendix B***

### **SIGNIFICANT CASE SETTLEMENTS**

In most enforcement actions, the ARB is able to reach mutual settlement agreements with the air quality violators. These settlements generally include a monetary penalty, a corrective action, and in some cases, funds for a Supplemental Environmental Project (SEP) that provides additional emission reduction incentive programs, public education projects, etc. Apart from funds earmarked for SEPs, all penalties submitted to the ARB are deposited into the Air Pollution Control Fund, the Vehicle Inspection and Repair Fund or the Diesel Emissions Reduction Fund, which serve as funding sources to mitigate air pollution throughout California.

The following is a summary of the significant cases settled in 2003, including mobile sources, consumer products, fuels, and stationary sources cases.

### **MOBILE SOURCE CASES**

#### **Ford 7.3L Federal Navistar Engine - \$1.5 Million Settlement**

The ARB determined that Ford assisted in the delivery of (374) vehicles in California that were for federal use only. The vehicles were all equipped with Navistar 7.3L diesel engines and were supplied as a chassis to secondary body builders throughout the U. S. The error was traced back to Ford's ordering system that allowed secondary manufacturers to order the 7.3L package as 50-state certified, but Navistar did not offer a 50-state certification, and each order for a 50-state model was supplemented by the ordering system with a federal version. Since most of these vehicles were custom built and in-use in California as shuttles, paratransit vehicles, or fleet vehicles, removing the vehicles from California would have imposed a hardship on the current owner/operators. Working with the ARB, Ford initiated a field-engineering program to convert the affected vehicles to a California certified configuration. After the completion of the corrective action, the ARB and Ford reached a settlement of \$1.14 million dollars to the APCF with \$365K held in abeyance and payable if a trigger violation is discovered within three years. Staff is currently watching Ford's compliance closely to insure compliance with this settlement.

#### **Indian Motorcycle Company - \$750,000 Settlement**

On January 7, 2003, the Air Resources Board (ARB) finalized a settlement with Indian Motorcycle Company. The Indian Motorcycle Company was found in violation of Health & Safety Code (HSC) section 43151 et. seq., which prohibits the delivery for sale in California of any new motor vehicle unless the vehicle has been certified to meet California emission standards. Under the terms of this settlement, Indian Motorcycle Company was assessed \$750,000 in penalties.

### **Hertz - \$125,000 Settlement**

In January 2003, the Los Angeles County District Attorney (LADA) and the Air Resources Board (ARB) entered into a \$125,000 settlement with the Hertz Corporation. In violation of Health & Safety Code sections 43151 and Business & Professions Code section 17200, the Hertz Corporation rented or offered for rent non-California certified vehicles in the state. Investigation by ARB staff revealed that on multiple occasions, vehicles that had been rented in other states and dropped off in California, were repeatedly rented in-state prior to being sent to out-of-state destinations. The \$125K settlement included \$13,500 to reimburse the ARB for investigative costs. Enforcement actions of this nature are important, ensuring that businesses in California are provided with a level playing field. Additionally, these enforcement actions help obtain the full benefit of California's emission standards.

### **National Car Rental - \$60,000 Settlement**

In April 2003, the Los Angeles County District Attorney (LADA) entered into a \$60,000 settlement with the National Car Rental, Inc. on behalf of ARB. National was found to be in violation of the California Health & Safety Code, Section 43151 and Business & Professions Code section 17200. National Car Rental, Inc. repeatedly rented or offered for rent, non-California certified vehicles within the state. Investigation by ARB staff revealed that on multiple occasions, 49-state vehicles that had been rented in other states and dropped off in California, were repeatedly rented in state prior to being sent to out-of-state destinations.

The \$60,000 settlement included \$30,000 to reimburse the ARB for investigative costs. The most important benefit from the settlement of this case is that National agreed that one interstate rental constitutes a violation regardless of the majority of the rentals of that vehicles being out of state. This agreement will make it easier to enforce the H&SC in any future cases based on the same type of violations. Enforcement actions of this nature are important, ensuring that businesses in California are provided with a level playing field. Additionally, these enforcement actions help obtain the full benefit of California's emission standards.

### **Mazda - \$1,000,000 Settlement**

During 2001, Mazda notified the Mobile Source Enforcement Section that they had inadvertently delivered, imported, offered for sale and sold 160 new 2001 model year 2.5 L Mazda B series trucks in California that were not certified by the Air Resources Board (ARB) for sale in California. Mazda self-reported these actions to the ARB, and stopped sales of the vehicles and initiated recovery of affected vehicles in the dealers' possession and shipped them out of California. By selling and offering for sale new non-California certified vehicles, Mazda and Mazda's franchised dealers violated California Health and Safety Code (H&SC) Section 43151. The settlement with Mazda and its dealers was completed in July 2003 and includes a cash payment to the Air Pollution Control Fund (APCF) in the amount of \$750,000, and a Supplemental



Environmental Project in the amount of \$125,000. Finally, the settlement also includes a provision that Mazda will pay an additional \$125,000 to the APCF if ten or more similar violations are discovered within three years of the effective date of the Settlement Agreement.

### **Five SORE Violations – Combined Settlement of \$18,356**

Murray settled for \$2,115 for delivering 40 non-California certified lawn mowers to Wal-Mart stores in Lancaster and Corona. These non-compliant units were subsequently sold to consumers in California.

Santa Cruz Scooter Works (SCSW) settled for \$600 for selling 2 non-compliant scooters in California. This settlement includes the manufacturer (SCSW) and their dealer Pacific Sand and Water Sports Racing.

Tradewind Products Inc., doing business as Youcansave.com, Inc., settled for \$9,000 for selling 150 motorized kick-scooters equipped with non-California certified Small Off-Road Engines (SORE). The non-compliant, Chinese scooters were sold on the internet at [www.youcansave.com](http://www.youcansave.com) to consumers in California.

Strong Ideas Incorporated, doing business as The Gadget Alert, sell various merchandise through their catalog and internet site. The ED staff noted non-compliant scooters advertised in The Gadget Alert catalog and issued a cease and desist order. In response, The Gadget Alert reported the sale of 65 non-compliant scooters to consumers in California of which they were able to recall only 5 units. The company settled for \$4,641 for selling motorized kick-scooters equipped with non-California certified two stroke engines to consumers in California.

Eastman Industries Inc. settled for \$2,000 for selling 17 hover movers equipped with non-California certified SOREs.

For both the Youcansave and the Eastman settlement, the ARB adjusted the settlement amount after reviewing financial hardship data submitted by the companies.

### **Cummins/Cummins Cal Pacific/Engine and Equipment - \$30,000 Settlement**

Cummins together with Cummins Cal Pacific (Cal Pacific) and Engine and Equipment (E&E) Company settled for \$30,000 (\$10,000 each) for introducing into commerce in California non-California certified CI engines. The California regulations for Off-Road Compression Ignition Engines require the manufactures to certify their engines to meet stringent emission standards if the engines are to be used in portable applications. At least 40 non-compliant diesel engines over 175 hp were installed in portable generators by E&E and sold to companies in California. Cal Pacific, the authorized Cummins dealer in Southern California, sold the non-compliant engines to E&E during 1996 and 1997. The Air Resources Board discovered these engines through our statewide, portable-engine, permitting program in 1999. This settlement concludes a lengthy investigation and settlement negotiation.

**Makita - \$21,500 Settlement**

Makita is a manufacturer of hand-held power tools. In August 2003, Makita reached a settlement with ARB for \$21,500 for delivering backpack blowers and other gasoline powered products equipped with non-California certified Fuji Robin engines to Makita dealers and Lowe's and Home Depot stores in California. The Fuji Robin engines were California certified through 1999 but became 49-State certified after the California Tier 2 standards came in effect in 2000. The non-compliant 2000 model units were inadvertently sold to consumers in California. Makita was able to recall some non-compliant units from dealer inventory. The case was complicated by the fact that the compliance status of the units in question depended on the date of manufacture (1999 vs. 2000).

Therefore, only 68 of 491 units could be identified as non-compliant. Assumptions had to be made about the compliance status of the other units.

**Daimler Chrysler - \$60,000 Settlement**

During an investigation conducted by the Mobile Source Enforcement Section of the ARB, it was discovered that Daimler Chrysler (Chrysler) delivered to California retail locations fifteen 2002 model year new motor vehicles that were not certified by the ARB for sale in California. Chrysler admitted that the vehicles were subsequently offered for sale and sold to California residents due in part to an error in Chrysler's vehicle order guide and electronic vehicle order system. This action is a violation of the California Health and Safety Code (H&SC) Section 43151.

To resolve the H&SC violations, Chrysler took corrective action by locating the vehicles and removing them from California. Chrysler replaced each vehicle with a California version for the customers. In addition, to prevent the recurrence of the violations, Chrysler modified their vehicle order control process. Chrysler made a penalty payment of \$60,000 to the Air Pollution Control Fund for the violations in settlement of this case. The settlement agreement for this case was signed by Chrysler in June and recently by the ARB.

**Yamaha Motorcycle Dealers - \$557,500 Settlement**

During an investigation by the Mobile Source Enforcement Section (MSES), it was discovered that numerous Yamaha motorcycle dealers throughout California were importing illegal non-California-certified motorcycles and selling them to California residents. Under California Health and Safety Code (H&SC), Sections 43150-43156, an illegal vehicle is defined as a vehicle with less than 7,500 miles on the odometer that is not certified by the Air Resources Board (ARB). H&SC Section 43154 provides for a maximum penalty of \$5,000 per vehicle. This penalty can be reduced if the vehicle is removed from California, and the removal of illegal vehicles is the ultimate goal of our enforcement efforts.

During November and December 2003, MSES settled eight Yamaha dealer cases with total penalties of \$557,000. San Diego House of Motorcycles settled for \$40,000 for eight motorcycles; Yamaha of Santa Cruz County settled for \$5,000 for one motorcycle; Corona Yamaha settled for \$37,500 for eight motorcycles; Pasadena Yamaha settled for \$10,000 for two motorcycles; Fun Bike Center in San Diego settled for \$5,000 for one motorcycle; G. P. Sports in San Jose settled for \$120,000 for twenty-four motorcycles; Hollywood Motorcycles settled for \$10,000 for two motorcycles; Bert's Mega Mall in Covina settled for \$330,000 for seventy-one motorcycles. This investigation is on-going and additional settlements are pending.

### **Ace Hardware Corporation - \$50,714 Settlement**

During the spring of 2001, staff of the MSOD Field Inspection/Testing section conducted a compliance survey for Small Off-Road Engines (SOREs) by visiting hardware stores and lawnmower shops throughout the state. At the Santa Barbara Home Improvement Center (SBHIC), they discovered non-California compliant chainsaws and line trimmers offered for sale. Since the SBHIC belongs to the ACE cooperative of stores, the ARB issued a cease and desist order to ACE and a request to report the number of units sold statewide. ACE reported that they delivered 1,068 line trimmers and 645 chainsaws equipped with non-California certified engines to retail stores in California, prior to the cease and desist order. Though ACE had procedures in place to segregate 49-state and California compliant equipment, an inadvertent error in the coding of the trimmers and chainsaws allowed the non-compliant units to be distributed and sold in California stores. A recall campaign undertaken by ACE was not successful because most of the non-compliant equipment had already been sold to consumers in California. ACE signed a settlement agreement on December 2, 2003 and deposited \$50,714 into the Air Pollution Control Fund.

### **Volkswagen of America - \$552,500 Settlement**

ARB has recently settled a case with Volkswagen of America (VW) in the amount of \$552,500 for violations to the California Health and Safety Code 43151 (HS&C).

VW delivered to California retail locations eighty-five 2002 model year new motor vehicles that were not certified by the ARB for sale in California. VW admits that the vehicles were subsequently offered for sale and 84 were sold to California residents due to an error in VW's vehicle order guide and electronic vehicle order system. VW self-reported these facts to the ARB, stopped sales of the affected vehicles and initiated recovery of the affected vehicles for shipment outside of California.

VW has undertaken the following corrective actions to prevent the recurrence of the violations. VW located and repurchased 81 out of 84 of the vehicles sold new to California residents, and 81 vehicles were removed from California. Despite VW's diligent efforts to make contact with customers, who were affected, 3 vehicles have not been recovered. VW understands and has informed these customers that the vehicles cannot be registered in California. Additionally, VW has implemented new programs to

prevent California dealers from receiving allocations of models that are non-California certified.

### **Aston Martin - \$6,550 Settlement**

Aston Martin delivered to California dealers and sold in California 131 model year 2001 and 2002 DB7 vehicles with incorrect emission labels. The mislabeling was a continuous problem that violated the ARB test procedures and, therefore, California Health and Safety Code Section 43212. Section 43212 provides for a civil penalty of \$50 for each vehicle, which does not comply with the procedures and is sold in California. In order to correct the problem, Aston Martin issued a service action campaign aimed at re-labeling all 131 affected vehicles with correct emission labels. Aston Martin paid \$6,550.00 to the Air Pollution Control Fund in settlement of this case and continues to re-label the vehicles until to the best of their ability all 131 are corrected.

### **Chrysler - \$44,000 Settlement**

During an investigation conducted by the Mobile Source Enforcement Section of the ARB it was discovered that Daimler Chrysler (Chrysler) delivered to California retail locations nine 2000 model year new motor vehicles that were not certified by the ARB for sale in California. Chrysler admitted that the vehicles were subsequently offered for sale and sold to California residents due in part to an error in Chrysler's vehicle order guide and electronic vehicle order system. This action is a violation of the California Health and Safety Code (H&SC) section 43151.

To resolve the H&SC violations Chrysler took corrective action by reconfiguring one of the vehicles to specifications for California-certified configuration and extending the manufacturers warranty to a 7/70 warranty on the remaining 8 vehicles. In addition, to prevent the recurrence of the violations Chrysler modified their vehicle order control process. Chrysler made a penalty payment of \$44,000 to the Air Pollution Control Fund for the violations in settlement of this case.

### **B & R Cycle - \$40,000 Settlement**

On May 21, 2003 an inspection was performed at B&R Cycle in Lemon Grove, CA. It was found that there were 4 motorcycles in violation of H&S Code 43150 and a notice of Violation was written. DMV records were also reviewed at this time, and it was found that an additional 7 motorcycles had been sold that were in violation of 43150. All of the motorcycles cited were used Yamaha motorcycles with less than 7,500 miles showing on the odometer. The owner, Dariuzs (Derek) C. Lukomski, provided proof on one of these motorcycles that the odometer had been replaced and the old odometer exceeded 7,500 miles when sold--so this one was dropped. He provided proof that he sold 2 of these motorcycles out of state. The settlement for this case was \$40,000.00.

### **Nor-Cal Bike Sales - \$20,000 Settlement**

On October 16, 2003 an inspection was performed at Nor-Cal Bike Sales. It was found that eight motorcycles were in violation of H&S Code 43150. These were custom motorcycles manufactured by Big Mikes Choppers and Bourget. All of these motorcycles were put back into the correct California certified condition and then re-inspected. In addition to the corrective actions, the settlement of this case was \$20,000.00. One payment of \$5,000.00 has been received with three more payments of \$5,000.00 each forthcoming.

## **CONSUMER PRODUCTS CASES**

### **Conair Corporation - \$225,000 Settlement**

A lawsuit filed on behalf of the Air Resources Board against the Conair Corporation for selling 56,299 units of non-complying hair mousse products has been settled for a civil penalty of \$225,000. From 1995 through and including 2000, Conair sold, supplied, offered for sale, or manufactured for sale in California non-complying containers of Rusk Blofoam, New Image Thermal Active Root Lift, and Beyond the Zone Volume Booster. In March of 2003, a complaint was filed by the Attorney General's Office, which was dismissed as a result of the negotiated settlement.

### **Shield Packaging of California Inc. - \$17,500 Settlement**

On April 9, 2003, an office conference was conducted with a representative from Shield Packaging to discuss and to settle a Report of Violation. Shield is a contract packaging company who fills a wide variety of aerosol and liquid products and has laboratory facilities for custom formulation and production. Shield is alleged to have offered approximately 14,000 containers of non-compliant hair mousse for sale in California. Shield agreed to settle this case for \$17,500 in 2003.

### **Zotos - \$125,000 Settlement**

In 2000, Zotos was issued a Report of Violation for selling haircare products that exceeded the volatile organic compound (VOC) standard for their respective categories. The products included Senscience Effervesce Soft Styling Foam, a "Hair Mousse" and Senscience Energel, a "Hair Styling Gel". In August 2002, the case was referred for litigation to the Attorney General's Office, who subsequently filed a civil complaint.

In July 2003, the Attorney General's Office notified us that the judge in the case had accepted a settlement agreement negotiated between Zotos and the Air Resources Board (ARB) and dismissed the complaint. As part of the settlement, Zotos paid a total of \$125,000 including a \$75,000 civil penalty paid to the ARB and \$50,000 to finance lawn mower trade-in events to be conducted by local air districts during 2003. These events are considered supplemental environmental projects and will be funded as

follows: \$25,000 for the San Diego County Air Pollution Control District; \$20,000 for the San Joaquin Valley Unified Air Pollution Control District and \$5,000 for the Sacramento Metropolitan Air Quality Management District.

**Lowe's - \$10,000 Settlement**

On June 26, 2003, the Enforcement Division staff conducted an office conference with Lowe's representatives to discuss a Report of Violation. Lowe's is alleged to have offered non-compliant portable fuel containers and spouts for sale in California. Discussions on July 21, 2003, have resulted in a mutually agreed upon settlement for \$10,000.

**Wal Mart - \$10,000 Settlement**

On July 11, 2003, Wal-Mart Stores, Inc. accepted the settlement offer for \$10,000 to resolve two Reports of Violations for non-compliant portable fuel container spouts. The settlement agreement was executed in August 2003.

**Blitz USA, Inc. - \$175,000 Settlement**

On October 1, 2003, representatives from Blitz USA, Inc. agreed to settle a violation for manufacturing non-complying spill-proof systems for sale in California. The company met with Enforcement and Monitoring & Laboratory Division staff on October 6, 2003 to observe testing of their one-gallon and two-gallon portable fuel containers equipped with the Sure Pour 3000 series spout. After the completion of this testing, Blitz implemented an exchange or rework program to replace all of their non-compliant Sure Pour 2000 series spouts with Sure Pour 3000 series spouts on their one-gallon and two-gallon containers. In 2003, Blitz paid \$175,000 to settle these violations.

**FUELS CASES**

**Shell Additive - \$32,000 Settlement**

Routine additization record review discovered that between January 2000 and April 2001, Shell had been using a decertified additive at their Bakersfield and Wilmington facilities. The case has been settled for \$32,000 in 2003.

**Valero - \$10,000 Settlement**

On August 21, 2002, Valero advised that three DAL batch reports submitted between August 17 and August 20, 2002, had incorrect aromatic values because of a laboratory software error. The case was settled for \$10,000 in 2003.

### **GATX - \$11,664 Settlement**

In February 1999, GATX self-reported that they had dispensed 274,512 gallons of EPA diesel through their CARB diesel rack, resulting in 66 loads of EPA diesel being delivered to California customers. Tank 100061 at their Long Beach terminal had recently been switched from a CARB diesel tank to an EPA diesel tank; the operator who connected it to the CARB diesel sales rack thought it still contained CARB diesel. The case was settled for \$11,664 in 2003.

### **Equilon - \$32,000 Settlement**

Equilon self-reported two instances of the accidental distribution of high Reid vapor pressure (RVP) gasoline from their Martinez refinery during the summer RVP season. The first incident involved the release of premium gasoline on 10/29/01 to their South San Francisco terminal.

The mistake was caught before any of the fuel entered the retail distribution chain, and the gasoline was held until the end of the RVP season on November 1. The second incident, on October 31, 2001; involved 29,600 gallons of high RVP regular grade gasoline delivered to six Northern California service stations. The cases were settled together for \$32,000 in 2003.

### **Tosco - \$45,000 Settlement**

A case was opened for a failure of Tosco's Rodeo refinery to properly notify CARB of a change in the predictive model formulation they were using to manufacture CARBOB on March 3, 2001. While that case was being prepared, we learned that Tosco's Wilmington refinery had not been reporting CARBOB batches at all between December 2000 and April 2001. During an office conference with Tosco on October 10, 2001, we learned of another reporting violation that had occurred in May 2001.

Subsequently, routine verification of predictive model notifications submitted by Tosco's Rodeo refinery during December 2001 revealed that several of the models failed. Subsequent investigation indicates that Phase 3 gasoline was submitted under the Phase 2 model procedure.

After Tosco's refusal to settle the cases through mutual negotiations, they were referred to the Attorney General's office for resolution. The AG settled them jointly for \$45,000 in 2003.

### **ARCO's Los Angeles Refinery - \$10,000 Settlement**

On February 8, 2000, ARCO's Los Angeles Refinery manufactured a batch of diesel according to their certified alternate formulation ARCO D-27, which specifies a maximum nitrogen content of 40 ppm by weight. ARCO's own release test showed the batch to have a nitrogen content of 44 ppm, but the batch was released anyway. ARCO attributed the violation to human error, in the form of oversight by lab personnel.

On March 23, 2000, ARCO submitted final notification of an import shipment of regular

grade gasoline meeting a predictive model specifying an aromatic hydrocarbon maximum of 14.9 percent. Sampling revealed that the gasoline actually had an aromatic hydrocarbon content exceeding 19 percent.

The Office of Legal Affairs has settled both cases for a total of \$10,000 in 2003.

### **STATIONARY SOURCE CASES**

#### **TXI and Subsidiaries - \$350,000 Settlement**

ARB and the Ventura County Air Pollution Control District have reached agreement to settle an enforcement case with Texas Industries, Inc. (TXI) and several of TXI's subsidiaries, Pacific Custom Materials, Inc. (PCM); TXI California, Inc.; and TXI Operations, Inc. SEIES personnel developed the case working with staff of the Ventura County Air Pollution Control District and provided support for the ARB attorneys in developing the settlement. The settlement is the culmination of three years of investigation, surveillance, and case preparation.

ARB and the District alleged that TXI/PCM's plant, located outside of Frasier Park in eastern Ventura County's Lockwood Valley, emitted nitrogen oxides, sulfur oxides and particulate matter in amounts exceeding limits in the regulations of the Ventura County Air Pollution District and set in TXI/PMC's permits, issued by the District. These emissions resulted in deleterious health consequences, property damage, and nuisance to Lockwood Valley residents. These emission violations caused a large number of complaints to the District and the Air Resources Board, resulting in an investigation by SEIES personnel and ultimately in the enforcement case prepared jointly by the ARB and the District.

Under the terms of the settlement, TXI and its subsidiaries have agreed to pay a monetary settlement of \$350,000, undertake process and equipment upgrades, install additional monitoring and reporting equipment, and conduct additional source testing. In addition to paying the monetary settlement, TXI/PCM agreed to provide continuous monitoring of emissions from the facility and upgrade several pieces of equipment at the facility to reduce emissions and to provide continuous quality control on emission control equipment. Further still, TXI/PCM agreed to retrofit diesel engines on mobile equipment with catalytic control devices to reduce or eliminate emissions of particulate matter in the exhaust. TXI/PMC agreed to work with the District in the development of a plan to reduce fugitive emissions of particulate matter from the facility.

The parties agreed to this settlement in 2003. The court approved the settlement on January 11, 2004. Since this case was settled in 2004 it is not reported in the tables of Appendix A.



### **Weber Creek - \$75,000 Settlement**

A settlement agreement was approved by the United States District Court (Eastern District of California) in the Sierra Rock case (People of the State of California ex rel. California Air Resources Board (ARB) v. Loring Brunius, Thelma Burnius, Sierra Rock). The agreement provides that defendants will pay a civil penalty of \$75,000 (payable in three installments over a two-year period) and will implement a number of work practices to minimize fugitive dust emissions from their quarry operations. The \$75,000 penalty will be split equally by the ARB and the U.S. EPA.

In this lawsuit Air Resources Board and the U.S. Environmental Protection Agency (U.S. EPA) cooperated in an enforcement action against Sierra Rock, a business owned and operated by Loring and Thelma Brunius. The business operates Weber Creek Quarry, an open-pit serpentine quarry located in rural El Dorado County. Asbestos occurs naturally in the underlying serpentine rock. Quarry activities generate significant quantities of dust, which is of particular concern because the dust contains asbestos, and the dust is frequently blown off the site into surrounding areas. Sierra Rock is required to control these fugitive dust emissions by various federal, state, and local air pollution laws and regulations. The ARB and the U.S. EPA alleged that the quarry had consistently failed to follow the applicable legal requirements. The parties reached a settlement shortly before the case was scheduled to go to trial, and the Court approved the settlement by signing a "Stipulation and Order of Judgment." The ARB staff is particularly pleased that this Court Order requires Sierra Rock to undertake a variety of actions to minimize dust emissions in the future. The Court will retain jurisdiction over this case, and the ARB and U.S. EPA can return to the Court for relief if Sierra rock fails to comply with the terms of the Court Order.

**Appendix C****MOBILE SOURCE ENFORCEMENT****Program and Inspection Activities – 2003****Table C-1**  
**Heavy-Duty Vehicle Inspection Program**

<b>Number of Inspections</b>	18,074
<b>Number of Violations</b>	866
<b>Failure Rate</b>	4.8%
<b>Appeals Received/Closed</b>	8/8
<b>Violations Closed</b>	810
<b>Current HDVIP II Penalties Assessed/Collected</b>	\$214,800/\$159,950
<b>Delinquent HDVIP I/II Penalties Collected</b>	\$89,335
<b>Total HDVIP I/II Penalties Collected</b>	\$249,285

**Table C-2**  
**Smoking Vehicle Complaint Program**

<b>Letters Sent</b>	1,968
<b>Responses Received</b>	674
<b>Response Rate</b>	34.3%

**Table C-3**  
**Certificate of Non-Compliance (49-State Vehicle) Program**

<b>Certificates Received</b>	1,288
<b>Certificates Reviewed</b>	277
<b>Cases Opened</b>	75
<b>Cases Closed</b>	77
<b>Penalties Received</b>	\$958,000

**Appendix D**

**Fuels and Consumer Products Enforcement  
Inspection Activities -- 2003**

**Table D-1**

**Consumer Products Inspections and Samples**

Samples obtained	1,177
Lab results received	1,141
Alleged violations	342

**Table D-2**

**Portable Fuel Containers and Spouts**

Number of inspections	986
Samples obtained	364

**Table D-3**

**Cargo Tank Vapor Recovery Certification\***

Cargo tanks inspected	943
Cargo tanks tested	443
Pressure violations (nitrogen test)	34
Uncertified equipment violations	9
Liquid leak violations	2
Annual tests observed	44

\*Includes tanks inspected during strike forces.

**Table D-4**  
**Motor Fuel Inspection Summary**

Number of samples	3,072
Number of analyses*	21,979
Reid vapor pressure	2,018
Lead	0
Sulfur	2,950
Manganese	0
Phosphorus	0
Oxygen*	2,697
Benzene*	2,654
Total aromatics*	2,654
Olefin*	2,658
Distillation, T50*	2,723
Distillation, T90*	2,723
Aromatic hydrocarbon* (dsl)	460
PAH (dsl)	460

\* Includes screen results

**Table D-5**  
**Gallons Represented in Sampling**

Gasoline	603,589,883
Diesel	156,735,121

**Table D-6**  
**BOE Dyed Diesel Program**

Number of Inspections	23,829
Number of Samples	171
Number of Violations	114

\*These monies go to Board of Equalization (BOE). The ARB works under a reimbursable services contract for the BOE for this program and conducts these inspections concurrent with HDVIP roadside inspections.

**Appendix E****Stationary Source Enforcement**  
**Air District Oversight Activity -- 2003****Table E-1****Air Facility System (AFS) Compliance Data**

Reports received	45
Reports entered	75
Issues addressed	391
Reports sent to districts	324
Mini-audits conducted*	2
NOV logs received	59

**Table E-2****Asbestos Enforcement Activity**

Notifications received	395
Demolition/renovation inspections	26
Violations issued	0
Violations settled	0
Penalty amount received	0
Samples collected	20
Samples analyzed	0
Complaints received	6
Complaints investigated	2
Related phone calls/e-mails received	319
NARS** reports submitted	0
Workshops conducted	0

\*\* National Asbestos Registry System

**Table E-3****Continuous Emissions Monitoring (CEMs) Program Activity**

Total reports received	<b>2,590</b>
NOx	1,072
SO <sub>2</sub>	372
H <sub>2</sub> S	175
CO	357
Opacity	614

**Table E-4****Hotline Complaints Activities**

Total complaints received	<b>432</b>
Stationary source	163
Vapor recovery	113
Smoking vehicle	156
Questions answered	107
Referrals to air districts	276
District responses received	263
Referred for investigation	3
Referred to other ARB divisions	29
Referred to other agency	50

**Table E-5****Air District Rule Review**

Rules received	230
Rules reviewed	242
Rules commented on	28

**Table E-6**  
**Variance Activity**

Variances received	588
Variances reviewed	588
Notices received	427
Variances questioned	10
Variances returned	0
Issues addressed	1,399
Hearing Board visits	0
Workshops conducted	2
Audits***	1
Special Projects	3

\*\*\* San Joaquin AQMD

**Table E-7**  
**Air Facility System (AFS) High Priority Violators (HPV)**

Reports received	244
Reports entered	16
Issues addressed	126
Reports sent to districts	324
Mini-audits conducted	2

**Table E-8**  
**Complaint Investigations**

Investigations	18
Requests for Assistance	20
Reports Completed	3
Special Projects	50

**Appendix F****Enforcement Division Contacts and Other Information****Division Contacts:**

Division Chief	James R. Ryden	(916) 322-7061
Division Secretary	Beverly Kelly	(916) 322-7061
Enforcement Database Coordinator	Reggie Guanlao/ Jason Francis (Student Assistant)	(916) 445-2815
Enforcement Division Coordinator	Valerie Sarver	(916) 322-2659
Enforcement Division FAX (Sacramento – HD Diesel Program)	-	(916) 322-8274
Enforcement Division FAX (Sacramento – General Enforcement)	-	(916) 445-5745
Enforcement Division FAX (El Monte – HD Diesel Program)	-	(626) 450-6170
Enforcement Division FAX (El Monte – MS Enforcement Program)	-	(626) 350-6431

**Mobile Source Enforcement Contacts:**

Chief, Mobile Source Enforcement Branch	Paul E. Jacobs	(916) 322-7061
Manager, Mobile Source Enforcement Section	Gregory Binder	(626) 575-6843
Manager, Heavy-Duty Diesel Enforcement Section – North	Victor Espinosa	(916) 322-3976
Manager, Heavy-Duty Diesel Enforcement Section – South	Darryl Gaslan	(626) 450-6155
HD Diesel Field Supervisor – Northern California	Chuck Owens	(916) 445-2049
HD Diesel Field Supervisor – Southern California	Craig Pendley	(626) 450-6172
Citation Administration – Northern California	Renae Hankins	(916) 322-8275
Citation Administration – Southern California	Rosemarie Huizar/ Debbie Wiemer	(626) 450-6158 (626) 450-6161
Collections Administration	Cheryl Griffin/ Katy Curran/ Jason Sanders	(916) 322-2654

**Fuels/Consumer Products Enforcement Contacts:**

Chief, Fuels/Consumer Products Enforcement Branch	Chuck Beddow	(916) 322-6033
Manager, Fuels Enforcement Section	Mark Stover	(916) 322-2056
Manager, Consumer Products Enforcement Section	Steve Giorgi	(916) 322-6965
CaRFG/Diesel Regulations Enforcement	Dickman Lum	(916) 327-1520
Case Development Program	Janice Ross	(916) 327-1526
Cargo Tank Enforcement Program	Brad Cole	(916) 322-3951
Cargo Tank Certification Program	Juli Sawaya	(916) 322-3034
Fuel Distributor Certification Program	Nelson Chan	(916) 445-0287
Fuels Inspection Program	Fred Schmidt	(916) 327-1522



**Stationary Source Enforcement Contacts:**

Chief, Stationary Source Enforcement Branch	Bob Leonard	(916) 322-6034
Manager, Strategic Environmental Investigations & Enforcement Section	R.C. Smith	(916) 445-1295
Manager, Stationary Source Enforcement Section	Carl Brown	(916) 323-8417
Air Facility System (AFS)	James McCormack	(916) 324-8020
Agricultural Burning Program	Cheryl Haden	(916) 323-8410
Asbestos NESHAP Program	Ahmad Najjar/ Nestor Castillo	(916) 322-6036 (916) 322-0749
Complaint Hotline Program	Verna Ruiz	(800) 952-5588
Continuous Emission Monitoring Program	Verna Ruiz	(916) 327-7574
Variance Program/Administrative Penalty Program/Cal/EPA Enforcement Assessment Project	Judy Lewis	(916) 322-1879

**Other Contacts:**

ARB Office of Legal Affairs	Diane Johnston, Chief Counsel	(916) 322-2884
ARB Public Information Office	Jerry Martin, Information Officer	(916) 322-2990
ARB Complaint Investigations	Simeon Okoroike John Sarno	(916) 327-3529 (916) 323-0724
ARB Complaint Hotline (Alternative Number)	-	(800) 363-7664 (800) END-SMOG
ARB Enforcement Division Spanish Speaking Assistance	Hortencia Mora Marivel De La Torre Kelly Davis	(626) 350-6590 (916) 323-1362 (916) 324-7658

- All individuals listed above may be contacted via e-mail. Email addresses can be found at the ARB's web site at [www.arb.ca.gov](http://www.arb.ca.gov).