

Senate Bill No. 1060

CHAPTER 634

An act to amend Section 25187.8 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 4, 1995. Filed
with Secretary of State October 5, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1060, Peace. Hazardous waste: minor violations.

Existing law requires a representative of the Department of Toxic Substances Control, an authorized local health officer, or a local public officer designated by the Director of Toxic Substances Control, who, in the course of conducting a hazardous waste facility inspection, detects a minor violation, as defined, to issue a notice to comply, as specified. That notice to comply is the only means by which the department representative or authorized or designated officer can cite a minor violation and, unless a facility fails to comply with the notice to comply within the prescribed period, any other enforcement action against the facility is generally prohibited.

However, if the department, or an authorized or designated officer, determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to the public health or safety, or to the environment, or are such that the assessment of a civil penalty is warranted or is required by the Resource Conservation and Recovery Act of 1976, the department may take any needed enforcement action that is authorized or shall assess that civil penalty.

This bill would include the circumstances surrounding a combination of minor violations, as well as a particular minor violation, in making that determination.

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

SECTION 1. Section 25187.8 of the Health and Safety Code is amended to read:

25187.8. (a) An authorized representative of the department or an authorized local health officer or a local public officer designated by the director, who, in the course of conducting an inspection of a facility, detects a minor violation of any permit conditions, rule, regulation, standard, or other requirement, shall issue a notice to comply before leaving the site in which the minor violation is alleged to have occurred.



(b) A facility which receives a notice to comply pursuant to subdivision (a) shall have not more than 30 days from the date of receipt of the notice to comply in which to achieve compliance with the permit conditions, rule, regulation, standard, or other requirement cited on the notice to comply. Within five working days of achieving compliance, an appropriate person who is an owner or operator of, or an employee at, the facility shall sign the notice to comply and return it to the department representative or to the authorized or designated officer, as the case may be, which states that the facility has complied with the notice to comply. A false statement that compliance has been achieved is a violation of this chapter pursuant to Section 25191.

(c) A single notice to comply shall be issued for all minor violations cited during the same inspection and the notice to comply shall separately list each of the cited minor violations and the manner in which each of the minor violations may be brought into compliance.

(d) A notice to comply shall not be issued for any minor violation which is corrected immediately in the presence of the inspector. Immediate compliance in that manner may be noted in the inspection report, but the facility shall not be subject to any further action by the department representative or by the authorized or designated officer.

(e) Except as otherwise provided in subdivision (g), a notice to comply shall be the only means by which the department representative or the authorized or designated officer shall cite a minor violation. The department representative or the authorized or designated officer shall not take any other enforcement action specified in this chapter against a facility which has received a notice to comply if the facility complies with this section.

(f) If a facility that receives a notice to comply pursuant to subdivision (a) disagrees with one or more of the alleged violations listed on the notice to comply, the owner shall give the person who issued the notice to comply written notice of disagreement. If the issuing agency takes administrative enforcement action on the basis of the disputed violation, that action may be appealed in the same manner as for other alleged violations under subdivisions (d) to (j), inclusive, of Section 25187.

(g) (1) Notwithstanding any other provision of this section, if a facility fails to comply with a notice to comply within the prescribed period, or if the department, or an authorized or designated officer, determines that the circumstances surrounding a particular minor violation or combination of minor violations are such that immediate enforcement is warranted to prevent harm to the public health or safety or to the environment, the department or officer may take any needed enforcement action authorized by this chapter.

(2) Notwithstanding any other provision of this section, if the department, or an authorized or designated officer, determines that



the circumstances surrounding a particular minor violation or combination of minor violations are such that the assessment of a civil penalty pursuant to this chapter is warranted or is required by the federal act, in addition to issuance of a notice to comply, the department or officer shall assess that civil penalty in accordance with this chapter, if the department or officer makes written findings that set forth the basis for the department's or officer's determination.

(h) A notice to comply issued to a facility pursuant to this section shall contain an explicit statement that the facility may be subject to reinspection at any time by the department or officer that issued the notice to comply. Nothing in this section shall be construed as preventing the reinspection of a facility to ensure compliance with this chapter or to ensure that minor violations cited in a notice to comply have been corrected and that the facility is in compliance with this chapter.

(i) Until January 1, 1998, the department shall maintain a public record of all minor violations, which shall include information about the name and circumstance of each minor violation and shall list whether a notice to comply was issued or if additional enforcement action was taken.

(j) Nothing in this section shall be construed as preventing the department, on a case-by-case basis, from requiring a facility to submit reasonable and necessary documentation to support the facility's claim of compliance pursuant to subdivision (b).

