

ENVIRONMENTAL HEALTH SERVICES DEPARTMENT

MATTHEW CONSTANTINE, R.E.H.S., Director

2700 "M" STREET, SUITE 300
BAKERSFIELD, CA 93301-2370

Voice: (661) 862-8700

Fax: (661) 862-8701

TTY Relay: (800) 735-2929

Web: www.co.kern.ca.us/eh

E-Mail: eh@co.kern.ca.us



RESOURCE MANAGEMENT AGENCY

DAVID PRICE III, RMA DIRECTOR

Animal Control Department
Community and Economic Development Department
Engineering and Survey Services Department
Environmental Health Services Department
Planning Department
Roads Department

**California Conference of Directors of Environmental Health
Application for Excellence in Environmental Health Award
June 30, 2009**

Overview

Kern County Environmental Health Services Department is proud to request consideration of its recently instituted Performance Incentive Program (PI Program) for recognition under CCDEH's Excellence in Environmental Health Award. The PI Program establishes an innovative approach to ensuring protection of public health and the protection of the environment by shifting the dynamics from a punitive strategy to encouragement. The program's objective is to redesign the long-standing model that utilizes negative reinforcements to force compliance, to a new approach that encourages businesses to proactively strive towards a high level of performance.

Imperative to the development and implementation of the program was the establishment of an industry group comprised of representatives from the regulated community including petroleum, farming, cogeneration, and refinery industries, and from the Greater Bakersfield Chamber of Commerce and the Independent Oil Producers' Agency. This PI Program committee was charged with the development of a sound but unique approach to provide a reward-based system which would allow the Department to direct resources away from high-performing business and towards operators that continue to struggle with compliance. Businesses that excel are rewarded with reduced permit fees (a reduction of up to \$4,380 annually) and reduced inspection frequency.

The PI Program has now been implemented with approximately 3,200 hazardous materials facilities throughout Kern County.

Background

The Kern County Environmental Health Services Department, Certified Unified Program Agency (CUPA) program, is responsible for oversight at approximately 3,200 facilities in a geographic area larger than the state of Massachusetts. Utilizing a risk-based approach established in July 2008, hazardous materials facilities have been assessed a risk based upon the chemical and processes involved, and attributed an inspection frequency and fee commensurate with their degree of hazard to the public and the environment.

The Department regulates a wide variety of facilities including some of the largest agricultural and industrial sites in the state, including large refineries, large and numerous cold storage plants, and pesticide manufacturing facilities. Several facilities have greater than a 25-mile toxic end-point radius.

California law mandates minimum inspection frequencies of at least once every three years for hazardous materials facilities. However, this mandate does not recognize or provide a mechanism for CUPAs to address relative risk. We believe current law and regulations are inadequate at providing a sufficient level of oversight with these extremely hazardous chemicals.

In late 2007, the Department began to explore alternative methods of addressing relative risk and allocating resources. The Department proposed a system wherein a facility's performance would not only be recognized, but also encouraged through positive and tangible feedback. The first step was to implement an inspection and fee schedule based upon the relative risk a business poses by the type and amount of chemical in their inventory. The second step was to implement a scoring system wherein businesses that are superior performers are rewarded for their approach to reduce their risk to the community. In doing this, the Department created an incentive for business owners to not only minimize the potential risk of release or exposure for the county through greater overall compliance, but to also reduce or redesign their use of hazardous materials. This secondary effect cannot be over-emphasized as this program now provides financial incentives to reduce chemical risks.

Step 1: Risk-Based Fee and Inspection Paradigm

Relative risk based upon chemical type was linked to differing inspection frequencies (and differing fees). Facilities handling highest risk chemicals receive the highest level of attention and pay the highest fees. The relative risk is based upon a combination of chemical type and amount of that chemical at a facility. The framework of the inspection frequency and fee system for the business plan program is based upon the existing list of CalARP chemicals (Title 19 CCR list; Table 1 and Table 3 chemicals are high risk; Table 2 chemicals are moderate risk; all others as low risk) linked to the minimum-reporting threshold quantities using the same ratios as established in law. Businesses handling conventional CalARP chemicals at sub-CalARP quantity thresholds are captured by this system and placed into enhanced inspection frequencies. Solids, liquids, and gasses are assigned a dimensionless unit using the relative ratios established in law as the reporting thresholds (500 pounds of solid, 55 gallons of liquid, 200 cubic feet of gas). CalARP facilities are also subdivided into high-, moderate-, and low-risk facilities based upon which program applies and the complexity of the individual processes subject to regulation. This plan resulted in high-risk facilities being inspected annually, moderate-risk facilities being inspected biennially, and low-risk facilities inspected triennially (state law mandates a minimum inspection frequency of once every three years). The Department formulated this proposal in late FY 2007-08, and proposed it for implementation as part of a comprehensive risk-based approach.

In FY 2008-09, Kern County Environmental Health Services Department received approval from the Board of Supervisors to implement the program. Board members agreed with the logic and common sense approach to protecting the community, but asked the Environmental Health Services Department to examine the issue of how an individual business can reduce their risk to the community and be recognized for their efforts. An implied issue was the question: "If a high-achieving business is of less threat to the community, shouldn't we be spending more time looking at marginal to poor performers who may through their actions or inactions be increasing risk?" This issue establishes the foundation for a strong enforcement program, but begs the issue of developing an incentive program rewarding high performers and prompting development of the PI Program.

Step 2: Performance Incentive Program

The Kern County Environmental Health Services Department solicited stakeholders for participation in a series of committee meetings held to design the PI Program. Critical participation and support from varied industries was gained by incorporating them in the development process. The Department specifically solicited participation from the businesses already known to have exceptional performance standards. This approach resulted in an energized committee committed to following through with the process and with keeping the standards high.

The PI committee proposed a program wherein eligible businesses are assessed and scored during their normal routine inspection, and that score is used to determine whether the business' practices qualify them for a reduced inspection frequency (from annual to biennial or from biennial to triennial) and reduced fees. To be eligible businesses must meet the following criteria:

- Facility must have a permit from the CUPA.
- Facility must be in substantial compliance and cannot have any unresolved Class 1 (major) violations.
- Facility must handle high or moderate risk chemicals.
 - Moderately hazardous chemicals are those on Table 2 in Title 19 CCR.
 - Extremely hazardous chemicals are those on Tables 1 and 3 in Title 19 CCR.
- Facility must apply to participate in the program and designate a specific contact for the PI Program.

The overall score will be calculated and a facility receiving a score of 95% or better is “rewarded” by being dropped to the next lowest inspection frequency, and receiving a corresponding reduction in fees during the next billing cycle.

All programs (business plan program, aboveground storage tank program, underground storage tank program, hazardous waste generator program, and CalARP program) administered by the CUPA will be inspected at each facility and that overall score will be used for calculation. Disputes of violations will be heard by the Director of Environmental Health and no facility will be “rescored.” Businesses achieving 94% or less will remain in their normal inspection frequency and fee category.

Advantages

This new approach benefits the community by placing regulated facilities handling hazardous chemicals into risk categories that are based upon the relative risk posed by each facility. It creates a higher standard for the industry by rewarding the high-performing businesses with financial incentives. It also facilitates allocation of resources to focus attention on businesses struggling with ongoing compliance. This effort couples greater scrutiny with focused and aggressive enforcement efforts.

As part of the PI Program, the Department will be issuing certifications of achievement to high-performing businesses as well as listing them on the Department's Web page. The highest

achieving businesses will automatically be invited to participate on the PI Program committee to monitor the program's progress. This type of industry participation encourages the industry/local government relationship and validates the process.

Kern County Environmental Health Services Department believes this risk-based approach coupled with a Performance Incentive Program provides a sound approach which recognizes relative risk and performance in allocating resources, especially in challenging financial times.

Supporting Materials

The Performance Incentive Program policy is attached and is also viewable on our Web site:
http://www.co.kern.ca.us/eh/PIP_Policy.asp

Comments were made by representatives of industry in support of this program at the Kern County Board of Supervisors meeting on May 12, 2009. A DVD video has been attached and is also viewable on our Web site: www.co.kern.ca.us/eh/PIP_Policy_vid.asp