

AMENDED IN SENATE JULY 12, 2004

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

An act to amend Sections 44002, 44015, 44300, 44305, 44307, 44308, 44309, 44310, 45005, 45017, 45030, 45032, 45033, and 45041 of, and to add Sections ~~44310.5, 45006~~, 45002 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 prohibits a person from operating a solid waste facility without a solid waste facilities permit if that facility is required to have a permit pursuant to the act, and requires the enforcement agency to immediately issue a cease and desist order ordering the facility to immediately cease operations and directing the owner or operator of the facility to obtain a permit. 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 specify that this prohibition on operating without a permit includes the operation of a solid waste facility without a required solid waste facilities permit or the operation of a solid waste facility outside the permitted boundaries specified in a solid waste facilities permit.~~

~~The bill would require the order issued by an enforcement agency to require all activities for which a permit is required be ceased until the permit or other authorization is obtained.~~

~~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~~ *provide that an order issued under the act takes effect immediately upon service, but would provide that a request for a hearing would stay the order until the date of the completion of all administrative appeals. The bill would provide that a cease and desist order takes effect upon service and that a request for a hearing would not stay the order, under specified conditions.*

The bill would revise the provisions for the conduct of hearings to require a written filing and a statement of the issues and would require the enforcement agency to comply with a specified time schedule regarding the conduct of the hearing.

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 revise the procedures for appealing the decision of the hearing panel or hearing officer to the board and would delete the prohibition on the board from reducing the amount of a civil penalty.

The bill would require the board to hear an appeal within 60 days after the board receives a request for the appeal.

The bill would also make changes with regard to the appeal of a 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 44002 of the Public Resources Code is*
2 *amended to read:*

3 44002. (a) (1) No person shall operate a solid waste facility
4 without a solid waste facilities permit if that facility is required to
5 have a permit pursuant to this division.~~¶~~

6 (2) *The prohibition specified in paragraph (1) includes, but is*
7 *not limited to, the operation of a solid waste facility without a*
8 *required solid waste facilities permit or the operation of a solid*
9 *waste facility outside the permitted boundaries specified in a solid*
10 *waste facilities permit.*

11 (b) *If the enforcement agency determines that a person is* ~~so~~
12 *operating a solid waste facility in violation of subdivision (a), the*
13 *enforcement agency shall immediately issue a cease and desist*
14 *order pursuant to Section 45005 ordering the facility to*
15 *immediately cease operations, and directing the owner or operator*
16 *of the facility to obtain a solid waste facilities permit in order to*
17 *resume operation of the facility.*

18 ~~(2) This subdivision shall become operative October 16, 1996.~~

19 (b) (1) ~~Notwithstanding subdivision (a), the enforcement~~
20 ~~agency may stay the issuance of a cease and desist order issued~~
21 ~~pursuant to subdivision (a) if the solid waste facility meets all of~~
22 ~~the following conditions:~~

23 (A) ~~The facility is in the process of changing its ownership and~~
24 ~~use, and is in the process of obtaining a new or modified solid~~
25 ~~waste facilities permit.~~



1 ~~(B) The owner or operator of the facility is actively engaging~~
2 ~~in good faith efforts, as determined by the enforcement agency, to~~
3 ~~obtain the new or modified solid waste facilities permit in an~~
4 ~~expeditious manner.~~

5 ~~(C) An environmental impact report has been prepared and~~
6 ~~certified for the solid waste facility pursuant to Division 13~~
7 ~~(commencing with Section 21000).~~

8 ~~(D) During the time that the facility is operating without a solid~~
9 ~~waste facilities permit, the facility is otherwise operating in a~~
10 ~~manner that is in compliance with this division and with any~~
11 ~~conditions required for that compliance imposed by the~~
12 ~~enforcement agency.~~

13 ~~(2) A stay granted by the enforcement agency pursuant to~~
14 ~~paragraph (1) shall be for not more than one year and may be~~
15 ~~extended by the enforcement agency for a period of time not to~~
16 ~~exceed one additional year, provided that the operator or proposed~~
17 ~~operator of the solid waste facility makes a continuing good faith~~
18 ~~effort, as determined by the enforcement agency, to obtain the~~
19 ~~solid waste facilities permit and remains in compliance with~~
20 ~~paragraph (1).~~

21 ~~(3) This subdivision shall become inoperative on January 1,~~
22 ~~1999 all activities for which a solid waste facilities permit is~~
23 ~~required and desist from those activities until the person obtains~~
24 ~~a valid solid waste facilities permit authorizing the activities or has~~
25 ~~obtained other authorization pursuant to this division.~~

26 SEC. 2. Section 44015 of the Public Resources Code is
27 amended to read:

28 44015. A solid waste facilities permit issued or revised under
29 this chapter shall be reviewed and, if necessary, revised at least
30 once every five years.

31 ~~SEC. 2.—~~

32 SEC. 3. Section 44300 of the Public Resources Code is
33 amended to read:

34 44300. An enforcement agency may, after holding a public
35 hearing before a hearing panel or a hearing officer appointed
36 pursuant to Section 44308 or 44309, in accordance with the
37 procedures set forth in Section 44310, deny a solid waste facilities
38 permit in any of the following cases:

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



1 (b) The applicant has not complied with Division 13
 2 (commencing with Section 21000).

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

5 (d) The application contains significant false or misleading
 6 information or significant misrepresentations.

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

12 (1) The violation demonstrates a chronic recurring pattern of
 13 noncompliance that has posed, or may pose, a significant risk to
 14 public health and safety or to the environment.

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

17 ~~SEC. 3.—~~

18 *SEC. 4.* Section 44305 of the Public Resources Code is
 19 amended to read:

20 44305. (a) An enforcement agency may, after holding a
 21 public hearing before a hearing panel or a hearing officer
 22 appointed pursuant to Section 44308 or 44309, in accordance with
 23 the procedures set forth in Section 44310, temporarily suspend a
 24 solid waste facilities permit if the enforcement agency determines
 25 that changed conditions at the facility necessitate a permit revision
 26 or modification to eliminate a significant threat to public health
 27 and safety or to the environment.

28 (b) Notwithstanding subdivision (a), the enforcement agency
 29 may suspend a solid waste facilities permit prior to holding a
 30 hearing if the enforcement agency determines that changed
 31 conditions at the facility necessitate a permit revision or
 32 modification to prevent or mitigate an imminent and substantial
 33 threat to the public health and safety or to the environment.
 34 However, any person aggrieved by an action by an enforcement
 35 agency to suspend a permit pursuant to this subdivision may appeal
 36 the action to a hearing panel or hearing officer appointed pursuant
 37 to Section 44308 or 44309. The hearing panel or hearing officer
 38 shall, at the request of the aggrieved party, hear the appeal within
 39 three business days of the date when the permit was suspended, or
 40 the first day thereafter requested by the aggrieved party in



1 compliance with Chapter 9 (commencing with Section 54950) of
2 Division 2 of Title 5 of the Government Code. The hearing panel
3 or hearing officer shall render its decision on the day the hearing
4 concludes. The hearing panel or hearing officer may affirm,
5 modify, or rescind the permit suspension. A decision of a hearing
6 panel or hearing officer appointed pursuant to Section 44308 or
7 44309 may be appealed pursuant to Section 45030.

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

11 ~~SEC. 4.—~~

12 *SEC. 5.* Section 44307 of the Public Resources Code is
13 amended to read:

14 44307. From the date of issuance of a permit that imposes
15 conditions that are inappropriate, as contended by the applicant, or
16 after the taking of any enforcement action pursuant to Part 5
17 (commencing with Section 45000) by the enforcement agency, the
18 enforcement agency shall hold a hearing, if requested to do so, by
19 the person subject to the action. The enforcement agency shall also
20 hold a hearing upon a petition to the enforcement agency from any
21 person requesting the enforcement agency to review an alleged
22 failure of the agency to act as required by law or regulation. A
23 hearing shall be held in accordance with the procedures specified
24 in Section 44310.

25 ~~SEC. 5.—~~

26 *SEC. 6.* Section 44308 of the Public Resources Code is
27 amended to read:

28 44308. (a) All hearings conducted pursuant to this chapter by
29 the enforcement agency shall be conducted by a hearing officer
30 appointed pursuant to subdivision (d) or a hearing panel appointed
31 pursuant to either of the following procedures:

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

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

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



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

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

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

9 (5) A member of an independent hearing panel shall serve for
10 a term of four years, and may not serve more than two consecutive
11 terms.

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

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

18 (d) The governing body of an enforcement agency may appoint
19 a hearing officer only if the governing body has adopted
20 procedures for making that appointment and has adopted
21 qualifications that the hearing officer is required to meet.

22 ~~SEC. 6.—~~

23 *SEC. 7.* Section 44309 of the Public Resources Code is
24 amended to read:

25 44309. All hearings conducted by the board acting as the
26 enforcement agency pursuant to Section 43205 shall be conducted
27 by a hearing panel of three board members appointed by the
28 chairperson of the board.

29 ~~SEC. 7.—~~

30 *SEC. 8.* Section 44310 of the Public Resources Code is
31 amended to read:

32 44310. All hearings conducted pursuant to this chapter shall
33 be based on the following procedures:

34 (a) (1) The hearing shall be initiated by the filing of a *written*
35 ~~request for a hearing by the person subject to the action within 15~~
36 ~~days from the date that person is notified, in writing, of the~~
37 ~~enforcement agency's intent to act in the manner specified. for a~~
38 *hearing with a statement of the issues.*

39 (A) *If the hearing request is made by the person subject to the*
40 *action, the request shall be made within 15 days from the date that*



1 *person is notified, in writing, of the enforcement agency's intent to*
2 *act in the manner specified.*

3 *(B) If the hearing request is made by a person alleging that the*
4 *enforcement agency failed to act as required by law or regulation*
5 *pursuant to Section 44307, the person shall file a request for a*
6 *hearing within 30 days from the date the person discovered or*
7 *reasonably should have discovered, the facts on which the*
8 *allegation is based.*

9 (2) The enforcement agency shall, within 15 days from the date
10 of receipt of a request for a hearing, provide written notice to the
11 person filing the request notifying the person of the date, time, and
12 ~~place of the hearing, and requiring the person to provide the~~
13 ~~enforcement agency with a statement of the issues that require a~~
14 ~~hearing, at least 20 days prior to the date of the hearing.~~ *place of*
15 *the hearing.*

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

20 ~~(b) The hearing shall be held on the merits of the issues~~
21 ~~presented, in accordance with the procedures specified in Sections~~
22 ~~11507 to 11517, inclusive, of the Government Code.~~

23 ~~(e) Within 30 days from the date of the hearing, the hearing~~
24 (4) *The enforcement agency shall file its written response to the*
25 *statement of issues filed by the person requesting the hearing with*
26 *the hearing panel or the hearing officer, and provide a copy to the*
27 *person requesting the hearing, not less than 15 days prior to the*
28 *date of the hearing.*

29 (b) *The hearing shall be held no later than 30 days after*
30 *receiving the request for a hearing on the merits of the issues*
31 *presented, in accordance with the procedures specified in Article*
32 *10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1*
33 *of Division 3 of Title 2 of the Government Code.*

34 (c) *Within five days from the conclusion of the hearing, the*
35 *hearing panel or hearing officer shall issue its decision. The*
36 *decision shall become effective as provided in Section 45017.*

37 ~~SEC. 8. Section 44310.5 is added to the Public Resources~~
38 ~~Code, to read:~~

39 ~~44310.5. (a) Notwithstanding Section 44310, if a person files~~
40 ~~an appeal with the enforcement agency to review a cease and desist~~



1 order issued pursuant to Section 45006, the hearing conducted
2 with regard to that order shall be based on the following
3 procedures:

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

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

15 (3) A hearing panel convened pursuant to Section 44308 or a
16 hearing officer appointed in accordance with subdivision (d) of
17 Section 44308 shall hold the hearing no later than 30 days after
18 receiving the request for a hearing, on the merits of the issues
19 presented, in accordance with the procedures specified in Sections
20 11507 to 11517, inclusive, of the Government Code.

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

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

32 (d) A person may file an action pursuant to Section 45040 for
33 review of an order issued pursuant to Section 45006 only if the
34 person has filed a request for an appeal with the hearing panel or
35 hearing officer and filed a request with the board to review the
36 order in accordance with this section.

37 ~~SEC. 9.—~~

38 *SEC. 9. Section 45002 is added to the Public Resources Code,*
39 *to read:*



1 45002. An order issued or a determination made pursuant to
2 this part or Part 4 (commencing with Section 43000) shall provide
3 the person subject to that order or determination with a notice of
4 that person's right to appeal pursuant to Part 4 (commencing with
5 Section 43000) and Part 6 (commencing with Section 45030).

6 SEC. 10. Section 45005 of the Public Resources Code is
7 amended to read:

8 45005. A person who is operating, or proposes to operate, a
9 solid waste facility, or who is disposing of solid waste in an
10 unauthorized manner, or who owns a solid waste facility and
11 causes or permits the operator to operate the facility (1) in violation
12 of a solid waste facilities permit or in violation of this division, or
13 any regulation adopted pursuant to this division, or (2) without a
14 solid waste facilities permit, or (3) in a manner that causes or
15 threatens to cause a condition of hazard, pollution, or nuisance
16 shall, upon order of the enforcement agency, cease and desist any
17 prohibited activities.

18 ~~SEC. 10. Section 45006 is added to the Public Resources~~
19 ~~Code, to read:~~

20 ~~45006. (a) Notwithstanding Section 45005, an enforcement~~
21 ~~agency shall issue a cease and desist order to a person who owns~~
22 ~~a solid waste disposal site, who is disposing of solid waste, who is~~
23 ~~operating a solid waste facility, or who is engaged in solid waste~~
24 ~~handling activities, if the enforcement agency finds that the person~~
25 ~~does not hold a full solid waste facilities permit authorizing that~~
26 ~~activity or the person is not otherwise authorized to engage in that~~
27 ~~activity pursuant to this division or the regulations adopted~~
28 ~~pursuant to this division, in accordance with the following~~
29 ~~procedure:~~

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

33 ~~(2) If the person does not take corrective action in accordance~~
34 ~~with the notice issued pursuant to subdivision (a), the enforcement~~
35 ~~agency shall issue the cease and desist order, which shall go into~~
36 ~~effect immediately.~~

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

1 SEC. 11. Section 45017 of the Public Resources Code is
2 amended to read:

3 45017. (a) (1) Except as provided in paragraphs (2), ~~(3), and~~
4 ~~(4) and (3)~~, all orders and determinations issued pursuant to this
5 part or Part 4 (commencing with Section 43000) shall take effect
6 ~~immediately and a request for a hearing shall stay the effect of that~~
7 ~~provision of the order pending completion of all appeals.~~
8 *immediately upon service, except that a request for a hearing*
9 *pursuant to Section 44307 shall stay the effect of any or all*
10 *provisions of the order until the date of the completion of all*
11 *administrative appeals.*

12 (2) Any provision of an order issued under this part *or Part 4*
13 *(commencing with Section 43000)* shall take effect upon service on
14 the affected person if the enforcement agency finds that the actions
15 or inactions associated with that provision may pose an imminent
16 and substantial threat to the public health and safety or to the
17 environment, and a request for a hearing shall not stay the effect
18 of that provision of the order pending completion of all
19 *administrative* appeals.

20 ~~(3) If the enforcement agency determines that any or all~~
21 ~~provisions of the order are so related that the public health and~~
22 ~~safety or the environment can be protected only by immediate~~
23 ~~compliance with the order as a whole, then the order as a whole~~
24 ~~shall take effect upon issuance by the enforcement agency and a~~
25 ~~request for a hearing shall not stay the effect of the order as a whole~~
26 ~~pending completion of all appeals.~~

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

29 ~~(b) Any person aggrieved by an order by an enforcement~~
30 ~~agency that takes effect upon service, based on the finding of an~~
31 ~~imminent and substantial threat to public health and safety or to the~~
32 ~~environment, pursuant to paragraph (2) of subdivision (a), or~~
33 ~~based on a determination that any of all provisions of the order are~~
34 ~~so related that the public health and safety or the environment can~~
35 ~~only be protected by immediate compliance pursuant to paragraph~~
36 ~~(3) of subdivision (a), may immediately appeal the order to a~~
37 ~~hearing panel or hearing officer established or appointed pursuant~~
38 ~~to Section 44308. The hearing panel or hearing officer shall, at the~~
39 ~~request of the person subject to the order, hear the appeal consistent~~
40 ~~with Sections 11125.5 and 54956.5 of the Government Code, as~~



1 applicable. A request for a hearing shall not stay the effect of the
2 order pending completion of all appeals.

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

7 ~~(c) An order issued pursuant to this part or Part 4 (commencing
8 with Section 43000) shall provide the person subject to that order
9 with a notice of that person's right of appeal pursuant to this part
10 or Part 6 (commencing with Section 45030).~~

11 (3) *A cease and desist order issued pursuant to Section 44002
12 shall take effect upon service on the affected person and a request
13 for a hearing shall not stay the effect of the order, notwithstanding
14 the completion of any administrative appeal, if the cease and desist
15 order is issued to a person operating a solid waste facility on a
16 property for which a solid waste facilities permit is required, and
17 one of the following applies:*

18 (A) *The person has not applied for any solid waste facilities
19 permit for that property.*

20 (B) *The person has been denied a solid waste facility permit for
21 the operation on that property for which a solid waste facilities
22 permit is required.*

23 (b) *For purposes of this section, service may be effected by any
24 of the following:*

25 (1) *Personal delivery.*

26 (2) *First class United States mail, if it is made by certified mail
27 with a return receipt requested.*

28 (3) *Express delivery by a national express mail service that
29 provides evidence of delivery.*

30 SEC. 12. Section 45022.5 is added to the Public Resources
31 Code, to read:

32 45022.5. An enforcement agency shall maintain a record of,
33 and take any action that the enforcement agency is authorized to
34 take regarding, a complaint, referral, or inspection relating to the
35 operation of a solid waste facility, solid waste disposal site, or solid
36 waste handling activity, including, but not limited to, those
37 activities that do not require a solid waste facilities permit, within
38 its jurisdiction.

39 SEC. 13. Section 45030 of the Public Resources Code is
40 amended to read:



1 45030. (a) A party to a hearing held pursuant to Chapter 4
2 (commencing with Section 44300) of Part 4 may appeal to the
3 board to review the written decision of the hearing panel or hearing
4 officer or to review the petitioner's request in the instance of a
5 failure of a hearing panel or hearing officer to render a decision or
6 consider the request for review, or a determination by the
7 governing body not to direct the hearing panel or hearing officer
8 to hold a public hearing, under the following circumstances:

9 (1) Within 10 days from the date of issuance of a written
10 decision by a hearing panel or hearing officer.

11 (2) If no decision is issued, with 45 days from the date a request
12 for a hearing was received by the enforcement agency for which
13 there was a failure of a hearing panel or hearing officer to render
14 a decision or consider a petitioner's request pursuant to Section
15 44310.

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

19 (c) Within five days from the date the board receives the request
20 for a hearing, the board shall schedule a hearing on the appeal and
21 notify the appellant and all other parties to the underlying
22 proceeding of the date of the board hearing.

23 (d) The board shall hear the appeal ~~not less than~~ *within* 60 days
24 from the date the board received the request for the appeal.

25 (e) The board shall conduct the hearing on the appeal in
26 accordance with the procedures specified in Article 10
27 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of
28 the Government Code.

29 SEC. 14. Section 45032 of the Public Resources Code is
30 amended to read:

31 45032. (a) In the board's hearing on the appeal, the evidence
32 before the board shall consist of the record before the hearing panel
33 or hearing officer, relevant facts as to any actions or inactions not
34 subject to review by a hearing panel or hearing officer, the record
35 before the local enforcement agency, written and oral arguments
36 submitted by the parties, and any other relevant evidence that, in
37 the judgment of the board, should be considered to effectuate and
38 implement the policies of this division.

39 (b) The board may only overturn an enforcement action, *and*
40 *any administrative civil penalty*, by a local enforcement agency if



1 it finds, based on substantial evidence, that the action was
2 inconsistent with this division. If the board overturns the decision
3 of the local enforcement agency, the hearing panel, or the hearing
4 officer, or finds that the enforcement agency has failed to act as
5 required, the board may do both of the following:

6 (1) Direct that the appropriate action be taken by the local
7 enforcement agency.

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

10 ~~(e) With regard to the review of an administrative civil penalty~~
11 ~~imposed by an enforcement agency, a hearing panel, or a hearing~~
12 ~~officer, the board shall not reduce the amount of the civil penalty,~~
13 ~~but may rescind the order imposing the civil penalty if the board~~
14 ~~determines, based on substantial evidence in the record, that the~~
15 ~~violation did not occur.~~

16 SEC. 15. Section 45033 of the Public Resources Code is
17 amended to read:

18 45033. A failure to appeal to the hearing panel, the hearing
19 officer, or the board for review, or the refusal of the local
20 enforcement agency, a hearing panel, the hearing officer, or the
21 board to hear an appeal does not preclude a person from filing an
22 action with the superior court to contest any action or inaction of
23 the local enforcement agency or the board.

24 SEC. 16. Section 45041 of the Public Resources Code is
25 amended to read:

26 45041. The evidence before the court shall consist of the
27 records before the hearing panel or hearing officer and the board,
28 if any, including the enforcement agency's records, and any other
29 relevant evidence that, in the judgment of the court, should be
30 considered to effectuate and implement the policies of this
31 division.

32 SEC. 17. No reimbursement is required by this act pursuant
33 to Section 6 of Article XIII B of the California Constitution
34 because a local agency or school district has the authority to levy
35 service charges, fees, or assessments sufficient to pay for the
36 program or level of service mandated by this act, within the
37 meaning of Section 17556 of the Government Code.



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- 2 CORRECTIONS
- 3 Text — Page 12.
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