

AMENDED IN ASSEMBLY APRIL 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2159**

**Introduced by Assembly Member Reyes**

February 18, 2004

---

---

An act to amend ~~Section 45017~~ of Sections 44308, 44310, 45017, 45030, 45031, 45032, 45033, and 45041 of, and to add Sections 44310.5, 45006, and 45022.5 to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2159, as amended, Reyes. Solid waste facilities: orders.

~~The~~

(1) *The existing California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, establishes an integrated solid waste management program. Existing law authorizes an enforcement agency to issue a cease and desist order to a person who is taking certain unlawful actions under the act. Existing law requires all orders and determinations issued under that act take effect immediately after any time period for appeal has expired. However, under existing law, a request for a hearing stays the effect of the order pending completion of all appeals, but a request for a hearing does not stay a provision of the order, or the order as a whole, when there is an imminent and substantial threat to public health and safety or the environment, as specified. Existing law specifies a procedure for the appeal of an order issued by an enforcement agency, including review by a hearing panel. Existing law allows an aggrieved person to file an appeal with the board to review the written decision of*

*a hearing panel and the board is authorized to determine, within 30 days from the date after the appeal is filed, whether to hear the appeal.*

*This bill would ~~instead provide that a request for a hearing does not stay the effect of any order, pending completion of all appeals, and would make conforming changes.~~ require an enforcement agency to issue a cease and desist order to a person who owns a solid waste disposal site, who is disposing of solid waste, who is operating a solid waste facility, or who is engaged in solid waste handling activities, if the enforcement agency finds that the person does not hold a full solid waste facilities permit authorizing that activity, as defined, or is not authorized to engage in that activity. The bill would require the enforcement agency to first issue a notice requiring the person to take corrective action within 30 days and if the person does not take that corrective action, the enforcement agency would be required to issue the cease and desist order, which would go into effect immediately.*

*The bill would delete the provision delaying the effect of an order until after the time period provided for an appeal expires. The bill would also provide that the filing of a request for a hearing to review the cease and desist order authorized by the bill does not stay the effect of the order and would require a person aggrieved by that order to file a request for a hearing within 5 business days after the date the cease and desist order is served. The bill would require the enforcement agency to convene a hearing panel or appoint a hearing officer and conduct the hearing in accordance with a specified schedule. The bill would allow the person to file an appeal with the board to review the written decision of the hearing panel or hearing officer within 5 business days after the decision is served on that person. The board would be required to accept and hold the hearing regarding the appeal within 30 days after receiving the appeal and to issue a decision within 10 days after the date of the hearing. The bill would allow a person to file an action with the superior court to review the order issued by the local enforcement agency only if the person has first complied with these procedures.*

*This bill would additionally allow a hearing by an enforcement agency to be conducted by a hearing officer appointed by the governing body of an enforcement agency, pursuant to procedures adopted by that governing body. The bill would make conforming changes with regard to the appeal of a hearing officer's decision.*

*(2) Existing law requires an enforcement agency that receives a complaint concerning a solid waste facility that the agency does not refer to another state agency to take appropriate enforcement action*



concerning the facility, refer the complaint to the Attorney General, the district attorney, or city attorney, whichever is applicable, or, provide the person who filed the complaint with a specified written statement.

This bill would require an enforcement agency to maintain a record of, and take any action that the enforcement agency is authorized to take regarding, a complaint, referral, or inspection relating to the operation of a solid waste facility or other activity within the jurisdiction of the enforcement agency that is an excluded operation, as specified.

(3) The bill would impose a state-mandated local program by requiring enforcement agencies to take specified solid waste enforcement actions.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 45017 of the Public Resources Code is~~  
2 *SECTION 1. Section 44308 of the Public Resources Code is*  
3 *amended to read:*

4 44308. (a) All hearings conducted pursuant to this chapter by  
5 the enforcement agency shall be conducted by a *hearing officer*  
6 *appointed pursuant to subdivision (d) or a hearing panel* appointed  
7 pursuant to either of the following procedures:

8 (1) The governing body may appoint three of its members as  
9 the hearing panel.

10 (2) The chairperson of the governing body may appoint an  
11 independent hearing panel consisting of three members.

12 (b) (1) If an independent hearing panel is appointed pursuant  
13 to paragraph (2) of subdivision (a), not more than one member of  
14 the governing body shall serve on the hearing panel.

15 (2) Members of the independent hearing panel shall be selected  
16 for their legal, administrative, or technical abilities in areas  
17 relating to solid waste management.



1 (3) At least one member of the independent hearing panel shall  
2 be a technical expert with knowledge of solid waste management  
3 methods and technology.

4 (4) At least one member of the independent hearing panel shall  
5 be a representative of the public at large.

6 (5) A member of an independent hearing panel shall serve for  
7 a term of two years, and may not serve more than two consecutive  
8 terms.

9 (6) If a member of an independent hearing panel does not  
10 complete the member's term, the chairperson of the governing  
11 body shall appoint a replacement to serve out the remainder of the  
12 unexpired term.

13 (c) Members of the hearing panel may receive per diem and  
14 necessary expenses while conducting the hearing.

15 (d) *The governing body of an enforcement agency may only*  
16 *appoint a hearing officer pursuant to procedures adopted by that*  
17 *governing body.*

18 *SEC. 2. Section 44310 of the Public Resources Code is*  
19 *amended to read:*

20 44310. All hearings conducted pursuant to this chapter shall  
21 be based on the following procedures:

22 (a) (1) The hearing shall be initiated by the filing of a request  
23 for a hearing by the person subject to the action within 15 days  
24 from the date that person is notified, in writing, of the enforcement  
25 agency's intent to act in the manner specified.

26 (2) The enforcement agency shall, within 15 days from the date  
27 of receipt of a request for a hearing, provide written notice to the  
28 person filing the request notifying the person of the date, time, and  
29 place of the hearing, and requiring the person to provide the  
30 enforcement agency with a statement of the issues that require a  
31 hearing, at least 20 days prior to the date of the hearing.

32 (3) If that person fails to request a hearing or to timely file a  
33 statement of issues, the enforcement agency may take the proposed  
34 action without a hearing or may, at its discretion, proceed with a  
35 hearing before taking the proposed action.

36 (b) The hearing shall be held on the merits of the issues  
37 presented, in accordance with the procedures specified in Sections  
38 11507 to 11517, inclusive, of the Government Code.



1 (c) Within 30 days from the date of the hearing, the hearing  
2 panel or hearing officer shall issue its decision. The decision shall  
3 become effective as provided in Section 45017.

4 *SEC. 3. Section 44310.5 is added to the Public Resources*  
5 *Code, to read:*

6 44310.5. (a) Notwithstanding Section 44310, if a person files  
7 an appeal with the enforcement agency to review a cease and desist  
8 order issued pursuant to Section 45006, the hearing conducted  
9 with regard to that order shall be based on the following  
10 procedures:

11 (1) A person subject to the cease and desist order shall file a  
12 request for an appeal with the enforcement agency within five  
13 business days from the date the cease and desist order is served  
14 upon the person subject to the order.

15 (2) The enforcement agency shall, within 10 days from the date  
16 of receipt of a request for a hearing, provide written notice to the  
17 person filing the request pursuant to paragraph (1) notifying the  
18 person of the date, time, and place of the hearing, and requiring the  
19 person to provide the enforcement agency with a statement of the  
20 issues that require a hearing, at least 15 days prior to the date of the  
21 hearing.

22 (3) A hearing panel convened pursuant to Section 44308 or a  
23 hearing officer appointed in accordance with subdivision (d) of  
24 Section 44308 shall hold the hearing no later than 30 days after  
25 receiving the request for a hearing, on the merits of the issues  
26 presented, in accordance with the procedures specified in Sections  
27 11507 to 11517, inclusive, of the Government Code.

28 (b) Within five days from the date of the hearing, the hearing  
29 panel or hearing officer shall issue its decision.

30 (c) Notwithstanding Sections 45030 and 45031, a person may  
31 file an appeal with the board to review the written decision of a  
32 hearing panel or hearing officer issued pursuant to this section. The  
33 person shall file the appeal within five business days after the date  
34 that the decision of the hearing panel or hearing officer is served  
35 upon the person subject to the decision. The board shall accept and  
36 hold the hearing regarding the appeal within 30 days after  
37 receiving the appeal and shall issue a decision within 10 days after  
38 the date of the hearing.

39 (d) A person may file an action pursuant to Section 45040 for  
40 review of an order issued pursuant to Section 45006 only if the



1 person has filed a request for an appeal with the hearing panel or  
2 hearing officer and filed a request with the board to review the  
3 order in accordance with this section.

4 *SEC. 4. Section 45006 is added to the Public Resources Code,*  
5 *to read:*

6 *45006. (a) Notwithstanding Section 45005, an enforcement*  
7 *agency shall issue a cease and desist order to a person who owns*  
8 *a solid waste disposal site, who is disposing of solid waste, who is*  
9 *operating a solid waste facility, or who is engaged in solid waste*  
10 *handling activities, if the enforcement agency finds that the person*  
11 *does not hold a full solid waste facilities permit authorizing that*  
12 *activity or the person is not otherwise authorized to engage in that*  
13 *activity pursuant to this division or the regulations adopted*  
14 *pursuant to this division, in accordance with the following*  
15 *procedure:*

16 *(1) The enforcement agency shall issue a notice requiring the*  
17 *person to take corrective action on or before 30 days after the date*  
18 *of the issuance of the notice.*

19 *(2) If the person does not take corrective action in accordance*  
20 *with the notice issued pursuant to subdivision (a), the enforcement*  
21 *agency shall issue the cease and desist order, which shall go into*  
22 *effect immediately.*

23 *(b) For purposes of this section, a full solid waste facilities*  
24 *permit has the same meaning as defined in subdivision (f) of*  
25 *Section 18101 of Title 14 of the California Code of Regulations.*

26 *SEC. 5. Section 45017 of the Public Resources Code is*  
27 *amended to read:*

28 *45017. (a) (1) Except as provided in paragraphs (2) and,*  
29 *(3), and (4), all orders and determinations issued pursuant to this*  
30 *part or Part 4 (commencing with Section 43000) shall take effect*  
31 *immediately after any time period provided for appeal has expired,*  
32 *and a request for a hearing shall stay the effect of that provision of*  
33 *the order pending completion of all appeals.*

34 *(2) Notwithstanding any other provision of law, any*  
35 *provision of an order issued under this part shall take effect upon*  
36 *service on the affected person if the enforcement agency finds that*  
37 *the actions or inactions associated with that provision may pose an*  
38 *imminent and substantial threat to the public health and safety or*  
39 *to the environment, and a request for a hearing shall not stay the*



1 effect of that provision of the order pending completion of all  
2 appeals.

3 ~~(3) Notwithstanding any other provision of law, If the~~  
4 enforcement agency determines that any or all provisions of the  
5 order are so related that the public health and safety or the  
6 environment can be protected only by immediate compliance with  
7 the order as a whole, then the order as a whole shall take effect  
8 upon issuance by the enforcement agency and a request for a  
9 hearing shall not stay the effect of the order as a whole pending  
10 completion of all appeals.

11 *(4) A cease and desist order issued pursuant to Section 45006*  
12 *shall take effect upon service on the affected person.*

13 (b) Any person aggrieved by an order by an enforcement  
14 agency ~~which~~ that takes effect upon service, based on the finding  
15 of an imminent and substantial threat to public health and safety  
16 or to the environment, *pursuant to paragraph (2) of subdivision*  
17 *(a), or based on a determination that any of all provisions of the*  
18 *order are so related that the public health and safety or the*  
19 *environment can only be protected by immediate compliance*  
20 *pursuant to paragraph (3) of subdivision (a), may immediately*  
21 *appeal the order to a hearing panel or hearing officer established*  
22 *or appointed pursuant to Section ~~44307~~ 44308. The hearing panel*  
23 *or hearing officer shall, at the request of the person subject to the*  
24 *order, hear the appeal consistent with the provisions of Sections*  
25 *11125.5 and 54956.5 of the Government Code, as applicable. A*  
26 *request for a hearing shall not stay the effect of the order pending*  
27 *completion of all appeals.*

28 *(2) A person aggrieved by an order issued by an enforcement*  
29 *agency pursuant to Section 45006 may appeal the order pursuant*  
30 *to Section 44310.5 and a request for a hearing shall not stay the*  
31 *effect of the order pending completion of all appeals.*

32 *(c) An order issued pursuant to this part or Part 4 (commencing*  
33 *with Section 43000) shall provide the person subject to that order*  
34 *with a notice of that person's right of appeal pursuant to this part*  
35 *or Part 6 (commencing with Section 45030).*

36 *SEC. 6. Section 45022.5 is added to the Public Resources*  
37 *Code, to read:*

38 *45022.5. An enforcement agency shall maintain a record of,*  
39 *and take any action that the enforcement agency is authorized to*  
40 *take regarding, a complaint, referral, or inspection relating to the*



1 *operation of a solid waste facility or other activity within the*  
2 *jurisdiction of the enforcement agency that is an excluded*  
3 *operation, as provided in Section 18102 of Title 14 of the*  
4 *California Code of Regulations.*

5 *SEC. 7. Section 45030 of the Public Resources Code is*  
6 *amended to read:*

7 45030. (a) Any aggrieved person may appeal to the board to  
8 review the written decision of the hearing panel *or hearing officer*  
9 or to review the petitioner's request in the instance of a failure of  
10 a hearing panel to render a decision or consider the request for  
11 review, or a determination by the governing body not to direct the  
12 hearing panel *or hearing officer* to hold a public hearing, under the  
13 following circumstances:

14 (1) Within 30 days from the date of issuance of a written  
15 decision by a hearing panel *or hearing officer*.

16 (2) Within 30 days from the failure of a hearing panel *or*  
17 *hearing officer* to render a decision or consider a petitioner's  
18 request.

19 (3) Within 30 days from the date that the governing body  
20 determines not to direct the hearing panel *or hearing officer* to hold  
21 a public hearing.

22 (b) With regard to the review of an administrative civil penalty  
23 imposed by an enforcement agency ~~or~~, a hearing panel, *or a*  
24 *hearing officer*, the board shall not reduce the amount of the civil  
25 penalty, but may rescind the order imposing the civil penalty if the  
26 board determines, based on substantial evidence in the record, that  
27 the violation did not occur.

28 *SEC. 8. Section 45031 of the Public Resources Code is*  
29 *amended to read:*

30 45031. Within 30 days from the date that an appeal is filed  
31 with the board, the board may do any of the following:

32 (a) Determine not to hear the appeal if the appellant fails to  
33 raise substantial issues.

34 (b) Determine not to hear the appeal if the appellant failed to  
35 participate in the administrative hearing before the hearing panel  
36 *or hearing officer*, except that the board shall hear the appeal if the  
37 appellant shows good cause for the appellant's failure to appear.

38 (c) Determine to accept the appeal and to decide the matter on  
39 the basis of the record before the hearing panel *or hearing officer*,  
40 or based on written arguments submitted by the parties, or both.



1 (d) Determine to accept the appeal and hold a hearing, within  
2 60 days, unless all parties stipulate to extending the hearing date.

3 *SEC. 9. Section 45032 of the Public Resources Code is*  
4 *amended to read:*

5 45032. (a) If the board declines to hear the appeal, it shall  
6 notify all parties in writing by appropriate means, and any  
7 enforcement agency action stayed pending appeal shall become  
8 effective 10 days from the date that the board's notification is  
9 made, unless judicial review is sought pursuant to Chapter 2  
10 (commencing with Section 45040).

11 (b) If the board accepts the appeal, the evidence before the  
12 board shall consist of the record before the hearing panel *or*  
13 *hearing officer*, or any actions or inactions not subject to review  
14 by a hearing panel *or hearing officer*, the record before the local  
15 enforcement agency, and any other relevant evidence ~~which~~ *that*,  
16 in the judgment of the board, should be considered to effectuate  
17 and implement the policies of this division.

18 (c) The board may only overturn an enforcement action by a  
19 local enforcement agency if it finds, based on substantial evidence,  
20 that the action was inconsistent with this division. If the board  
21 overturns the decision of the local enforcement agency ~~or~~, the  
22 hearing panel, *or the hearing officer*, or finds that the enforcement  
23 agency has failed to act as required, the board may do both of the  
24 following:

25 (1) Direct that the appropriate action be taken by the local  
26 enforcement agency.

27 (2) If the local enforcement agency fails to act by the date  
28 specified by the board, take the appropriate action itself.

29 *SEC. 10. Section 45033 of the Public Resources Code is*  
30 *amended to read:*

31 45033. A failure to appeal to the hearing panel, *the hearing*  
32 *officer*, or the board for review, or the refusal of the local  
33 enforcement agency, a hearing panel, *the hearing officer*, or the  
34 board to hear an appeal does not preclude a person from filing an  
35 action with the superior court to contest any action or inaction of  
36 the local enforcement agency or the board.

37 *SEC. 11. Section 45041 of the Public Resources Code is*  
38 *amended to read:*

39 45041. The evidence before the court shall consist of the  
40 records before the hearing panel *or hearing officer* and the board,



1 if any, including the enforcement agency’s records, and any other  
2 relevant evidence ~~which~~ *that*, in the judgment of the court, should  
3 be considered to effectuate and implement the policies of this  
4 division.

5 *SEC. 12. No reimbursement is required by this act pursuant*  
6 *to Section 6 of Article XIII B of the California Constitution*  
7 *because a local agency or school district has the authority to levy*  
8 *service charges, fees, or assessments sufficient to pay for the*  
9 *program or level of service mandated by this act, within the*  
10 *meaning of Section 17556 of the Government Code.*

11 ~~amended to read:~~

12 ~~45017.—All orders and determinations issued pursuant to this~~  
13 ~~part or Part 4 (commencing with Section 43000) shall take effect~~  
14 ~~immediately after any time period provided for appeal has expired.~~  
15 ~~Notwithstanding any other provision of law, a request for a hearing~~  
16 ~~shall not stay the effect of any provision of the order pending~~  
17 ~~completion of all appeals.~~

