

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1647

Introduced by Assembly Member Gordon

February 13, 2012

An act to amend ~~Section~~ *Sections 42825, 42835, 42843, 42845, 42847.5, 42851, 42852, 42853, 42854, and 42960* of, to add *Section 42961.1* to, to repeal *Section 42844* of, to repeal and add *Section 42961* of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1647, as amended, Gordon. Solid waste: waste tires: ~~injunction enforcement.~~

Existing law requires, upon the order of the Department of Resources Recycling and Recovery, a person who stores, stockpiles, or accumulates waste tires in violation of the provisions regulating the storage, stockpiling, or accumulation of waste tires to clean up those waste tires and abate the effects of the waste tires or take other necessary remedial actions in the case of threatened pollution or nuisance. Existing law requires the Attorney General, at the request of the department, to petition the appropriate superior court for the issuance of an injunction if the person fails to comply with the cleanup or abatement order. Existing law authorizes, at the request of the department, the district attorney or county counsel of the county in which the violation occurred to petition the court for the issuance of an injunction if the Attorney General fails to petition the court within 45 days of the department's request to the Attorney General.

This bill would shorten that time period to 30 days.

Existing law authorizes the department, subject in some cases to a formal administrative adjudicative hearing, to revoke, suspend, or deny a waste tire facility permit if the department makes specified findings. Existing law authorizes the department, prior to any hearing, to temporarily suspend a waste tire facility permit if the department determines that the action is necessary to prevent or to mitigate an imminent or substantial endangerment to the public health or safety, or the environment and requires the department to set an informal hearing before a neutral official. Existing law requires that the temporary revocation or suspension remain in effect until the hearing is completed and the department has made a final determination on the merits. Existing law provides that the temporary revocation or suspension is of no further effect if the department fails to transmit the determination within 60 days of the completion of the hearing.

This bill would, instead, authorize the department to revoke, suspend, or deny a waste tire facility permit if the department makes specified findings. The bill would require the department to notify the applicant for, or the holder of, the permit of the revocation, suspension, or denial and the effective date of the revocation, suspension, or denial and serve a statement of issue on the applicant for, or the holder of, the permit. The bill would require the department to conduct an informal hearing before the Director of Resources Recycling and Recovery. The bill would provide that the revocation or suspension remain in effect until the hearing is completed and the department has made a final determination on the merits. The bill would provide that the revocation or suspension is of no further effect if the department fails to transmit the determination within 60 days of the submission of the case.

Existing law authorizes the department to issue and serve an administrative complaint to a person on whom civil liability is imposed for a violation of law regulating waste tire facilities. Existing law requires the department to inform the person served that a formal administrative hearing would be held within 60 days of service unless the person waives his or her right to a hearing.

This bill would, instead, require the department to serve an administrative accusation on the person. The bill would require the department to schedule an informal administrative hearing before the director within 15 days of receipt of a notice of defense to the administrative accusation. The bill would require the director to issue, within 60 days of the submission of the case, an order setting the amount of civil penalty to be imposed, if any.

Existing law authorizes the department to revoke, suspend, or deny a waste and used tire hauler registration if the department makes specified findings. Existing law authorizes an applicant for the registration to request a hearing if the application was denied.

This bill would additionally authorize a holder of the registration to request a hearing upon the revocation or suspension of the registration. The bill would require the department to notify the applicant for, or the holder of, the registration of the revocation, suspension, or denial and the effective date of the revocation, suspension, or denial and serve an accusation on the applicant for, or the holder of, the registration. The bill would require the department to conduct an informal hearing before the director. The bill would provide that the revocation or suspension remain in effect until the hearing is completed and the department has made a final determination on the merits. The bill would provides that the revocation or suspension is of no further effect if the department fails to transmit the determination within 60 days of the submission of the case.

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

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

1 SECTION 1. Section 42825 of the Public Resources Code is
2 amended to read:

3 42825. (a) ~~Any~~A person who accepts waste tires at a major
4 waste tire facility that has not been issued a permit or an
5 authorization to operate from the ~~board~~ department, or who
6 knowingly directs, transports, or abandons waste tires to or at a
7 major waste tire facility that has not been issued a permit or an
8 authorization to operate from the ~~board~~ department shall, ~~upon~~
9 ~~conviction~~, be punished by a fine of not less than one thousand
10 dollars (\$1,000) or more than ten thousand dollars (\$10,000) for
11 each day of violation, by imprisonment in the county jail for not
12 more than one year, or by both that fine and imprisonment.

13 (b) For purposes of subdivision (a), “each day of violation”
14 means each day on which a violation continues. In any case ~~where~~
15 *in which* a person has accepted waste tires at a major waste tire
16 facility, or knowingly directed or transported waste tires to a major
17 waste tire facility, that has not been issued a permit, in violation
18 of subdivision (a), each day that the waste tires remain at the

1 facility and the person has knowledge thereof is a separate
2 additional violation, unless the person has filed a report with the
3 ~~board~~ department disclosing the violation and is in compliance
4 with any order regarding the waste tires issued by the ~~board~~, a
5 hearing officer, or a court of competent jurisdiction department.

6 SEC. 2. Section 42835 of the Public Resources Code is
7 amended to read:

8 42835. (a) ~~Any~~ A person who accepts waste tires at a minor
9 waste tire facility that has not been issued a permit or an
10 authorization to operate from the ~~board~~ department, or who
11 knowingly directs, transports, or abandons waste tires to or at a
12 minor waste tire facility that has not been issued a permit or an
13 authorization to operate from the ~~board~~ department shall, ~~upon~~
14 conviction, be punished by a fine of not less than five hundred
15 dollars (\$500) or more than five thousand dollars (\$5,000) for each
16 day of violation, by imprisonment in the county jail for not more
17 than one year, or by both that fine and imprisonment.

18 (b) For purposes of subdivision (a), “each day of violation”
19 means each day on which a violation continues. In any case ~~where~~
20 in which a person has accepted waste tires at a minor waste tire
21 facility, or knowingly directed or transported waste tires to a minor
22 waste tire facility, that has not been issued a permit, in violation
23 of subdivision (a), each day that the waste tires remain at the
24 facility and the person has knowledge thereof is a separate
25 additional violation, unless the person has filed a report with the
26 ~~board~~ department disclosing the violation and is in compliance
27 with any order regarding the waste tires issued by the ~~board~~, a
28 hearing officer, or a court of competent jurisdiction department.

29 SEC. 3. Section 42843 of the Public Resources Code is
30 amended to read:

31 42843. (a) ~~The board, after holding a hearing in accordance~~
32 ~~with the procedures set forth in Sections 11503 to 11519, inclusive,~~
33 ~~of the Government Code,~~ department may revoke, suspend, or
34 deny a waste tire facility permit for a period of up to three years,
35 if the ~~board~~ department determines any of the following:

36 (1) The permit was obtained by a material misrepresentation or
37 failure to disclose relevant factual information.

38 (2) The operator of the waste tire facility, during the previous
39 three years, has been issued a final order for, failed to comply with,
40 or has been convicted of, any of the following:

1 (A) One or more violations of this chapter or the regulations
2 adopted pursuant to this chapter.

3 (B) One or more violations of Chapter 19 (commencing with
4 Section 42950) or the regulations adopted pursuant to that chapter.

5 (C) The terms or conditions of the operator's waste tire facility
6 permit.

7 (D) Any order, direction, or penalty issued by the ~~board~~
8 *department* relating to the safe storage or processing of waste tires.

9 (b) If the ~~board~~ *department* determines that a violation specified
10 in paragraph (2) of subdivision (a) demonstrates a chronic,
11 recurring pattern of noncompliance that poses, or may pose, a
12 significant risk to public health and safety or the environment, or
13 if the violation has not been corrected or reasonable progress
14 toward correction has not been achieved, the ~~board~~ *department*
15 may suspend, revoke, or deny a waste tire facility permit, in
16 accordance with the procedure specified in subdivision (a), for a
17 period of not more than five years.

18 (c) If the ~~board~~ *department* determines that a violation specified
19 in paragraph (2) of subdivision (a) has resulted in significant harm
20 to human health or the environment, the ~~board~~ *department* may
21 suspend, revoke, or deny a waste tire facility permit, in accordance
22 with the procedure specified in subdivision (a), for a period of five
23 years or greater.

24 (d) *The department shall notify the applicant for, or the holder*
25 *of, the permit of the revocation, suspension, or denial of the permit*
26 *and the effective date of the revocation, suspension, or denial and,*
27 *at the same time, shall serve, by personal service or certified mail,*
28 *the person with a statement of issues.*

29 (e) *Upon receipt by the department of a notice of defense to the*
30 *statement of issues from the applicant for, or the holder of, the*
31 *permit, the department shall, within 15 days, schedule a hearing*
32 *before the director. The hearing shall be held as soon as possible.*

33 (f) *The revocation or suspension shall remain in effect until the*
34 *hearing is completed and the director has issued a decision.*

35 (g) *After conducting the hearing, the director shall, within 60*
36 *days after the case is submitted, issue a decision, including an*
37 *order setting forth the issuance, suspension, revocation, or denial*
38 *of the permit. If the decision is not issued within this period, the*
39 *revocation or suspension shall be of no further effect.*

1 SEC. 4. Section 42844 of the Public Resources Code is
2 repealed.

3 ~~42844. (a) The board may temporarily suspend any permit
4 issued pursuant to this chapter prior to any hearing if the board
5 determines that the action is necessary to prevent or mitigate an
6 imminent or substantial endangerment to the public health or safety
7 or the environment.~~

8 ~~(b) The board shall notify the holder of the permit of the
9 temporary suspension and the effective date thereof and, at the
10 same time, shall serve the person with an accusation.~~

11 ~~(c) Upon receipt by the board of a notice of defense to the
12 accusation from the holder of the permit, the board shall, within
13 15 days, set the matter for a hearing, which shall be held as soon
14 as possible, but not later than 30 days after receipt of the notice.~~

15 ~~(d) The temporary suspension shall remain in effect until the
16 hearing is completed and the board has made a final determination
17 on the merits, which shall be made within 60 days after the
18 completion of the hearing. If the determination is not transmitted
19 within this period, the temporary suspension shall be of no further
20 effect.~~

21 SECTION 4.

22 SEC. 5. Section 42845 of the Public Resources Code is
23 amended to read:

24 42845. (a) A person who stores, stockpiles, or accumulates
25 waste tires at a location for which a waste tire facility permit is
26 required pursuant to this chapter, or in violation of the terms and
27 conditions of the permit, the provisions of this chapter, or the
28 regulations adopted under this chapter, shall, upon order of the
29 department, clean up those waste tires or abate the effects of the
30 waste tires, or, in the case of threatened pollution or nuisance, take
31 other necessary remedial action.

32 (b) (1) Upon failure of a person to comply with the cleanup or
33 abatement order, the Attorney General, at the request of the
34 department, shall petition the superior court for that county for the
35 issuance of an injunction requiring the person to comply with that
36 order. In a suit, the court shall have jurisdiction to grant a
37 prohibitory or mandatory injunction, either preliminary or
38 permanent, as the facts may warrant.

39 (2) If the Attorney General declines, or is unable, to petition the
40 appropriate superior court for issuance of an injunction within 30

1 days from the department’s request, pursuant to paragraph (1), the
2 district attorney or county counsel of that county may, at the
3 department’s request, petition the superior court for issuance of
4 the injunction specified in paragraph (1).

5 *SEC. 6. Section 42847.5 of the Public Resources Code is*
6 *amended to read:*

7 42847.5. (a) Any costs or damages incurred by the ~~board~~
8 *department* under this article constitute a lien upon the real property
9 owned by any responsible party that is subject to the remedial
10 action. The lien shall attach regardless of whether the responsible
11 party is insolvent. A lien imposed under this section shall arise at
12 the time costs are first incurred by the ~~board~~ *department* with
13 respect to a remedial action at the site.

14 (b) A lien established under this section shall be subject to the
15 notice and hearing procedures required by due process of the law.
16 Prior to imposing the lien, the ~~board~~ *department* shall send the
17 property owner via certified mail a “Notice of Intent to Place A
18 Lien” letter. This letter shall provide that the owner, within 14
19 calendar days from the date of receipt of the letter, may object to
20 the imposition of the lien either in writing or through an informal
21 proceeding before a neutral official. This neutral official shall be
22 the ~~board’s~~ executive director or his or her designee, who may not
23 have had any prior involvement with the site. The issue before the
24 neutral official shall be whether the ~~board~~ *department* has a
25 reasonable basis for its determination that the statutory elements
26 for lien placement under this section are satisfied. During this
27 proceeding the property owner may present information or submit
28 documents, or both, to establish that the ~~board~~ *department* should
29 not place a lien as proposed. The neutral official shall ~~assure~~ *ensure*
30 that a record of the proceeding is made, and shall issue a written
31 decision. The decision shall state whether the property owner has
32 established any issue of fact or law to alter the ~~board’s~~
33 *department’s* intention to file a lien, and the basis for the decision.

34 (c) The ~~board~~ *department* may not be considered a responsible
35 party for a remediated site merely because a lien is imposed under
36 this section.

37 (d) A lien imposed under this section shall continue until the
38 liability for the costs or damages incurred under this article, or a
39 judgment against the responsible party, is satisfied. However, if it
40 is determined by a court that the judgment against the responsible

1 party will not be satisfied, the ~~board~~ department may exercise its
2 rights under the lien.

3 (e) A lien imposed under this section shall have the force and
4 effect of, and the priority of, a judgment lien upon its recordation
5 in the county in which the property subject to the lien is located.
6 The lien shall contain a legal description of the real property that
7 is subject to, or affected by, the remedial action, the assessor’s
8 parcel number, and the name of the owner of record, as shown on
9 the latest equalized assessment roll.

10 (f) All funds recovered under this section on behalf of the
11 ~~board’s department’s~~ waste tire stabilization and abatement
12 program shall be deposited in the California Tire Recycling
13 Management Fund established under Section 42885.

14 *SEC. 7. Section 42851 of the Public Resources Code is*
15 *amended to read:*

16 42851. (a) The ~~board~~ department may ~~issue a complaint~~ serve
17 ~~an administrative accusation to any~~ a person on whom civil
18 liability may be imposed pursuant to this ~~article~~ chapter. The
19 ~~complaint~~ accusation shall allege the acts or failures to act that
20 constitute a basis for liability and the amount of the proposed civil
21 liability. The ~~complaint~~ accusation shall be served by personal
22 service or certified mail and shall inform the party so served that
23 a hearing shall be conducted within 60 days after the party has
24 been served, ~~unless the party waives the right to a hearing.~~

25 (b) *Upon receipt by the department of a notice of defense to the*
26 *accusation, the department shall, within 15 days, schedule a*
27 *hearing before the director. The hearing shall be held as soon as*
28 *possible, unless the party waives the right to a hearing.*

29 ~~(b)~~

30 (c) If the party waives the right to a hearing, the ~~board~~
31 department shall issue an order setting liability in the amount
32 proposed in the ~~complaint~~ accusation unless the ~~board~~ department
33 and the party have entered into a settlement agreement, in which
34 case the ~~board~~ department shall issue an order setting liability in
35 the amount specified in the settlement agreement. If the party has
36 waived the right to a hearing or if the ~~board~~ department and the
37 party have entered into a settlement agreement, the order shall not
38 be subject to review by any court or agency.

1 (d) After conducting the hearing, the director shall, within 60
2 days after the case is submitted, issue a decision, including an
3 ordering setting the amount of civil penalty to be imposed, if any.

4 SEC. 8. Section 42852 of the Public Resources Code is
5 amended to read:

6 42852. ~~(a) Any~~ A hearing required under this section chapter
7 shall be conducted by ~~an independent hearing officer according~~
8 ~~to the procedures specified in Sections 11507 to 11517, inclusive,~~
9 ~~of the Government Code, except as otherwise specified in this~~
10 ~~section~~ the director in accordance with the informal hearing
11 requirements specified in Chapter 4.5 (commencing with Section
12 11400) of Part 1 of Division 3 of Title 2 of the Government Code
13 and shall not be required to be conducted in accordance with the
14 formal hearing requirements specified in Chapter 5 (commencing
15 with Section 11500) of Part 1 of Division 3 of Title 2 of the
16 Government Code. In making a determination, the ~~hearing officer~~
17 director shall take into consideration the nature, circumstances,
18 extent, and gravity of the violation, the violator's past and present
19 efforts to prevent, abate, or clean up conditions posing a threat to
20 the public health or safety or the environment, the violator's ability
21 to pay the proposed civil penalty, and the prophylactic effect that
22 imposition of the proposed penalty will have on both the violator
23 and on the regulated community as a whole.

24 ~~(b) After conducting any hearing required under this section,~~
25 ~~the hearing officer shall, within 30 days after the case is submitted,~~
26 ~~issue a decision, including an order setting the amount of civil~~
27 ~~penalty to be imposed, if any.~~

28 SEC. 9. Section 42853 of the Public Resources Code is
29 amended to read:

30 42853. Orders setting civil liability issued under this section
31 shall become effective and final upon issuance thereof, and
32 payment shall be made within 30 days of issuance, *unless otherwise*
33 *ordered by the director*. Copies of these orders shall be served by
34 personal service or by certified mail upon the party served with
35 the ~~complaint~~ accusation and upon other persons who appeared
36 at the hearing and requested a copy.

37 SEC. 10. Section 42854 of the Public Resources Code is
38 amended to read:

39 42854. (a) Within 30 days after service of a copy of a decision
40 issued by the ~~hearing officer,~~ any director, a person so served may

1 file with the superior court a petition for writ of mandate for review
2 of the decision. Any person who fails to file the petition within
3 the 30-day period may not challenge the reasonableness or validity
4 of a decision or order of the ~~hearing officer~~ *director* in ~~any a~~
5 judicial ~~proceedings~~ *proceeding* brought to enforce the decision
6 or order or for other remedies.

7 (b) Except as otherwise provided in this section, Section 1094.5
8 of the Code of Civil Procedure governs any proceedings conducted
9 pursuant to this subdivision. In all proceedings pursuant to this
10 subdivision, the court shall uphold the decision of the ~~hearing~~
11 ~~officer~~ *director* if the decision is based upon substantial evidence
12 in the whole record.

13 (c) The filing of a petition for writ of mandate does not stay any
14 corrective action required pursuant to this chapter or the accrual
15 of any penalties assessed pursuant to this chapter.

16 (d) This section does not prohibit the court from granting any
17 appropriate relief within its jurisdiction.

18 *SEC. 11. Section 42960 of the Public Resources Code is*
19 *amended to read:*

20 42960. (a) The ~~board~~ *department* may suspend, revoke, or
21 deny a waste and used tire hauler registration for a period of up to
22 three years, by ~~filing an accusation in accordance with the~~
23 ~~procedures of Sections 11505 to 11519, inclusive, of the~~
24 ~~Government Code~~ *servicing a statement of issue in accordance with*
25 *Section 42961*, if the *applicant for, or* holder of, the registration
26 does any of the following:

27 (1) Commits more than three violations of, or fails to comply
28 with any requirements of, this chapter or Chapter 16 (commencing
29 with Section 42800), or the regulations adopted pursuant to those
30 provisions, within a one year period.

31 (2) Commits, aids, or abets any violation of this chapter or
32 Chapter 16 (commencing with Section 42800), or the regulations
33 adopted pursuant to those provisions, or permits an agent to do so,
34 and the ~~board~~ *department* determines that the violation poses an
35 immediate threat of harm to public safety or to the environment.

36 (3) Commits, aids, or abets a failure to comply with this chapter
37 or Chapter 16 (commencing with Section 42800), or the regulations
38 adopted pursuant to those provisions, or permits an agent to do so,
39 and the ~~board~~ *department* determines that the failure to comply
40 shows a repeating or recurring occurrence or that the failure to

1 comply may pose a threat to public health or safety or the
2 environment.

3 (4) Commits any misrepresentation or omission of a significant
4 fact or other required information in the application for a waste
5 and used tire hauler registration or commits any misrepresentation
6 or omission of fact on any manifest more than three times in one
7 year.

8 (b) The ~~board~~ department may suspend, revoke, or deny a waste
9 and used tire hauler registration for a period of three years to five
10 years, or may suspend, revoke, or deny a waste and used tire hauler
11 registration permanently, in accordance with the procedures
12 specified in subdivision (a), under any of the following
13 circumstances:

14 (1) The hauler's registration has been previously revoked or
15 denied for any violation specified in subdivision (a).

16 (2) The hauler has been previously fined pursuant to this chapter
17 or Chapter 16 (commencing with Section 42800).

18 (3) The ~~board~~ department determines that the hauler's operations
19 pose a significant threat to public health and safety.

20 *SEC. 12. Section 42961 of the Public Resources Code is*
21 *repealed.*

22 ~~42961. If the board denies an application for registration, the~~
23 ~~applicant may request a hearing by the board.~~

24 *SEC. 13. Section 42961 is added to the Public Resources Code,*
25 *to read:*

26 *42961. (a) The department shall notify the applicant for, or*
27 *holder of, the registration of the revocation, suspension, or denial*
28 *of the permit and the effective date of the suspension and*
29 *revocation and, at the same time, shall serve the person with a*
30 *statement of issues.*

31 *(b) Upon a request for a hearing by the department from the*
32 *applicant for, or the holder of, the registration, the department*
33 *shall, within 15 days, schedule a hearing before the director. The*
34 *hearing shall be held as soon as possible.*

35 *(c) The revocation or suspension shall remain in effect until the*
36 *hearing is completed and the department's director has issued a*
37 *decision.*

38 *(d) After conducting the hearing, the director shall, within 60*
39 *days after the case is submitted, issue a decision, including an*
40 *order setting for the issuance, suspension, revocation, or denial*

1 *of the permit. If the decision is not transmitted within this period,*
2 *the revocation or suspension shall be of no further effect.*

3 *SEC. 14. Section 42961.1 is added to the Public Resources*
4 *Code, to read:*

5 *42961.1. A hearing required under this chapter shall be*
6 *conducted by the director in accordance with the informal hearing*
7 *requirements specified in Chapter 4.5 (commencing with Section*
8 *11400) of Part 1 of Division 3 of Title 2 of the Government Code,*
9 *and shall not be required to be conducted in accordance with the*
10 *formal hearing required specified in Chapter 5 (commencing with*
11 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*
12 *Code.*