

AMENDED IN SENATE JUNE 21, 2004

AMENDED IN ASSEMBLY APRIL 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2159**

**Introduced by Assembly Member Reyes**

February 18, 2004

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An act to amend Sections ~~44308, 44310~~ 44015, 44300, 44305, 44307, 44308, 44309, 44310, 45005, 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.

(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 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 *on the cease and desist order* 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~~

~~The bill would also make conforming changes with regard to the appeal of a hearing officer's decision on other matters by a hearing panel or hearing officer.~~



(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: yes.

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

1 SECTION 1. *Section 44015 of the Public Resources Code is*  
2 *amended to read:*

3 44015. (a) ~~Any~~ A solid waste facilities permit issued or  
4 revised under this chapter shall be reviewed and, if necessary,  
5 revised at least once every five years.

6 ~~(b) On or before January 1, 1996, the board shall prepare a list~~  
7 ~~of solid waste facilities whose permits have not been reviewed by~~  
8 ~~the enforcement agency in the last five years, indicating the~~  
9 ~~designated enforcement agency having jurisdiction over the solid~~  
10 ~~waste facility. The list shall include, but is not limited to, a solid~~  
11 ~~waste facility that meets any of the following conditions:~~

12 ~~(1) The solid waste facilities permit was issued on or before~~  
13 ~~January 1, 1989.~~

14 ~~(2) The facility is accepting more solid waste than is authorized~~  
15 ~~in the current solid waste facilities permit.~~



1 ~~(3) Any relevant information submitted to the board indicates~~  
2 ~~significant risks to the public health or safety or to the~~  
3 ~~environment.~~

4 ~~(e) The enforcement agency shall order any solid waste facility~~  
5 ~~on the list to seek a revision or modification of its solid waste~~  
6 ~~facilities permit if the solid waste facility is not in compliance with~~  
7 ~~this division.~~

8 *SEC. 2. Section 44300 of the Public Resources Code is*  
9 *amended to read:*

10 44300. An enforcement agency may, after holding a public  
11 hearing *before a hearing panel or a hearing officer appointed*  
12 *pursuant to Section 44308 or 44309*, in accordance with the  
13 procedures set forth in Section 44310, deny a solid waste facilities  
14 permit in any of the following cases:

15 (a) The application is incomplete or otherwise inadequate.

16 (b) The applicant has not complied with Division 13  
17 (commencing with Section 21000).

18 (c) The applicant has failed to demonstrate that the facility will  
19 meet minimum regulatory standards.

20 (d) The application contains significant false or misleading  
21 information or significant misrepresentations.

22 (e) The agency determines the applicant has, during the  
23 previous three years, been convicted of, or been issued a final order  
24 for, one or more violations of this division, or regulations adopted  
25 pursuant to this division, or the terms and conditions of the permit,  
26 and the violation meets both of the following criteria:

27 (1) The violation demonstrates a chronic recurring pattern of  
28 noncompliance ~~which~~ *that* has posed, or may pose, a significant  
29 risk to public health and safety or to the environment.

30 (2) The violation has not been corrected or reasonable progress  
31 toward correction has not been achieved.

32 *SEC. 3. Section 44305 of the Public Resources Code is*  
33 *amended to read:*

34 44305. (a) An enforcement agency may, after holding a  
35 public hearing *before a hearing panel or a hearing officer*  
36 *appointed pursuant to Section 44308 or 44309*, in accordance with  
37 the procedures set forth in Section 44310, temporarily suspend a  
38 solid waste facilities permit if the enforcement agency determines  
39 that changed conditions at the facility necessitate a permit revision



1 or modification to eliminate a significant threat to public health  
2 and safety or to the environment.

3 (b) Notwithstanding subdivision (a), the enforcement agency  
4 may suspend a solid waste facilities permit prior to holding a  
5 hearing if the enforcement agency determines that changed  
6 conditions at the facility necessitate a permit revision or  
7 modification to prevent or mitigate an imminent and substantial  
8 threat to the public health and safety or to the environment.  
9 However, any person aggrieved by an action by an enforcement  
10 agency to suspend a permit pursuant to this subdivision may appeal  
11 the action to a hearing panel ~~established~~ or hearing officer  
12 appointed pursuant to Section 44308 or 44309. The hearing panel  
13 or hearing officer shall, at the request of the aggrieved party, hear  
14 the appeal within three business days of the date when the permit  
15 was suspended, or the first day thereafter requested by the  
16 aggrieved party in compliance with Chapter 9 (commencing with  
17 Section 54950) of Division 2 of Title 5 of the Government Code.  
18 The hearing panel or hearing officer shall render its decision on the  
19 day the hearing concludes. The hearing panel or hearing officer  
20 may affirm, modify, or rescind the permit suspension. ~~Any A~~  
21 decision of a hearing panel ~~established~~ or hearing officer  
22 appointed pursuant to Section 44308 or 44309 may be appealed  
23 pursuant to Section 45030.

24 (c) The enforcement agency shall lift the permit suspension as  
25 soon as the changed conditions that necessitated the suspension  
26 pursuant to subdivision (b) have been corrected.

27 *SEC. 4. Section 44307 of the Public Resources Code is*  
28 *amended to read:*

29 44307. From the date of issuance of a permit that imposes  
30 conditions that are inappropriate, as contended by the applicant, or  
31 after the taking of any enforcement action pursuant to Part 5  
32 (commencing with Section 45000) by the enforcement agency, the  
33 enforcement agency shall hold a hearing, if requested to do so, by  
34 the person subject to the action, ~~in accordance with the~~  
35 ~~requirements set forth in Section 44310.~~ The enforcement agency  
36 shall also hold a hearing upon a petition to the enforcement agency  
37 from any person requesting the enforcement agency to review an  
38 alleged failure of the agency to act as required by law or regulation.  
39 A hearing shall be held in accordance with the procedures  
40 specified in Section 44310.



1 SEC. 5. Section 44308 of the Public Resources Code is  
2 amended to read:

3 44308. (a) All hearings conducted pursuant to this chapter by  
4 the enforcement agency shall be conducted by a hearing officer  
5 appointed pursuant to subdivision (d) or a hearing panel appointed  
6 pursuant to either of the following procedures:

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

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

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

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

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

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

22 (5) A member of an independent hearing panel shall serve for  
23 a term of ~~two~~ four years, and may not serve more than two  
24 consecutive terms.

25 (6) If a member of an independent hearing panel does not  
26 complete the member's term, the chairperson of the governing  
27 body shall appoint a replacement to serve out the remainder of the  
28 unexpired term.

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

31 ~~(d) The governing body of an enforcement agency may only  
32 appoint a hearing officer pursuant to procedures adopted by that  
33 governing body.~~

34 *(d) The governing body of an enforcement agency may appoint  
35 a hearing officer only if the governing body has adopted  
36 procedures for making that appointment and has adopted  
37 qualifications that the hearing officer is required to meet.*

38 ~~SEC. 2.—~~

39 SEC. 6. Section 44309 of the Public Resources Code is  
40 amended to read:



1 44309. All hearings conducted by the board pursuant to this  
2 chapter, acting as, or on behalf of, the enforcement agency, acting  
3 as the enforcement agency pursuant to Section 43205 shall be  
4 conducted by a hearing panel of three board members selected  
5 appointed by the chairperson of the board.

6 SEC. 7. Section 44310 of the Public Resources Code is  
7 amended to read:

8 44310. All hearings conducted pursuant to this chapter shall  
9 be based on the following procedures:

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

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

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

24 (b) The hearing shall be held on the merits of the issues  
25 presented, in accordance with the procedures specified in Sections  
26 11507 to 11517, inclusive, of the Government Code.

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

30 ~~SEC. 3.~~

31 SEC. 8. Section 44310.5 is added to the Public Resources  
32 Code, to read:

33 44310.5. (a) Notwithstanding Section 44310, if a person files  
34 an appeal with the enforcement agency to review a cease and desist  
35 order issued pursuant to Section 45006, the hearing conducted  
36 with regard to that order shall be based on the following  
37 procedures:

38 (1) A person subject to the cease and desist order shall file a  
39 request for an appeal with the enforcement agency within five



1 business days from the date the cease and desist order is served  
2 upon the person subject to the order.

3 (2) The enforcement agency shall, within 10 days from the date  
4 of receipt of a request for a hearing, provide written notice to the  
5 person filing the request pursuant to paragraph (1) notifying the  
6 person of the date, time, and place of the hearing, and requiring the  
7 person to provide the enforcement agency with a statement of the  
8 issues that require a hearing, at least 15 days prior to the date of the  
9 hearing.

10 (3) A hearing panel convened pursuant to Section 44308 or a  
11 hearing officer appointed in accordance with subdivision (d) of  
12 Section 44308 shall hold the hearing no later than 30 days after  
13 receiving the request for a hearing, on the merits of the issues  
14 presented, in accordance with the procedures specified in Sections  
15 11507 to 11517, inclusive, of the Government Code.

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

18 (c) Notwithstanding Sections 45030 and 45031, a person may  
19 file an appeal with the board to review the written decision of a  
20 hearing panel or hearing officer issued pursuant to this section. The  
21 person shall file the appeal within five business days after the date  
22 that the decision of the hearing panel or hearing officer is served  
23 upon the person subject to the decision. The board shall accept and  
24 hold the hearing regarding the appeal within 30 days after  
25 receiving the appeal and shall issue a decision within 10 days after  
26 the date of the hearing.

27 (d) A person may file an action pursuant to Section 45040 for  
28 review of an order issued pursuant to Section 45006 only if the  
29 person has filed a request for an appeal with the hearing panel or  
30 hearing officer and filed a request with the board to review the  
31 order in accordance with this section.

32 ~~SEC. 4.—~~

33 *SEC. 9. Section 45005 of the Public Resources Code is*  
34 *amended to read:*

35 45005. ~~Any~~ A person who is operating, or proposes to operate,  
36 a solid waste facility, or who is disposing of solid waste in an  
37 unauthorized manner, or who owns a solid waste facility and  
38 causes or permits the operator to operate the facility (1) in violation  
39 of a solid waste facilities permit or in violation of this division, or  
40 any regulation adopted pursuant to this division, or (2) without a



1 solid waste facilities permit, or (3) in a manner that causes or  
2 threatens to cause a condition of hazard, pollution, or nuisance  
3 shall, upon order of the enforcement agency, cease and desist any  
4 ~~improper action~~ *prohibited activities*.

5 *SEC. 10.* Section 45006 is added to the Public Resources  
6 Code, to read:

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

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

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

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

27 ~~SEC. 5.~~

28 *SEC. 11.* Section 45017 of the Public Resources Code is  
29 amended to read:

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

35 (2) Any provision of an order issued under this part shall take  
36 effect upon service on the affected person if the enforcement  
37 agency finds that the actions or inactions associated with that  
38 provision may pose an imminent and substantial threat to the  
39 public health and safety or to the environment, and a request for



1 a hearing shall not stay the effect of that provision of the order  
2 pending completion of all appeals.

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

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

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

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

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

34 ~~SEC. 6.~~

35 *SEC. 12.* Section 45022.5 is added to the Public Resources  
36 Code, to read:

37 45022.5. An enforcement agency shall maintain a record of,  
38 and take any action that the enforcement agency is authorized to  
39 take regarding, a complaint, referral, or inspection relating to the  
40 ~~operation of a solid waste facility or other activity within the~~



1 ~~jurisdiction of the enforcement agency that is an excluded~~  
2 ~~operation, as provided in Section 18102 of Title 14 of the~~  
3 ~~California Code of Regulations: operation of a solid waste facility,~~  
4 ~~solid waste disposal site, or solid waste handling activity,~~  
5 ~~including, but not limited to, those activities that do not require a~~  
6 ~~solid waste facilities permit, within its jurisdiction.~~

7 ~~SEC. 7.~~

8 *SEC. 13.* Section 45030 of the Public Resources Code is  
9 amended to read:

10 45030. (a) ~~Any aggrieved person~~ *A party to a hearing held*  
11 *pursuant to Chapter 4 (commencing with Section 44300) of Part*  
12 *4 may appeal to the board to review the written decision of the*  
13 *hearing panel or hearing officer or to review the petitioner's*  
14 *request in the instance of a failure of a hearing panel or hearing*  
15 *officer to render a decision or consider the request for review, or*  
16 *a determination by the governing body not to direct the hearing*  
17 *panel or hearing officer to hold a public hearing, under the*  
18 *following circumstances:*

19 (1) ~~Within 30~~ *10* days from the date of issuance of a written  
20 decision by a hearing panel or hearing officer.

21 ~~(2) Within 30 days from the failure of a hearing panel or~~  
22 ~~hearing officer to render a decision or consider a petitioner's~~  
23 ~~request.~~

24 ~~(3) Within 30 days from the date that the governing body~~  
25 ~~determines not to direct the hearing panel or hearing officer to hold~~  
26 ~~a public hearing.~~

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

33 (2) *If no decision is issued, with 45 days from the date a request*  
34 *for a hearing was received by the enforcement agency for which*  
35 *there was a failure of a hearing panel or hearing officer to render*  
36 *a decision or consider a petitioner's request pursuant to Section*  
37 *44310.*

38 (b) *An appellant shall commence an appeal to the board by*  
39 *filing a written request for a hearing together with a brief summary*  
40 *statement of the legal and factual basis for the appeal.*



1 (c) *Within five days from the date the board receives the request*  
 2 *for a hearing, the board shall schedule a hearing on the appeal and*  
 3 *notify the appellant and all other parties to the underlying*  
 4 *proceeding of the date of the board hearing.*

5 (d) *The board shall hear the appeal not less than 60 days from*  
 6 *the date the board received the request for the appeal.*

7 (e) *The board shall conduct the hearing on the appeal in*  
 8 *accordance with the procedures specified in Article 10*  
 9 *(commencing with Section 11445.10) of Chapter 4.5 of Part 1 of*  
 10 *the Government Code.*

11 ~~SEC. 8. Section 45031 of the Public Resources Code is~~  
 12 ~~amended to read:~~

13 ~~45031. Within 30 days from the date that an appeal is filed~~  
 14 ~~with the board, the board may do any of the following:~~

15 ~~(a) Determine not to hear the appeal if the appellant fails to~~  
 16 ~~raise substantial issues.~~

17 ~~(b) Determine not to hear the appeal if the appellant failed to~~  
 18 ~~participate in the administrative hearing before the hearing panel~~  
 19 ~~or hearing officer, except that the board shall hear the appeal if the~~  
 20 ~~appellant shows good cause for the appellant's failure to appear.~~

21 ~~(c) Determine to accept the appeal and to decide the matter on~~  
 22 ~~the basis of the record before the hearing panel or hearing officer,~~  
 23 ~~or based on written arguments submitted by the parties, or both.~~

24 ~~(d) Determine to accept the appeal and hold a hearing, within~~  
 25 ~~60 days, unless all parties stipulate to extending the hearing date.~~

26 ~~SEC. 9.~~

27 ~~SEC. 14. Section 45032 of the Public Resources Code is~~  
 28 ~~amended to read:~~

29 ~~45032. (a) If the board declines to hear the appeal, it shall~~  
 30 ~~notify all parties in writing by appropriate means, and any~~  
 31 ~~enforcement agency action stayed pending appeal shall become~~  
 32 ~~effective 10 days from the date that the board's notification is~~  
 33 ~~made, unless judicial review is sought pursuant to Chapter 2~~  
 34 ~~(commencing with Section 45040).~~

35 ~~(b) If the board accepts the appeal, the evidence before the~~  
 36 ~~45032. (a) In the board's hearing on the appeal, the evidence~~  
 37 ~~before the board shall consist of the record before the hearing panel~~  
 38 ~~or hearing officer, or relevant facts as to any actions or inactions~~  
 39 ~~not subject to review by a hearing panel or hearing officer, the~~  
 40 ~~record before the local enforcement agency, written and oral~~



1 *arguments submitted by the parties*, and any other relevant  
2 evidence that, in the judgment of the board, should be considered  
3 to effectuate and implement the policies of this division.

4 ~~(e)~~

5 (b) The board may only overturn an enforcement action by a  
6 local enforcement agency if it finds, based on substantial evidence,  
7 that the action was inconsistent with this division. If the board  
8 overturns the decision of the local enforcement agency, the hearing  
9 panel, or the hearing officer, or finds that the enforcement agency  
10 has failed to act as required, the board may do both of the  
11 following:

12 (1) Direct that the appropriate action be taken by the local  
13 enforcement agency.

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

16 (c) *With regard to the review of an administrative civil penalty*  
17 *imposed by an enforcement agency, a hearing panel, or a hearing*  
18 *officer, the board shall not reduce the amount of the civil penalty,*  
19 *but may rescind the order imposing the civil penalty if the board*  
20 *determines, based on substantial evidence in the record, that the*  
21 *violation did not occur.*

22 ~~SEC. 10.~~

23 *SEC. 15.* Section 45033 of the Public Resources Code is  
24 amended to read:

25 45033. A failure to appeal to the hearing panel, the hearing  
26 officer, or the board for review, or the refusal of the local  
27 enforcement agency, a hearing panel, the hearing officer, or the  
28 board to hear an appeal does not preclude a person from filing an  
29 action with the superior court to contest any action or inaction of  
30 the local enforcement agency or the board.

31 ~~SEC. 11.~~

32 *SEC. 16.* Section 45041 of the Public Resources Code is  
33 amended to read:

34 45041. The evidence before the court shall consist of the  
35 records before the hearing panel or hearing officer and the board,  
36 if any, including the enforcement agency's records, and any other  
37 relevant evidence that, in the judgment of the court, should be  
38 considered to effectuate and implement the policies of this  
39 division.

40 ~~SEC. 12.~~



1     *SEC. 17.* No reimbursement is required by this act pursuant  
2 to Section 6 of Article XIII B of the California Constitution  
3 because a local agency or school district has the authority to levy  
4 service charges, fees, or assessments sufficient to pay for the  
5 program or level of service mandated by this act, within the  
6 meaning of Section 17556 of the Government Code.

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