

AMENDED IN ASSEMBLY APRIL 23, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2679

**Introduced by Assembly Member Ruskin
(Coauthor: Assembly Member Nunez)**

February 22, 2008

An act to amend Sections 40120.1, 40122, 40141, 40160, 40192, 43209, 43214, 43300, 44100, 44306, 45000, 45002, 45005, 45010, 45011, 45012, 45013, 45017, 45019, 45020, 45021, 45022, 45023, and 45040 of, to add Sections 40115.5, 40142, 40150.1, 40162, 44000.5, 45000.1, 45003, 45010.1, and 45010.2 to, to add Chapter 2 (commencing with Section 45025) to Part 5 of Division 30 of, and to repeal Sections 40123 and 45033 of, the Public Resources Code, relating to solid waste, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2679, as amended, Ruskin. Solid waste: enforcement: local agencies.

(1) Existing law, the California Integrated Waste Management Act of 1989, regulates the management of solid waste. The act provides that the California Integrated Waste Management Board may designate and certify a local enforcement agency within each county to carry out specified powers and duties and requires the board and certified local enforcement agencies to perform specified functions with regard to the regulation of solid waste management, including the issuance and enforcement of solid waste facilities permits. Existing law defines various terms for purposes of the act, including defining the term

“disposal site owner” as a person who holds title to property used as a disposal site after January 1, 1977.

The bill would repeal the definition of disposal site owner and would additionally define the terms “closed disposal site,” “illegal disposal site,” “minor violation,” and “owner.” The bill would also revise the existing definitions of the terms “disposal,” “disposal site,” “hazardous waste,” “operator,” and “solid waste disposal” for purposes of the act.

(2) Existing law prohibits the operation of a solid waste facility without a solid waste facilities permit and authorizes an enforcement agency to issue a solid waste facilities permit only if it makes certain findings regarding the consistency of the permit with the act and the regulations adopted by the board. The enforcement agency is required to take specified actions, including establishing and maintaining an inspection program.

Existing law requires the board to periodically inspect solid waste facilities to determine if the enforcement agency is enforcing state minimum standards. Existing law allows an enforcement agency to issue an administrative order requiring the owner or operator of a solid waste facility to take corrective action and to issue a cease and desist order. An enforcement agency is allowed to include an administrative civil penalty of up to \$5,000 for each day on which a violation occurs. Existing law also provides for the imposition of a civil penalty of up to \$10,000 per day upon an owner or operator of a solid waste facility who violates certain requirements or a person who violates a standard adopted by the board. Existing law requires all civil penalties paid to the board pursuant to the enforcement provisions of the act *to* be deposited in the Solid Waste Disposal Site Cleanup Trust Fund, which is continuously appropriated to the board for specified purposes with regard to the cleanup of solid waste disposal sites.

This bill would make conforming changes to the enforcement and penalty provisions of the act to additionally include violations of the act regarding disposal sites and solid waste handling activities. The bill would authorize the board to take any enforcement action that a local enforcement agency may take under the enforcement provisions of the act. The bill would authorize an enforcement agency to include, as part of its funding of the inspection program required to be conducted by the enforcement agency, the prevention of the illegal disposal of solid waste, the abatement of the illegal disposal of solid waste, and activities to make the public aware regarding that disposal.

The bill would allow the board to require an environmental restriction to be imposed on a disposal site where the solid waste remains in place after closure or environmental remediation.

The bill would require the board or enforcement agency to take specified actions when a minor violation is detected in the course of an inspection.

The bill would prohibit a person from disposing of solid waste, causing solid waste to be disposed of, arranging for the disposal of solid waste, transporting solid waste, or accepting solid waste for disposal, except at a solid waste disposal facility issued a solid waste facilities permit, or as otherwise authorized. This bill would revise the procedures for the imposition of civil penalties to authorize the board or an enforcement agency to issue an order imposing a civil penalty of not more than \$5,000 upon a person who violates the act, a regulation adopted pursuant to the act or, an order issued under the enforcement provisions of the act applicable to a solid waste facility, solid waste handling activity, or a disposal site, or the terms or conditions of a solid waste facilities permit. The bill would require the board or an enforcement agency before issuing an order, except as specified, to follow specified procedures regarding notification and meeting with the owner, operator, or person to determine what actions, if any, that the operator, owner, or person may voluntarily take to bring the facility, activity, or site into compliance by the earliest feasible date.

The bill would impose a state-mandated local program by requiring local agencies to take specified enforcement actions under the act.

The bill would *additionally* authorize the imposition of a civil penalty of not more than \$10,000 upon a person who ~~disposes or arranges for the disposal of, or generates, transports, or arranges for the transport of, a solid waste that is not disposed of at a solid waste facility issued a solid waste facilities permit~~ *own or operates a solid waste handling activity or disposal site and who intentionally or negligently violates a solid waste facilities permit or a standard, requirement, or order, or a person who intentionally or negligently violates the act or a regulation, administrative order, or standard, with respect to a solid waste facility, solid waste handling activity, or disposal site*, for each day the violation or operation occurs.

Because the civil penalties that would be imposed by the board are required to be deposited in the Solid Waste Disposal Site Cleanup Trust Fund, which is a continuously appropriated fund, the bill would make an appropriation.

The bill would make a person convicted of violating certain provisions of the act guilty of a misdemeanor punishable by a fine in an amount of not less than \$500 and not more than \$10,000, by imprisonment in a county jail for not more than 6 months, or by both, for each violation. The bill would impose a state-mandated local program by creating new crimes.

(3) Existing law requires all orders and determinations issued under the act to 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.

This bill would instead allow a person subject to an order in the case of extraordinary circumstances to petition the board to stay the order, pending the completion of specified administrative appeals pursuant to a specified procedure.

(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 specified reasons.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 40115.5 is added to the Public Resources
- 2 Code, to read:
- 3 40115.5. "Closed disposal site" means a disposal site that
- 4 ceases to accept solid waste and is closed in accordance with
- 5 applicable statutes, regulations, and local ordinances in effect at
- 6 the time of the closure.
- 7 SEC. 2. Section 40120.1 of the Public Resources Code is
- 8 amended to read:
- 9 40120.1. "Disposal" or "dispose" has the same meaning as
- 10 "solid waste disposal" as defined in Section 40192.
- 11 SEC. 3. Section 40122 of the Public Resources Code is
- 12 amended to read:

1 40122. “Disposal site” or “site” means the place, location, tract
2 of land, area, or premises in use, intended to be used, or which has
3 been used, for the disposal of solid wastes.

4 SEC. 4. Section 40123 of the Public Resources Code is
5 repealed.

6 SEC. 5. Section 40141 of the Public Resources Code is
7 amended to read:

8 40141. (a) “Hazardous waste” means a waste, defined as a
9 “hazardous waste” in accordance with Section 25117 of the Health
10 and Safety Code, or a combination of wastes, which because of
11 its quantity, concentration, or physical, chemical, or infectious
12 characteristics may do either of the following:

13 (1) Cause, or significantly contribute to, an increase in mortality
14 or an increase in serious irreversible, or incapacitating reversible,
15 illness.

16 (2) Pose a substantial present or potential hazard to human health
17 or environment when improperly treated, stored, transported, or
18 disposed of, or otherwise managed.

19 (b) Unless expressly provided otherwise, “hazardous waste”
20 includes extremely hazardous waste and acutely hazardous waste.

21 SEC. 6. Section 40142 is added to the Public Resources Code,
22 to read:

23 40142. “Illegal disposal site” means a disposal site that meets
24 both of the following conditions:

25 (a) The site does not have a solid waste facilities permit, if the
26 site is required to obtain a solid waste facilities permit pursuant to
27 this division.

28 (b) The site is not closed in accordance with the requirements
29 of this division.

30 SEC. 7. Section 40150.1 is added to the Public Resources Code,
31 to read:

32 40150.1. “Minor violation” means the failure of a person to
33 comply with a requirement or condition of an applicable law,
34 regulation, permit, information request, order, variance, or other
35 requirement, whether procedural or substantive, that an
36 enforcement agency or the board is authorized to implement or
37 enforce pursuant to Part 5 (commencing with Section 45000) and
38 that does not otherwise include any of the following:

1 (a) A violation that results in injury to persons or property or
2 that presents a significant threat to human health or the
3 environment.

4 (b) A ~~knowing willful~~ *knowing, willful*, or intentional violation.

5 (c) A violation that is a chronic violation or that is committed
6 by a recalcitrant violator. In determining whether a violation is
7 chronic or a violator is recalcitrant, the enforcement agency or
8 board, whichever issues the notice to comply, shall consider
9 whether there is evidence indicating that the violator has engaged
10 in a pattern of neglect or disregard with respect to applicable
11 regulatory requirements.

12 (d) A violation that results in an emergency response from a
13 public safety agency.

14 (e) A violation that enables the violator to benefit economically
15 from the noncompliance, either by reduced costs or competitive
16 advantage.

17 SEC. 8. Section 40160 of the Public Resources Code is
18 amended to read:

19 40160. (a) “Operator” means a person who operates a solid
20 waste facility, conducts a solid waste handling activity, or operates
21 a disposal site.

22 (b) For purposes of an enforcement action pursuant to Part 5
23 (commencing with Section 45000) or a cost recovery action
24 pursuant to Section 48023, “operator” includes the current operator
25 and a person who, at any time before the date of the commencement
26 of the enforcement action or cost recovery action, operated a solid
27 waste facility, conducted a solid waste handling activity, or
28 operated a disposal site during which time the operation of the
29 property or the activity may have contributed to, caused the
30 circumstances giving rise to, or caused the condition of the property
31 giving rise to, the enforcement action or cost recovery action.

32 SEC. 9. Section 40162 is added to the Public Resources Code,
33 to read:

34 40162. (a) “Owner” means a person who holds fee title to, or
35 a leasehold or other possessory interest in, real property that is
36 presently in use as a solid waste facility, is a disposal site, or is
37 presently used for any solid waste handling activity.

38 (b) For purposes of an enforcement action pursuant to Part 5
39 (commencing with Section 45000) or a cost recovery action
40 pursuant to Section 48023, “owner” includes a person who, at any

1 time before the commencement of the enforcement action or
2 recovery action, held fee title to, or held a leasehold or other
3 possessory interest in, real property that was used as the site of a
4 solid waste facility or a disposal site, or was used for any solid
5 waste handling activity, during which time the operation of the
6 property or the activity may have contributed to, caused the
7 circumstances giving rise to, or caused the condition of the property
8 giving rise to, the enforcement action or cost recovery action.

9 SEC. 10. Section 40192 of the Public Resources Code is
10 amended to read:

11 40192. (a) Except as provided in subdivisions (b) and (c),
12 “solid waste disposal,” “disposal,” or “dispose” means the final
13 deposition of solid wastes onto land, into the atmosphere, or into
14 the waters of the state.

15 (b) For purposes of Part 2 (commencing with Section 40900),
16 “solid waste disposal,” “dispose,” or “disposal” means the
17 management of solid waste through landfill disposal or
18 transformation at a permitted solid waste facility, unless the term
19 is expressly defined otherwise.

20 (c) For purposes of Chapter 16 (commencing with Section
21 42800) and Chapter 19 (commencing with Section 42950) of Part
22 3, Part 4 (commencing with Section 43000), Part 5 (commencing
23 with Section 45000), Part 6 (commencing with Section 45030),
24 and Chapter 2 (commencing with Section 47901) of Part 7, “solid
25 waste disposal,” “dispose,” or “disposal” means the final deposition
26 of solid wastes onto land.

27 SEC. 11. Section 43209 of the Public Resources Code is
28 amended to read:

29 43209. The enforcement agency, within its jurisdiction and
30 consistent with its certification by the board, shall do all of the
31 following:

32 (a) Enforce applicable provisions of this part, regulations
33 adopted under this part, and terms and conditions of permits issued
34 pursuant to Chapter 3 (commencing with Section 44001).

35 (b) Request enforcement by appropriate federal, state, and local
36 agencies of their respective laws governing solid waste storage,
37 handling, and disposal.

38 (c) File with the board, upon its request, information the board
39 determines to be necessary.

1 (d) Develop, implement, and maintain inspection, enforcement,
2 permitting, and training programs.

3 (e) (1) Establish and maintain an enforcement program
4 consistent with regulations adopted by the board to implement this
5 chapter, the standards adopted pursuant to this chapter, and the
6 terms and conditions of permits issued pursuant to Chapter 3
7 (commencing with Section 44001).

8 (2) The enforcement agency may establish specific local
9 standards for solid waste handling and disposal subject to approval
10 by a majority vote of its local governing body, by resolution or
11 ordinance.

12 (3) A standard established pursuant to this subdivision shall be
13 consistent with this division and all regulations adopted by the
14 board.

15 (f) Keep and maintain records of its inspection, enforcement,
16 permitting, training, and regulatory programs, and of any other
17 official action in accordance with regulations adopted by the board.

18 (g) (1) Consult, as appropriate, with the appropriate local health
19 agency concerning all actions which involve health standards.

20 (2) The consultation required by this subdivision shall include
21 affording the health agency adequate notice and opportunity to
22 conduct and report the evaluation as it reasonably determines is
23 appropriate.

24 (h) Establish and maintain an inspection program.

25 (1) The inspection program required by this subdivision shall
26 be designed to determine whether any solid waste facility is
27 operating under any of the following:

28 (A) The facility is operating without a permit.

29 (B) The facility is operating in violation of state minimum
30 standards.

31 (C) The facility is operating in violation of the terms and
32 conditions of its solid waste facilities permit.

33 (D) The facility may pose a significant threat to public health
34 and safety or to the environment, based on any relevant
35 information.

36 (2) The inspection program established pursuant to this
37 subdivision shall also ensure frequent inspections of solid waste
38 facilities that have an established pattern of noncompliance with
39 this division, regulations adopted pursuant to this division, or the
40 terms and conditions of a solid waste facilities permit.

1 (3) The enforcement agency may include, as part of its funding
2 of the inspection program required by this subdivision, enforcement
3 to prevent the illegal disposal of solid waste, the abatement of the
4 illegal disposal of solid waste, and activities to make the public
5 aware of that disposal.

6 SEC. 12. Section 43214 of the Public Resources Code is
7 amended to read:

8 43214. (a) The board shall develop performance standards for
9 evaluating certified local enforcement agencies and shall
10 periodically review each certified enforcement agency and its
11 implementation of the permit, inspection, and enforcement
12 program. The board's review shall include periodic inspections of
13 solid waste facilities, disposal sites, and solid waste handling
14 activities within the jurisdiction of each enforcement agency for
15 the purpose of evaluating whether the enforcement agency is
16 appropriately applying and enforcing state minimum standards
17 within its jurisdiction.

18 (b) Following initial certification of an enforcement agency by
19 the board, the board shall conduct a performance review of the
20 enforcement agency every three years, or more frequently as
21 determined by the board.

22 (c) In conducting performance reviews of enforcement agencies,
23 the board shall, based on the performance standards developed
24 pursuant to subdivision (a), determine whether each enforcement
25 agency is in compliance with the requirements of this article and
26 the regulations adopted to implement this article. If the board finds
27 that an enforcement agency is not fulfilling its responsibilities
28 pursuant to this article and if the board also finds that this lack of
29 compliance has contributed to significant noncompliance with
30 state minimum standards at solid waste facilities, disposal sites,
31 or solid waste handling activities within the jurisdiction of the
32 enforcement agency, the board shall withdraw its approval of
33 designation pursuant to Sections 43215 and 43216.
34 Notwithstanding Sections 43215 and 43216, if the board finds that
35 conditions at solid waste facilities, disposal sites, or solid waste
36 handling activities within the jurisdiction of the enforcement
37 agency threaten public health and safety or the environment, the
38 board shall, within 10 days of notifying the enforcement agency,
39 become the enforcement agency until another enforcement agency
40 is designated locally and certified by the board.

1 (d) The board shall find that an enforcement agency is not
2 fulfilling its responsibilities pursuant to this article, and may take
3 action as prescribed by subdivision (c), if the board, in conducting
4 its performance review, makes one or more of the following
5 findings with regard to compliance with this part and Part 5
6 (commencing with Section 45000):

7 (1) The enforcement agency has failed to exercise due diligence
8 in the inspection of solid waste facilities, disposal sites, and solid
9 waste handling activities.

10 (2) The enforcement agency has intentionally misrepresented
11 the results of inspections.

12 (3) The enforcement agency has failed to prepare, or cause to
13 be prepared, permits, permit revisions, or closure and postclosure
14 maintenance plans.

15 (4) The enforcement agency has approved permits, permit
16 revisions, or closure and postclosure maintenance plans that are
17 not consistent with this part and Part 5 (commencing with Section
18 45000).

19 (5) The enforcement agency has failed to take appropriate
20 enforcement actions.

21 (6) The enforcement agency has failed to comply with, or has
22 taken actions that are inconsistent with, or that are not authorized
23 by, this division or the regulations adopted by the board pursuant
24 to this division. However, nothing in this paragraph is intended to
25 affect the authority of enforcement agencies pursuant to subdivision
26 (e) of Section 43209.

27 SEC. 13. Section 43300 of the Public Resources Code is
28 amended to read:

29 43300. The board may enforce all provisions of this division,
30 and the regulations adopted thereto, for the protection of the
31 environment and the public health and safety, and to prevent or
32 abate a public nuisance in the same manner as if it were the
33 designated enforcement agency for the local jurisdiction.

34 SEC. 14. Section 44000.5 is added to the Public Resources
35 Code, to read:

36 44000.5. (a) A person shall not dispose of solid waste, cause
37 solid waste to be disposed of, arrange for the disposal of solid
38 waste, transport solid waste for purposes of disposal, or accept
39 solid waste for disposal, except at a solid waste disposal facility
40 issued a solid waste facilities permit pursuant to this chapter or as

1 otherwise authorized pursuant to this division and the regulations
2 adopted by the board pursuant to this division.

3 (b) A violation of this section is an unlawful act.

4 SEC. 15. Section 44100 of the Public Resources Code is
5 amended to read:

6 44100. (a) The enforcement agency, in issuing or reviewing
7 a solid waste facilities permit or in connection with an action
8 relating to a solid waste facility permit or authorized by this
9 division, may investigate the operation by a person of a solid waste
10 facility, a solid waste handling activity, a transfer or processing
11 station, a disposal site, collection or handling equipment, or a
12 storage area for solid wastes.

13 (b) In the investigation, the enforcement agency may require a
14 person, who is, or proposes to become, an operator of a solid waste
15 facility, a solid waste handling activity, a transfer or processing
16 station, a disposal site, collection or handling equipment, or a
17 storage area for solid wastes, or a person that the enforcement
18 agency believes may have information concerning a suspected
19 violation of this division, to furnish, under penalty of perjury, any
20 nonprivileged technical or monitoring program or other reports
21 that the enforcement agency may specify.

22 (c) (1) If the owner of property upon which solid waste is
23 unlawfully stored, stockpiled, disposed, handled, or maintained
24 refuses to allow or provide the board, the local enforcement agency,
25 or a contractor of the board or local enforcement agency with
26 access to enter onto the property and perform all necessary cleanup,
27 abatement, or remedial work as authorized pursuant to Section
28 45000 or 48020, the court shall issue the board, local enforcement
29 agency, or a contractor of the board or local enforcement agency
30 a warrant pursuant to the procedure set forth in Title 13
31 (commencing with Section 1822.50) of Part 3 of the Code of Civil
32 Procedure to permit reasonable access to the property to perform
33 that activity, if the following conditions have been met:

34 (A) An administrative order requiring corrective action has been
35 issued or obtained pursuant to Section 45000 against the property
36 owner.

37 (B) The board or local enforcement agency finds that there is a
38 significant threat to public health or the environment.

39 (2) Notwithstanding paragraph (1), if there is an emergency
40 affecting public health or safety, the board, local enforcement

1 agency, or a contractor of the board or local enforcement agency
2 may enter the property without consent or the issuance of a warrant
3 to perform any necessary cleanup, abatement, or remedial work.

4 SEC. 16. Section 44306 of the Public Resources Code is
5 amended to read:

6 44306. The enforcement agency may, after holding a hearing
7 in accordance with the procedures set forth in Section 44310,
8 revoke a solid waste facilities permit if the enforcement agency
9 determines any of the following:

10 (a) The permit was obtained by a material misrepresentation or
11 failure to disclose relevant factual information.

12 (b) The operator has, during the previous three years, been
13 convicted of, or been issued a final order for, one or more violations
14 of this division, regulations adopted pursuant to this division, or
15 the terms and conditions of the permit, and the violation meets
16 both of the following criteria:

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

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

22 (c) The operator has failed to pay in full any monetary penalty
23 imposed pursuant to Part 5 (commencing with Section 45000) not
24 more than 90 days from the date when the penalty is required to
25 be paid.

26 SEC. 17. Section 45000 of the Public Resources Code is
27 amended to read:

28 45000. (a) Except as provided in subdivision (b), the
29 enforcement agency may issue an administrative order requiring
30 the owner or operator of a solid waste facility, solid waste handling
31 activity, or disposal site or a person in violation of Section 44000.5,
32 to take corrective action as necessary to abate a nuisance, or to
33 protect human health and safety or the environment.

34 (b) An administrative order shall not be issued for a minor
35 violation that is corrected immediately in the presence of the
36 inspector. Immediate compliance in that manner shall be noted in
37 the inspection report.

38 (c) The enforcement agency or the board may contract for
39 corrective action after an order issued pursuant to subdivision (a)

1 becomes final and the owner or operator fails to comply with the
2 order by the date specified in the order.

3 (d) If an enforcement agency or the board expends any funds
4 pursuant to subdivision (b), the owner or operator of the solid
5 waste facility, solid waste handling activity, or disposal site or a
6 person in violation of Section 44000.5 shall reimburse the
7 enforcement agency or the board for the amount expended,
8 including, but not limited to, a reasonable amount for contract
9 administration, and an amount equal to the interest that would have
10 been earned on the expended funds. The amount expended shall
11 be recoverable in a civil action by the Attorney General, upon
12 request of the local enforcement agency or the board.

13 (e) A contract for corrective action entered into by the board is
14 exempt from approval by the Department of General Services
15 pursuant to Section 10295 of the Public Contract Code.

16 (f) A corrective action shall incorporate by reference applicable
17 waste discharge requirements issued by the state water board or a
18 regional water board, and shall be consistent with all applicable
19 water quality control plans adopted pursuant to Section 13170 of,
20 and Article 3 (commencing with Section 13240) of Chapter 4 of
21 Division 7 of, the Water Code, and state policies for water quality
22 control adopted pursuant to Article 3 (commencing with Section
23 13140) of Chapter 3 of Division 7 of the Water Code, existing at
24 the time of the corrective action or proposed corrective action.

25 SEC. 18. Section 45000.1 is added to the Public Resources
26 Code, to read:

27 45000.1. For purposes of adequately protecting the public
28 health and safety and the environment, the board may require an
29 environmental restriction to be imposed on a disposal site where
30 the solid waste remains in place after closure or after environmental
31 remediation that is conducted by a public agency or the owner of
32 the disposal site. The environmental restriction shall meet the
33 requirements described in Section 1471 of the Civil Code, and the
34 environmental restriction shall run with the land.

35 SEC. 19. Section 45002 of the Public Resources Code is
36 amended to read:

37 45002. (a) Except as provided in subdivision (b), an order
38 issued pursuant to this part or Part 4 (commencing with Section
39 43000) shall provide the person subject to that order with a notice

1 of that person's right to appeal pursuant to Part 4 (commencing
2 with Section 43000) and Part 6 (commencing with Section 45030).

3 (b) The recipient of a notice to comply issued pursuant to Section
4 45003 may request that a hearing be conducted in accordance with
5 Section 44307, but only with respect to an action taken by an
6 enforcement agency of the board that arises from a minor violation
7 that the owner or ~~operation~~ operator fails to correct or fails to
8 certify, in a timely manner, as having been corrected.

9 SEC. 20. Section 45003 is added to the Public Resources Code,
10 to read:

11 45003. (a) (1) An authorized representative of the enforcement
12 agency or board who, in the course of conducting an inspection,
13 detects a minor violation, shall take an enforcement action as to
14 the minor violation only in accordance with this section.

15 (2) In a proceeding concerning an enforcement action taken
16 pursuant to this section, there shall be a rebuttable presumption
17 upholding the determination made by the enforcement agency or
18 board regarding whether the violation is a minor violation.

19 (b) A notice to comply shall be the only means by which an
20 enforcement agency or board may cite a minor violation, unless
21 the person cited fails to correct the violation or fails to submit the
22 certification of correction within the time period prescribed in the
23 notice, in which case the enforcement agency or board may take
24 any enforcement action, including imposing a penalty, as
25 authorized by this part.

26 (c) (1) The enforcement agency or the board shall commence
27 an enforcement action under this section by serving a notice to
28 comply on the owner or operator of the solid waste facility, solid
29 waste handling activity, or disposal site at which a violation has
30 occurred, specifying the violation and the manner in which the
31 violation may be corrected.

32 (2) A person who receives a notice to comply detailing a minor
33 violation shall have not more than 30 days from the date of the
34 notice to comply in which to correct any violation cited in the
35 notice to comply. Within five working days of correcting the
36 violation, the person cited or an authorized representative shall
37 sign the notice to comply, certifying that any violation has been
38 corrected, and return the notice to the enforcement agency or board,
39 whichever issued the notice to comply.

1 (3) A false certification that a violation has been corrected is
2 punishable as a misdemeanor.

3 (4) The effective date of the certification that a violation has
4 been corrected shall be one of the following dates, whichever
5 occurs first:

6 (A) The date the certification is received by the enforcement
7 agency or the board, whichever issued the notice to comply,
8 including receipt of an electronic or facsimile version of the
9 certification.

10 (B) The date the certification is postmarked by the United States
11 Postal Service.

12 (C) The date the certification is accepted for delivery by a
13 national express delivery service as evidenced by a receipt.

14 (d) If a notice to comply is issued, a single notice to comply
15 shall be issued for all minor violations noted during the inspection,
16 and the notice to comply shall list all of the minor violations and
17 the manner in which each of the minor violations may be brought
18 into compliance.

19 (e) If a person who receives a notice to comply pursuant to
20 subdivision (a) disagrees with one or more of the alleged violations
21 listed on the notice to comply, the person shall provide the
22 enforcement agency or board that issued the notice to comply a
23 written notice of disagreement along with the returned signed
24 notice to comply. If the person disagrees with all of the alleged
25 violations, the written notice of disagreement shall be returned in
26 lieu of the signed certification of correction within 30 days of the
27 date of issuance of the notice to comply. If the issuing agency takes
28 administrative enforcement action on the basis of the disputed
29 violation, that action may be appealed in the same manner as any
30 other alleged violation under Section 44307.

31 (f) This section does not do any of the following:

32 (1) Prevent a reinspection to ensure compliance with this
33 division or to ensure that minor violations cited in a notice to
34 comply have been corrected and that the facility or site is in
35 compliance with this division.

36 (2) Prevent the enforcement agency or board from requiring a
37 person to submit necessary documentation needed to support the
38 person's claim of compliance pursuant to subdivision (c).

39 (3) Restrict the power of a city attorney, district attorney, county
40 counsel, or the Attorney General to bring, in the name of the people

1 of California, any criminal proceeding otherwise authorized by
2 law.

3 (4) Prevent the enforcement agency or board from cooperating
4 with, or participating in, a proceeding specified in paragraph (3).

5 SEC. 21. Section 45005 of the Public Resources Code is
6 amended to read:

7 45005. An enforcement agency or the board may issue a cease
8 and desist order to any of the following:

9 (a) A person who is operating, has operated, or proposes to
10 operate a solid waste facility, conducts a solid waste handling
11 activity, or operates a disposal site in an unauthorized manner, or
12 who is disposing of solid waste in any of the following manners:

13 (1) In violation of a solid waste facilities permit or in violation
14 of this division, or any regulation adopted pursuant to this division.

15 (2) Without a solid waste facilities permit.

16 (3) In a manner that causes or threatens to cause a condition of
17 hazard, pollution, or nuisance.

18 (b) A person who has violated, is violating, or proposes to
19 violate Section 44000.5.

20 SEC. 22. Section 45010 of the Public Resources Code is
21 amended to read:

22 45010. (a) The board and enforcement agencies shall impose
23 civil penalties on the operators of solid waste facilities in a
24 judicious manner and shall impose those penalties only after all
25 reasonable efforts pursuant to Section 45010.2 have been made
26 by enforcement agencies to provide proper notice of violations to
27 alleged violators as well as a reasonable opportunity to bring solid
28 waste facilities, solid waste handling activities, and disposal sites
29 into compliance with this division.

30 (b) An enforcement agency shall not deposit funds collected
31 through the imposition of civil penalties pursuant to this article in
32 the General Fund of the local enforcement agency, but instead
33 shall deposit those funds in a segregated account and use those
34 funds exclusively for enhancing solid waste enforcement within
35 the local enforcement agency's jurisdiction, including, but not
36 limited to, all of the following:

37 (1) Increasing enforcement programs.

38 (2) Expanding the agency's enforcement capabilities.

39 (3) Bringing solid waste facilities and solid waste handling
40 activities into compliance with this division.

1 (4) Remediating illegal or abandoned solid waste disposal sites.

2 (c) Civil penalties paid to the board pursuant to this article shall
3 be deposited in the Solid Waste Disposal Site Cleanup Trust Fund
4 created pursuant to Section 48027.

5 SEC. 23. Section 45010.1 is added to the Public Resources
6 Code, to read:

7 45010.1. (a) The board or an enforcement agency may issue
8 an order imposing a civil penalty of not more than five thousand
9 dollars (\$5,000) for each violation, for each day that the violation
10 continues, upon a person who violates a requirement of this
11 division, a regulation adopted pursuant to this division, or a order
12 issued under this chapter, if the requirement, regulation, or order
13 is applicable to a solid waste facility, solid waste handling activity,
14 or a disposal site or who violates the terms or conditions of a solid
15 waste facilities permit. An enforcement agency or the board may
16 impose the penalty administratively pursuant to this part.

17 (b) In determining the amount of civil liability to be imposed
18 pursuant to this section, the board or enforcement agency shall
19 take into consideration the factors specified in Section 45016.

20 SEC. 24. Section 45010.2 is added to the Public Resources
21 Code, to read:

22 45010.2. Before issuing an order under this chapter, except for
23 a notice to comply pursuant to Section 45003, the board or
24 enforcement agency shall do both of the following:

25 (a) Notify the owner or operator of the solid waste facility, the
26 person conducting the solid waste handling activity, or the owner
27 or operator of the disposal site, that the facility, activity, or site is
28 in violation of this division, a regulation adopted pursuant to this
29 division, or an order issued under this division, applicable to a
30 solid waste facility, solid waste handling activity, or disposal site.

31 (b) Upon the request of the owner or operator of the solid waste
32 facility, the person conducting the solid waste handling activity,
33 or the owner or operator of the disposal site, meet with the owner,
34 operator, or person to clarify the applicable requirements and to
35 determine what actions, if any, that the operator, owner, or person
36 may voluntarily take to bring the facility, activity, or site into
37 compliance by the earliest feasible date.

38 SEC. 25. Section 45011 of the Public Resources Code is
39 amended to read:

1 45011. If an enforcement agency or the board determines that
2 a solid waste facility, solid waste handling activity, or disposal
3 site is in violation of this division, a regulation adopted pursuant
4 to this division, the terms or conditions of a solid waste facilities
5 permit, an order issued under this division, or poses a potential or
6 actual threat to public health and safety or the environment, or
7 determines that a person has disposal solid waste at an unpermitted
8 disposal site in violation of Section 44000.5, the enforcement
9 agency or board may issue an order establishing a time schedule
10 according to which the facility, activity, or site shall be brought
11 into compliance with this division. The order may also provide for
12 a civil penalty, to be imposed administratively by the enforcement
13 agency, or board if compliance is not achieved in accordance with
14 that time schedule.

15 SEC. 26. Section 45012 of the Public Resources Code is
16 amended to read:

17 45012. (a) The board, through the board's executive director
18 or the executive director's delegate, may take any enforcement
19 action that a local enforcement agency may take under this part.
20 The board shall not take an enforcement action specified in this
21 part without providing notice to the local enforcement agency and
22 the violator of the board's intent to take that action, allowing the
23 local enforcement agency and the violator a reasonable opportunity
24 to correct the violation. In taking the enforcement action, the board
25 is vested, in addition to its other powers, with all of the powers of
26 a local enforcement agency under this division.

27 (b) Notwithstanding subdivision (a), if the board finds that a
28 local enforcement agency's failure to take enforcement action
29 constitutes an imminent threat to public health or safety or to the
30 environment, the board may take the enforcement action, as the
31 board determines is necessary.

32 (c) When the board takes an enforcement action pursuant to this
33 section, the board shall coordinate that action with the enforcement
34 agency to prevent a party from being subject to duplicate
35 enforcement for the same violation.

36 SEC. 27. Section 45013 of the Public Resources Code is
37 amended to read:

38 45013. The board shall provide guidance and assistance to the
39 enforcement agency regarding the inspection, investigation,
40 enforcement, and remediation of illegal, abandoned, inactive, or

1 closed disposal sites to ensure that public health and safety and
2 the environment are protected.

3 SEC. 28. Section 45017 of the Public Resources Code is
4 amended to read:

5 45017. (a) (1) Except as provided in paragraph (2), all orders
6 and determinations issued pursuant to this part or Part 4
7 (commencing with Section 43000) shall take effect immediately
8 upon service.

9 (2) (A) A person subject to an order or determination issued
10 pursuant to this part or Part 4 (commencing with Section 43000)
11 may petition the board to stay the effect of the order or
12 determination, or portion thereof, pending the completion of
13 administrative appeals before the hearing panel or hearing officer
14 or the board.

15 (B) A petition submitted pursuant to subparagraph (A) shall be
16 in writing and shall state the extraordinary circumstances that
17 justify the stay.

18 (C) The board shall consider and act on a petition submitted
19 pursuant to this paragraph no later than its next regularly scheduled
20 meeting. The board may order the stay to be in effect from the
21 effective date of the order or determination or other appropriate
22 date.

23 (D) The board may delegate to the executive officer of the board
24 the authority to consider and act on a petition for a stay submitted
25 pursuant to this paragraph. The executive officer may redelegate
26 this authority to one or more of his or her subordinates.

27 (b) For purposes of this section, service may be effected by any
28 of the following:

29 (1) Personal delivery.

30 (2) First-class United States mail, if it is made by certified mail
31 with a return receipt requested.

32 (3) Express delivery by a national express mail service that
33 provides evidence of delivery.

34 SEC. 29. Section 45019 of the Public Resources Code is
35 amended to read:

36 45019. At least 10 days prior to the date of issuance of an
37 enforcement order which is not for an emergency, or within five
38 days from the date of issuance of an enforcement order for an
39 emergency, or within 15 days from the date of discovery of a
40 violation of a state law, regulation, or term or condition of a solid

1 waste facilities permit for a solid waste facility, solid waste
2 handling activity, or disposal site, which is likely to result in an
3 enforcement action, the following agencies shall, to the extent that
4 the enforcement action involves a violation that may also be under
5 the jurisdiction of another state regulatory agency, provide a written
6 statement providing an explanation of, and justification for, the
7 enforcement order or a description of the violation in the following
8 manner:

9 (a) The local enforcement agency, as appropriate, shall provide
10 the statement to the regional water board, the board, the air
11 pollution control district or air quality management district, and
12 the Department of Toxic Substances Control.

13 (b) A regional water board, as appropriate, shall provide the
14 statement to the local enforcement agency, the board, the air
15 pollution control district or air quality management district, and
16 the Department of Toxic Substances Control.

17 (c) An air pollution control district or an air quality management
18 district, as appropriate, shall provide the statement to the local
19 enforcement agency, the board, the regional water board, and the
20 Department of Toxic Substances Control.

21 (d) The Department of Toxic Substances Control, as appropriate,
22 shall provide the report of inspection required by paragraph (1) of
23 subdivision (c) of Section 25185 of the Health and Safety Code
24 to the local enforcement agency, the board, the regional water
25 board, and the air pollution control district or air quality
26 management district.

27 SEC. 30. Section 45020 of the Public Resources Code is
28 amended to read:

29 45020. (a) Within 30 days from the date of receipt of a notice
30 of the issuance of, or the proposal to issue, an enforcement order
31 pursuant to Section 45022, the regional water board, the
32 enforcement agency, or the air pollution control district or the air
33 quality management district, and the Department of Toxic
34 Substances Control, as appropriate, shall inspect the solid waste
35 facility, solid waste handling activity, or disposal site to determine
36 whether any state law, regulation, or term or condition of a permit,
37 which that board or agency is authorized to enforce, is being
38 violated.

39 (b) Each agency, to the maximum extent allowed by law, shall
40 do all of the following with respect to enforcement activities at

1 solid waste facilities, solid waste handling activities, and disposal
2 sites:

3 (1) Coordinate enforcement activities to eliminate duplication
4 and facilitate compliance.

5 (2) Notify the owner and operator of the solid waste facility,
6 person conducting the solid waste handling activity, or owner and
7 operator of the disposal site of a violation before imposing an
8 administrative civil penalty.

9 (3) Prior to imposing an administrative penalty, and upon the
10 request of the owner or operator of the solid waste facility, person
11 conducting the solid waste handling activity, or owner or operator
12 of the disposal site, meet with the owner, operator, or person to
13 clarify the regulatory requirements and to determine what actions,
14 if any, the owner, operator, or person could voluntarily take to
15 bring the solid waste facility, solid waste handling activity, or
16 disposal site into compliance by the earliest feasible date. If a
17 contemporaneous enforcement action or investigation dealing with
18 the same violation or with similar violations is being pursued by
19 another regulatory agency, a city attorney, a district attorney, or
20 the Attorney General, the operator may request a meeting with all
21 those investigating and enforcement entities.

22 (4) Consider the factors prescribed in Section 45016 in
23 determining appropriate enforcement actions.

24 SEC. 31. Section 45021 of the Public Resources Code is
25 amended to read:

26 45021. If any board or agency specified in Section 45019
27 receives a complaint concerning a solid waste facility, solid waste
28 handling activity, or disposal site and the board or agency
29 determines that it is not authorized to take action concerning the
30 complaint, the board or agency shall refer the complaint within 30
31 days from the date of receipt to another state agency that it
32 determines is authorized to take action.

33 SEC. 32. Section 45022 of the Public Resources Code is
34 amended to read:

35 45022. If any agency or board specified in Section 45019
36 receives a complaint concerning a solid waste facility, solid waste
37 handling activity, or disposal site that the agency or board does
38 not refer to another state agency pursuant to Section 45021, or if
39 the agency or board receives this complaint referred to it by another
40 agency or board pursuant to Section 45021, the agency or board

1 shall either take appropriate enforcement action concerning the
2 facility, activity, or site pursuant to this part, or refer the complaint
3 to the Attorney General, the district attorney, or city attorney,
4 whichever is applicable, or, at the earliest feasible date, not to
5 exceed 60 days, provide the person who filed the complaint with
6 a written statement explaining why an enforcement action would
7 not be appropriate.

8 SEC. 33. Section 45023 of the Public Resources Code is
9 amended to read:

10 45023. ~~(a)~~—A civil penalty of not more than ten thousand dollars
11 (\$10,000), may be imposed upon a person who, for each day the
12 violation or operation occurs:

13 ~~(1)~~

14 (a) Owns or operates a solid waste facility, solid waste handling
15 activity, or disposal site and who intentionally or negligently
16 violates or causes or permits another to violate the terms and
17 conditions of a solid waste facilities permit or a standard,
18 requirement, or order applicable to a solid waste facility, solid
19 waste handling activity, or disposal site.

20 ~~(2)~~

21 (b) Operates a solid waste facility without a solid waste facilities
22 permit.

23 ~~(3)~~

24 (c) With respect only to a solid waste facility, solid waste
25 handling activity, or disposal site, intentionally or negligently
26 violates a provision of this division, or a regulation, administrative
27 order, or standard adopted by the board or an enforcement agency.

28 ~~(b) A person who disposes of, arranges for the disposal of, or~~
29 ~~generates, transports, or arranges for the transport of, a solid waste~~
30 ~~that is not disposed of at a solid waste facility issued a solid waste~~
31 ~~facilities permit pursuant to Chapter 3 (commencing with Section~~
32 ~~44001) of Part 4 is subject to a civil penalty not to exceed ten~~
33 ~~thousand dollars (\$10,000) for each day the violation or operation~~
34 ~~occurs.~~

35 ~~SEC. 34. The heading of Chapter 2 (commencing with Section~~
36 ~~45025) is added to Part 5 of Division 30 of the Public Resources~~
37 ~~Code, to read:~~

~~CHAPTER 2. CRIMINAL ENFORCEMENT~~

~~45025.—~~

SEC. 34. Chapter 2 (commencing with Section 45025) is added to Part 5 of Division 30 of the Public Resources Code, to read:

CHAPTER 2. CRIMINAL ENFORCEMENT

45025. (a) A violation of Part 4 (commencing with Section 43000) is a misdemeanor punishable by a fine of not less than five hundred dollars (\$500) and not more than ten thousand dollars (\$10,000), by imprisonment in a county jail for not more than six months, or both the fine and imprisonment, for each violation. Each instance of disposal that violates Section 44000.5 is a separate violation.

(b) In addition to any fine imposed upon a conviction, the court may require, as a condition of probation and in addition to any other condition of probation, that the person convicted under this section remove, or pay the cost of removing, any solid waste the person unlawfully disposed, caused, or arranged to be disposed, transported, or accepted for disposal.

SEC. 35. Section 45033 of the Public Resources Code is repealed.

SEC. 36. Section 45040 of the Public Resources Code is amended to read:

45040. (a) Within 30 days from the date of service of a copy of a decision or order issued by the board pursuant to Section 45031 or 45032, any aggrieved party may file with the superior court a petition for a writ of mandate for review thereof.

(b) (1) The filing of a petition for writ of mandate shall not stay any enforcement action taken or the accrual of any penalties ~~assesse~~ assessed, pursuant to this part or Part 5 (commencing with Section 45000).

(2) Paragraph (1) shall not prohibit the court from granting any appropriate relief within its jurisdiction.

SEC. 37. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, or the only costs that may

1 be incurred by a local agency or school district will be incurred
2 because this act creates a new crime or infraction, eliminates a
3 crime or infraction, or changes the penalty for a crime or infraction,
4 within the meaning of Section 17556 of the Government Code, or
5 changes the definition of a crime within the meaning of Section 6
6 of Article XIII B of the California Constitution.

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