Loyola of Los Angeles Law Review

Volume 19
Number 4 *Symposium: Environmental Litigation and Enforcement*

Article 10

6-1-1986

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LOCAL GOVERNMENT'S RESPONSE TO HAZARDOUS WASTE: CATCH-22 MEETS THE FOX GUARDING THE CHICKEN COOP

*Steven J. Castleman**

I. INTRODUCTION

I never imagined that my career as an Assistant District Attorney would call to mind Joseph Heller's *Catch-22*, where you had to be crazy to get out of the Army, but wanting out was conclusive evidence of sanity. However, during the last three years, as San Francisco's chief environmental prosecutor, I have confronted the sad fact that local government's response to the hazardous waste crisis presents just such a dilemma. You have heard of the fox guarding the chicken coop? I'm the fox's lawyer. I am also the one assigned to count the eggs. Catch-22.

My first hazardous waste prosecution involved a man who was storing 1000 containers of suspected hazardous waste on Pier 70, over San Francisco Bay, in February, 1983. Experts said that the wastes identified—PCBs (polychlorinated biphenyls), pesticides, arsenic compounds, cyanides, and concentrated acids—could have caused a major environmental catastrophe had they caught fire or leaked into the Bay. The defendant was the first to be convicted for a hazardous waste crime by a California jury.[1] Filing the complaint was easy. Prosecuting it was not. Like most district attorneys, I have no background in chemistry or toxicology. Nor was I familiar with the Hazardous Waste Control Act,[2] a complex and untested law. During the eight months it took to litigate the case, I had to learn both the law and the science involved. It was quite an education.

This case also marked by first exposure to government's role as a major part of the hazardous waste problem. The Port of San Francisco

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1. People v. Wilson, No. 585-309 (San Francisco Muni. Ct. of Cal. Dec. 3, 1983), *aff'd*, No. CR3306 (San Francisco Super. Ct. of Cal. Apr. 19, 1985). The superior court certified this decision to the California Court of Appeal on its own motion in April, 1985. As of the time of publication, the court of appeal had yet to grant or deny a hearing.

2. CAL. HEALTH & SAFETY CODE §§ 25100-25245 (West 1984).

had permitted the illegal storage site to exist for well over a year. As the case progressed, I began to realize that the Port had little control over or knowledge of the activities of its tenants who handled hazardous materials.

In the wake of the Pier 70 case, I became aware of many other hazardous materials problems caused either by City agencies or by tenants of the City. Department of Public Works crews routinely dumped diesel fuel down storm drains. City crews used out-of-date propane cylinders which were illegal to refill. Electricians handled PCB-cooled capacitors without adequate training or protective equipment.

I was not alone in discovering these problems. Defense attorneys often commented that the City was a more frequent and extreme violator than their clients. In addition, a small group of City employees who were familiar with environmental regulation also became aware of some of the violations.[3] But despite our collective efforts to make City officials aware, they failed to realize that there was a problem until it became a crisis.

The crisis erupted when an illegal hazardous waste dump used for years by the City's Municipal Railway (MUNI) was discovered right next to one of the City's largest drinking water reservoirs.[4] When this PCB-contaminated dump was discovered, the City could no longer ignore its part in the hazardous waste problem.

As a result, I conducted a six-week investigation of the City's hazardous waste practices, which uncovered a pervasive pattern of violations indicative of decades of environmental neglect and wholesale lack of accountability within City government for hazardous waste decision-making. On August 26, 1985, the District Attorney's office released a report accusing the City of violating California's hazardous waste laws on virtually every day since those laws had become effective.[5] The violations included:

1. Illegal disposal of PCBs and other hazardous wastes at an illegal dump for several years;
2. Illegal transportation of hazardous waste from one city-owned site to another;

3. These employees included a Public Utilities Commission Safety Officer, Health Department Environmental Bureau officials, the San Francisco Fire Department's Hazardous Materials Program Coordinator and various personnel of the City's Risk Management Office.

4. Popularly referred to as the University Mound site, this dump was located at the corner of Bowdoin and University Streets in downtown San Francisco.

5. S. Castleman, Investigation of University Mound and City Agencies Re: Hazardous Waste Violations (Aug. 26, 1985) (unpublished memorandum to elected District Attorney Arlo Smith) (released to San Francisco's mayor and board of supervisors).

3. Illegal storage of hazardous waste—including PCBs, solvents, asbestos, pesticides, insecticides, waste paints and laboratory waste—every day for years;
4. Storage of hazardous wastes, including PCBs, in areas which were unsecured and accessible to anyone who happened by; and
5. Failure to educate workers who handle hazardous materials and wastes about the dangers of these materials; and, a failure to train these employees in proper precautions and the use of protective equipment.[6]

Since the release of the report, I have been advising the City as it struggles to comply with environmental regulations. As prosecutors rarely see the defendant's point of view, this has been an eye-opening experience for me, one that has brought me face to face with the incredible array of problems faced by the regulated community in complying with these laws.

Local government faces two major problems in responding to the hazardous waste challenge. It is placed in the curious and contradictory position of being at the same time the enforcer of environmental laws and a significant violator of those laws. While some City agencies were violating hazardous materials laws, others were entrusted with enforcing them. In addition to the District Attorney's office, several other city agencies are responsible for enforcing hazardous materials and waste law. For example, the San Francisco Fire Department's Hazardous Materials Permitting Program[7] requires users of hazardous materials to obtain permits for what they use and store.[8] The program also regulates underground storage tanks and provides for public disclosure of hazardous materials that are stored by businesses.[9] Significantly, City departments, including the fifty-one sites used by the Fire Department itself, are also required to obtain these permits.[10] Thus, the Fire Department is in the contradictory position of being both the enforcer of hazardous material regulations and a potential violator, as well.

Similarly, the Environmental Health Bureau of the San Francisco Department of Public Health investigates hazardous waste complaints.[11]

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6. *Id.*
7. SAN FRANCISCO, CAL. FIRE CODE art. 29 (1983).
8. *Id.*
9. *Id.*
10. *Id.*
11. The Environmental Health Bureau conducts these investigations pursuant to its general power to respond to public health inquiries. *See generally* SAN FRANCISCO, CAL. HEALTH CODE (1983).

In addition to its traditional public health activities, the Health Department also plans to expand its role in hazardous waste regulation through a "Memorandum of Understanding" (MOU) with the State Toxic Substances Control Division. Under the MOU the local Health Department would inspect all generators of hazardous waste in San Francisco. However, the Health Department is also a generator of hazardous waste since its laboratories and clinics use large quantities of dangerous chemicals. Thus, it is subject to the very regulation it has proposed to enforce.

Hazardous materials violations are not the only examples of the "fox guarding the chicken coop." The District Attorney's investigation revealed that the City government is a long-time violator of the entire spectrum of environmental laws, while offices within that government are entrusted with enforcing those laws against private industry. All levels of government—local, state and federal—have a bad reputation for environmental compliance. As a result, San Francisco's situation is not at all unique. Many, if not most, local governments face similar problems.

In addition to all the environment compliance problems it shares with private industry, government faces a second layer of problems in its role as an environmental enforcer. Solving these problems promises to be a long, difficult, expensive proposition. This Article examines the causes, and suggests some approaches to solving these pressing problems.

II. LOCAL GOVERNMENT'S ROLE AS ENFORCER

The most important problem for local government as an enforcer of environmental law is the trend toward decentralization, characterized by increasing delegation of enforcement authority to the local level.

This trend flows from a common-sense recognition that local environmental problems can best be solved locally. Clean-up of contaminated sites is a perfect example. Those directly affected by abandoned waste sites are often frustrated with clean-ups directed by state or federal bureaucracies. They complain that clean-up vigor is directly proportionate to the site's distance from the homes of those responsible for cleaning it up. The more centralized the governmental bureaucracy, the more sites it handles, and the less likely it is that any individual site will stand out. This is particularly true of the vast majority of abandoned sites less notorious than Love Canal, Times Beach or Stringfellow Acid Pits. These less notorious sites are likely to sit unaddressed for a long time before centralized state or federal authorities have the resources to attend to them. "Superfund" programs[12] have relatively limited resources com-

12. Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.

pared to the large number of sites that need attention and the enormous costs involved. Thus, lower priority sites cannot be cleaned up in the near future under these federal or state programs. No wonder that communities affected by abandoned waste sites complain that state or federal officials are insensitive to their concerns.

In contrast, local officials—particularly *elected* officials—cannot ignore their constituents' fears when a hazardous materials incident occurs. This supports the theory that as much enforcement activity as possible should be handled by local authorities sensitive to local impacts.

Basic hazardous waste law recognizes the logic of decentralization. The Resource Conservation and Recovery Act (RCRA),[13] which established a national program for hazardous waste regulation, explicitly provides for decentralization.[14] In so providing, Congress recognized that the federal government could not regulate hazardous waste generation, storage, transportation and disposal alone. Instead, RCRA delegated responsibility for enforcement of major portions of the hazardous waste program to state governments.[15] With this delegation, Congress conceded that regulation could be more comprehensive and better attuned to local problems faced by the communities directly affected.

Under RCRA, to the extent that state programs are as strict as the federal program, they may be authorized to supplant the federal program.[16] California is one state which has taken up the RCRA challenge, has received interim authorization from EPA, and operates its program in lieu of the federal program.

In a manner analogous to Congress' authorization of state programs under RCRA, California has recognized the advisability of delegating many hazardous materials responsibilities to county governments. The result is the MOU program. The state delegates to counties which enter into MOUs the authority to inspect and permit hazardous waste generators. Ideally, this delegation of authority increases the number of inspectors and provides significantly more "eyes and ears" to look for potential violations.

Hazardous waste regulation is not the only example of this decentralization trend. In California, hazardous materials regulation has gone

§§ 9601-9657 (1982); Carpenter-Presley-Tanner Hazardous Substance Account Act, CAL. HEALTH & SAFETY CODE §§ 25300-25395 (West 1984).

13. Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6987 (1982).

14. *Id.* §§ 6926, 6941.

15. *Id.* §§ 6941-6949.

16. *Id.* § 6929.

through a similar process. In 1983, the legislature passed the Sher Bill,[17] which set the stage for local hazardous materials programs, such as the one operated by the San Francisco Fire Department.[18] The Bill allows local governments to regulate the use and storage of hazardous materials if local ordinances were in place by the end of 1983.[19] Only in the jurisdictions without such local ordinances does the state remain the regulatory authority. Many local governments passed such ordinances and have assumed the regulatory responsibility from the state.[20]

California has also embarked on a state-wide program to regulate underground storage tanks; the program places significant regulatory responsibility on local governments. Cities and counties are now responsible for registering underground storage tanks, permitting them, and approving monitoring systems to identify leaks.[21] They also review applications for removal or for abandonment-in-place of decomissioned underground tanks.

Further evidence of the trend toward decentralization may be found in California Assembly Bill 2185,[22] which was enacted and became effective on January 1, 1986. A.B. 2185 requires that every business which uses and stores hazardous materials to draft "business emergency plans" for response to accidental chemical emergencies. Local governments must collect the emergency plans and synthesize them into a comprehensive plan for emergency response to chemical incidents.

The foregoing examples clearly illustrate that regulation of environmental matters, once a federal concern, has been extensively delegated to state and local authorities. As a result of this trend, local governments are increasingly burdened with the responsibility for enforcing environmental regulations.

III. LOCAL GOVERNMENT'S ROLE AS A VIOLATOR OF THE LAW

Increasing enforcement responsibility also highlights local government's role as a *violator* of the law and increases the urgency of correcting widespread internal compliance failures.

Those who have watched government in action often think that gov-

17. Cal. A.B. 1362, 1983-84 Reg. Sess., ch. 1362, 1983 (codified as amended at CAL. HEALTH & SAFETY CODE §§ 25280-25289 (West Supp. 1986)); *see also* CAL. ADMIN. CODE tit. 23, RR. 2610-2621 (1983).

18. *See supra* notes 7-10 and accompanying text.

19. CAL. HEALTH & SAFETY CODE § 25299.1 (West 1984).

20. *See, e.g.*, SAN FRANCISCO, CAL. FIRE CODE art. 29 (1983).

21. CAL. HEALTH & SAFETY CODE § 25299.1 (West 1984).

22. Cal. A.B. 2185, 1985-86 Reg. Sess. (1985).

ernmental agencies believe they are either exempt from the law or simply above it.

Sometimes this is just an attitude that permeates the bureaucracy. Other times it is a fact. For example, the San Francisco Fire Department has long regulated storage of gasoline and other flammable or corrosive hazardous materials.[23] However, the Fire Department has never included City agencies as part of the regulated community. Consequently, improper practices of City agencies are not routinely discovered by the regulatory agency.

In addition, it is difficult, if not impossible, for one governmental agency to effectively enforce its regulations against other governmental agencies, even though everyone agrees that the regulations are applicable to private industry. This is the case not only in San Francisco. At the federal level, by presidential order, the Environmental Protection Agency (EPA) cannot take formal action to enforce its regulations against other federal agencies. Rather, EPA is required to work out any such problems it encounters informally.[24]

Even where there is no explicit exemption for governmental agencies, many governmental employees do not take compliance seriously. Why? There are several reasons. First, there is a lack of individual accountability within governmental bureaucracies.

Second, government employees do not feel the same threat of prosecution for violations that private industry feels. Government employees often do not believe that they will be personally liable for fines that might be levied against the agencies for which they work. The same holds true in the case of criminal penalties. Employees simply do not believe they will be prosecuted individually; therefore, the threat of prosecution is not real to them.

Finally, if prosecution is not a threat to individuals, it is even less of a threat to the bureaucracy as a whole. There is no way to put a government agency in jail. Even if an agency were fined, no individual would suffer financially. Does it make sense for one government agency to pay fines to another? In many cases, any fines would be merely an accounting adjustment among agencies. Even if fines are assessed, ultimately taxpayers and not the employees would pay.

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23. SAN FRANCISCO, CAL. FIRE CODE arts. 11, 13 (1983).

24. Exec. Order No. 12,088, 43 Fed. Reg. 47,707 (1978), *reprinted in* 42 U.S.C.A. § 4321 note (West Supp. 1985).

IV. PROBLEMS COMMON TO BOTH ENFORCEMENT AND COMPLIANCE

Although there are problems unique to each of government's separate roles, most problems are common to both and significantly hamper government's ability to do a competent job as either regulator or regulatee.

One substantial problem has been local government's tardiness in recognizing hazardous waste as a serious problem for which it has major responsibilities. The lack of a credible threat of prosecution has encouraged this neglect.

In addition, government does not perceive itself as a member of the regulated community. Though government often reaches out to regulated communities to provide guidance on new regulations, it does not do the same for itself. Managers of San Francisco departments which use hazardous materials and generate hazardous waste have never been trained in the legal and technical requirements of the law. Where managers are completely ignorant of the law, how can they comply with it?

Furthermore, government is primarily reactive. Crisis, and *only* crisis, prompts action. Government lacks foresight about environmental problems and has not realized that it may play a larger part contributing to the problem than it does solving it.

Local government's recognition that it has a problem is a big step. It is also the easiest step. Getting government to change business as usual is infinitely harder.

The same problems that caused government to ignore environmental compliance for so long also inhibit its ability to rectify the situation. The complexity of the legal and scientific issues involved in hazardous waste regulations necessitates a tremendous amount of education for those who must either enforce the law or comply with it. It took me many months to learn the law and the science in order to prosecute violators. Every level of the bureaucracy must go through the same process to insure internal compliance.

Further, while government managers face the same educational problems as prosecutors, they face them on a much larger scale. A prosecutor's office might need to train several people in the legal and technical issues. A City has to train thousands. It may cost thousands of dollars to prosecute a case, but City-wide compliance will cost millions.

Another problem is the diffuse nature of responsibility within government. In San Francisco, we found that there was no single individual with overall responsibility for ensuring the City's environmental compli-

ance. Within individual departments there were no managers specifically charged with that responsibility either. And, even when people within specific departments *were* responsible for small areas of environmental concern, they were isolated from all other departments which might face similar problems. Their efforts would not be of City-wide benefit. Each department had to "reinvent the wheel" internally if it wanted to take steps toward compliance.

Fragmentation of responsibility further complicates all solutions. Although City-wide training relating to environmental compliance is essential, there is no mechanism within city government capable of providing it. No structure accommodates the training needs of all of the departments at once. That structure remains to be developed. Thus, even the most preliminary efforts at solutions face serious obstacles which may have little to do with environmental issues.

This problem is exacerbated by the highly technical nature of hazardous materials regulation. Department managers are generally unfamiliar with the chemistry, toxicology and biology that is necessary to understand the regulations. In areas which involve issues of scientific uncertainty, such as cancer causation and other controversial toxicological issues, managers of local governmental agencies are wholly unqualified to make informed judgements. A steep learning curve awaits them. Only after extensive training will they understand the full impact of—let alone make intelligent decisions about—the problems they face.

Perhaps the most troubling element here is the process of government itself. By its very nature government is a slow-moving beast. Although private business can change policies and procedures and divert financial resources relatively quickly, government cannot. Governmental decision-making is fragmented and democratic, and therefore it is slow and inflexible. Before budgetary decisions can be made, hearings must be held, compromises must be reached, and political consensus must gel—all of which takes time.

Moreover, every level—departmental management, budget bureaucracy and elected officials—has input into the ultimate decision. And every decision-making level has all of the problems described above: a lack of legal and technical understanding; a steep learning curve to climb; and a snail's-pace process. The re-education process which must be repeated at every level further slows decision-making at every step. And—because top management typically must face numerous crises at any given time—the higher up one is in the chain of command, the less time one has to devote to any educational process, and the less complete is one's understanding of complex issues. Thus, the more important the

decision, the less likely it is that the person making it fully grasps the impact and seriousness of the decisions' consequences.

Finally, there is the issue that never goes away—money. Staff, training, equipment, supplies and everything else costs a geal deal. And just as the democratic process guarantees delay, lack of funds often guarantees the failure of local environmental enforcement and compliance programs.

Local governments have borne the brunt of budget cuts both on national and statewide levels. States like California have suffered "tax revolts," such as Proposition 13,[25] which have limited the ability of local governments to raise revenues.

Even those only peripherally familiar with the subject are aware of the tremendous expense involved in solving hazardous waste problems. Literally millions of dollars are spent decontaminating hazardous waste sites.[26] The problems of waste disposal, drinking water contamination, air contamination and the human health consequences of exposure to toxic substances defy quick or easy solutions. Further, they defy *inexpensive* solutions.

At the same time that local governments have been handed a vast new set of environmental regulations to enforce, federal and state funding has been increasingly cut. When new areas of regulation are delegated to local governments there is no commensurate delegation of resources. Though legislators may perceive a need for new regulation, they cannot anticipate all implementation problems, or costs. As a result, legislators have failed to fund local governments adequately to insure the success of realistic programs.

The State of California does not fund local health departments which enter into Memoranda of Understanding. Although the State offers to help train health inspectors, it does not yet fund counties in developing environmental regulatory programs. Although local governments have been made responsible for regulating the use and storage of hazardous materials, for the continued use and monitoring of underground storage tanks, and for responding to chemical emergencies, the State has not provided any corresponding resources to accomplish these tasks. Nor does the State seem likely to do so in the near future.

Consequently, the financial burden for enforcing hazardous material and waste regulation falls to local government, a level which has been

25. CAL. CONST. art. XIII A (enacting Proposition 13).

26. Just one decontamination—that following the PCB transformer explosion at One Market Plaza in San Francisco in March 1983—reportedly cost in excess of $25 million. S.F. Examiner, Jan. 10, 1984, at A2, col. 3.

already hard hit by federal and state budget cuts, and is in danger of even greater cuts in response to the Gramm-Rudman-Hollings budget mandate.[27]

In this climate, and given the officials' general lack of understanding of hazardous waste issues, budget requests associated with new environmental enforcement or compliance programs receive a chilly reception. Without an adequate understanding of the enormity of the problem, officials are tempted to believe that existing personnel and budgets can absorb new environmental programs with little additional financial commitment.

This is a crippling misconception. Local governments must recognize that protecting their workers and their communities from hazardous materials means a fundamental restructuring of the way government does business. It is a costly process. In the final analysis, local government must be forced to realize that preventive action now, no matter how costly, will save money in the long run—to say nothing of protecting the environment and public health and safety.

Unless this Catch-22 between increased responsibility for enforcement and inadequate resources is reversed, compliance efforts are doomed to failure.

V. SOLUTIONS

Although the problems cannot be underestimated, there are solutions. The first essential task is to identify hazardous materials regulation as a problem that requires significant attention by top management in local government. Few local governments can avoid the issue much longer. Departments of virtually every local government use hazardous materials, including paints, solvents, asbestos, petroleum products, PCBs, pesticides, insecticides, herbicides and other toxic chemicals.

Once the problems have been identified, coming to grips with solutions will involve:

1. *Training.* Immediate training of all levels of responsibility, from manual laborers to top management, must proceed on an emergency basis. Workers who handle hazardous materials must be educated about proper handling procedures, use of protective equipment, health risks associated with exposure, and emergency procedures and responsibilities. Top management, particularly elected officials, must develop an adequate understanding of these problems and their solutions to make

27. Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, 99 Stat. 1038.

realistic funding decisions. They must also understand the environmental, legal and financial risks associated with continued violations of the law.

2. *Centralization of Responsibility.* Unless responsibility for insuring internal compliance with environmental regulation is centralized, there will always be the temptation to believe that it is "someone else's problem." Centralization is also crucially important for emergency response. A clear delineation of responsibilities avoids delay and duplication of effort.

There are several reasons why a centralized authority should not be a part of an existing governmental agency, such as a health department. First, as has been explained above, it makes little sense for the agency responsible for compliance to be an agency which is also a probable violator.

Second, compliance officers should be separated from the internal pressures within departments, particularly budgetary pressures. How can a compliance officer tell his or her bosses what to do or insist on changes in practice and procedure? There is always tension between managers, whose primary goal is production, and compliance officers, whose primary goal is safety. Unless compliance officers are independent, they lack the authority to resist departmental pressure to "go slow" or cover up dangerous practices.

Third, an independent compliance officer is not saddled with the "history" of an existing department. This is important in combatting the mistaken belief that existing staff and resources can absorb major new functions of environmental compliance. In San Francisco, the Health Department has been appointed the lead agency in ensuring compliance. However, since it is the largest City department, many officials have expressed the view that there must be room within the Department's current budget to implement these new programs without significant additional staffing or resources. This is a dangerous and inaccurate perception. New environmental compliance and enforcement programs are major undertakings, requiring literally thousands of person-hours of work—work which cannot be absorbed within existing budgets. If not adequately and separately funded, these programs are destined to fail.

Finally, if a compliance officer is established as a new unit, directly accountable to a mayor or county executive, it would provide the program with the political clout to make significant short- and long-range changes in government operations.

3. *Short Range Tasks.*

(1) A newly established compliance office must meet several

short-term goals before the necessary long-term changes can be accomplished.

(2) Among other tasks, the office must:

(a) *Identify* all sites which handle hazardous materials or generate and store hazardous waste;

(b) *Appoint* a coordinator for each site to be responsible for assuring proper compliance and to identify a small group of people who should be given the most extensive training; also, appoint an overall coordinator to supervise all site coordinators;

(c) *Inventory* all hazardous wastes that are currently stored;

(d) *Pick-Up and Dispose* of all wastes using a registered waste hauler and a licensed disposal facility;

(e) *Schedule* ongoing disposal on a regular basis to comply with the regulations limiting the time period within which wastes may be stored at unlicensed sites (normally 90 days); and

(f) *Prepare* contingency plans for chemical accidents, fires, earthquakes, etc. which could result in the release of hazardous materials into the environment.

4. *Long Range Tasks.* Extensive planning must be undertaken to determine changes in policy and practices necessary to insure efficient steps toward compliance. Given the tremendous expense involved in hazardous waste compliance, appropriate data must be developed to guide long-range decision making. Perhaps the most important decision concerns the feasibility of a single, centralized, licensed storage facility. In order to determine whether this would be technically and financially feasible, local government must determine exactly what hazardous wastes are produced at what sites in what quantities over what period of time. Most jurisdictions do not currently have this data. The specific tasks that must be accomplished include:

(a) *Inventory* of all hazardous materials used at every site;

(b) *Compilation* of all Material Safety Data Sheets (MSDS) to obtain information relating to proper handling procedures, protective equipment, associated risks and emergency response;

(c) *Review* of all MSDS's by a qualified industrial hygienist or toxicologist to determine if there are less hazardous substitute materials that can be used;

(d) *Purchasing* procedures that insure that only chemicals that have undergone the above review can be bought;

(e) *Detailed Inspection* of all sites that handle hazardous materials or generate hazardous waste to determine their storage conditions and assess what changes, including possible reconstruction, are necessary to comply with storage regulations; and

(f) *Synthesis* of all data with the regulations so that a realistic plan for reaching long-range compliance can be developed and funded.

For long-range decision making, an invaluable tool is an "environment audit," in which qualified personnel review the MSDS information, interview personnel on working procedures, inspect all facilities, compare the existing situation with all applicable regulations and make detailed compliance recommendations.

To accomplish this audit, a local government could hire outside consultants qualified in the legal and technical requirements of the law or hire additional personnel within the government who are similarly qualified. Of course, both approaches have significant problems. Outside consultants are expensive. And even, if outsiders are hired, the government must still retain qualified inside personnel to oversee an expensive, complicated and time-consuming audit, and then be able to evaluate its results.

On the other hand, if new personnel are to be hired, the civil service hiring process is certain to cause significant delay. In many instances entirely new civil service classifications will be required, and funds will have to be approved through the political process, further compromising the ability to hire qualified personnel quickly.

The best approach is to hire both outside consultants and new governmental employees. By doing so, a staff can be provided to oversee the audit. Further, an audit conducted by external consultants can be used as a training tool for governmental personnel. Finally, intelligent decisions about appropriate long-term staffing needs cannot be made until an audit provides the necessary data.

Whatever the mix of new personnel and outside consultants, the one approach that should be avoided at all costs is to continue "business as usual." An environmental compliance program must address not only hazardous materials and waste compliance, but also Occupational Safety and Health Act (OSHA),[28] Worker[29] and Community Right to Know

28. Occupational Safety and Health Act, 29 U.S.C. §§ 651-678 (1982).

29. Hazardous Substance Information and Training (Worker Right to Know) Act, CAL. LABOR CODE §§ 6360-6399.5 (West Supp. 1985).

Acts,[30] and a host of other regulations. Unless government realizes that "business as usual" is no longer acceptable, it will continue to poorly comply and enforce environmental laws. And, unless bureaucratic procedures can be short-circuited, these twin responsibilities cannot be met within a reasonable time.

VI. CONCLUSION

Local government has not yet faced the two essential facts of its hazardous waste responsibilities. The first is that local government is not in a position to adequately enforce the law. The second fact is that local government is not in a position to *comply* with the law, either.

Resources must be expanded to make the enforcement effort more credible and to allow local governments to change their own practices regarding hazardous materials and waste handling.

Although the authority for local enforcement exists, and although local government is beginning to recognize the significant problems of compliance, the resources that are necessary to address these issues have not yet been committed. Comprehensive environmental programs will require tens of millions of dollars. Furthermore, adequate resources will not be available unless and until local government officials *perceive* that there is a problem and act in a responsible manner to *solve* it. So far, local government's conflicting roles as both enforcer and member of the regulated community have contributed to the failure of competently filling either role.

But, it need not remain so. Rather than being a stumbling block, government's dual role could be an asset in achieving reasonable regulation which can be both environmentally sound and financially achievable. In its unique position as both an enforcer and a potential violator, local government can gain invaluable insight into the problems faced by private industry in satisfying the requirements of environmental law. It can—indeed, it *must*—use this insight to great advantage in balancing the conflicting priorities of safeguarding the environment with the technical and economic costs and consequences of these protections to the regulated community.

30. SAN FRANCISCO, CAL. FIRE CODE art. 29 (1983).