

**Assembly Bill No. 2937**

**CHAPTER 775**

An act to amend Section 42400.2 of, and to add and repeal Chapter 3 (commencing with Section 39150) of Part 1 of Division 26 of, the Health and Safety Code, and to amend Sections 13268 and 13387 of, and to add and repeal Chapter 5.8 (commencing with Section 13399) of Division 7 of, the Water Code, relating to pollution enforcement.

[Approved by Governor September 21, 1996. Filed  
with Secretary of State September 23, 1996.]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2937, Brulte. Minor violations: air pollution: water quality.

(1) Existing law authorizes the State Air Resources Board, air pollution control and air quality management districts, the State Water Resources Control Board, and the California regional water quality control boards to conduct inspections for violations of law.

This bill would require the State Air Resources Board and the air pollution control and air quality management districts to adopt regulations classifying minor violations. The bill would require the State Water Resources Control Board and the regional water quality control boards to determine the types of violations that are minor violations and would require the state water board to adopt regulations or state policy for water quality, as prescribed. The bill would define the term "notice to comply" and would require a representative of those agencies who, in the course of conducting an inspection, detects a minor violation, to issue a notice to comply, as specified. The bill would prescribe related requirements and procedures. These provisions would be repealed on January 1, 2001.

The bill would require the state air board and state water board to report to the Legislature by January 1, 2000, regarding implementation of the bill.

Since the bill would make a false statement of compliance submitted under those procedures a crime pursuant to specified provisions, the bill would impose a state-mandated local program by creating a new crime.

Also, with regard to air pollution control districts and air quality management districts, the bill would impose a state-mandated local program by imposing new requirements upon those local agencies.

(2) 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.

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

SECTION 1. Chapter 3 (commencing with Section 39150) is added to Part 1 of Division 26 of the Health and Safety Code, to read:

CHAPTER 3. MINOR VIOLATIONS

39150. (a) The Legislature hereby finds and declares that the purpose of this chapter is to establish an enforcement policy for violations of this division that the enforcement agency finds are minor when the danger they pose to, or the potential that they have for endangering, human health, safety, or welfare or the environment are taken into account.

(b) It is the intent of the Legislature in enacting this chapter to provide a more resource-efficient enforcement mechanism, faster compliance times, and the creation of a productive and cooperative working relationship between the state board, the districts, and the regulated community while maintaining protection of human health and safety and the environment.

(c) The state board and each district shall, for their respective jurisdictions, implement this chapter by adopting a regulation or a rule that classifies the types of violations of this division, or of the regulations, rules, standards, orders, permit conditions, or other requirements adopted pursuant to this division, that the state board or the district finds are minor violations in accordance with subdivision (d).

(d) In classifying the types of violations that are minor violations, the state board or the district shall consider all of the following factors:

- (1) The magnitude of the violation.
- (2) The scope of the violation.
- (3) The severity of the violation.
- (4) The degree to which a violation puts human health, safety, or welfare or the environment into jeopardy.
- (5) The degree to which a violation could contribute to the failure to accomplish an important goal or program objective as established by this division.
- (6) The degree to which a violation may make it difficult to determine if the violator is in compliance with other requirements of this division.

(e) For purposes of this chapter, a minor violation of this division shall not include any of the following:

- (1) Any knowing, willful, or intentional violation of this division.



(2) Any violation of this division that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.

(3) Any violation that is a chronic violation or that is committed by a recalcitrant violator.

(f) In determining whether a violation is chronic or a violator is recalcitrant, for purposes of paragraph (3) of subdivision (e), the state board or district or an authorized or designated officer shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of this division or the requirements adopted pursuant to this division.

39151. For purposes of this chapter, “notice to comply” means a written method of alleging a minor violation that is in compliance with all of the following requirements:

(a) The notice to comply is written in the course of conducting an inspection by an authorized representative of the state board or district or an authorized or designated officer. If testing is required by the state board or district or an authorized or designated officer to determine compliance, and the testing cannot be conducted during the course of the inspection, the representative of the state board or the district or an authorized or designated officer shall have a reasonable period of time to conduct the required testing. If, after the test results are available, the representative of the state board or district or an authorized or designated officer determines that the issuance of a notice to comply is warranted, the representative or officer shall immediately notify the facility owner or operator in writing.

(b) A copy of the notice to comply is presented to a person who is an owner, operator, employee, or representative of the facility being inspected at the time that the notice to comply is written. If offsite testing is required pursuant to subdivision (a), a copy of the notice to comply may be mailed to the owner or operator of the facility.

(c) The notice to comply clearly states the nature of the alleged minor violation, a means by which compliance with the requirement cited by the state board’s or district’s representative or an authorized or designated officer may be achieved, and a time limit in which to comply, which shall not exceed 30 days.

(d) The notice to comply shall contain the information specified in subdivision (h) of Section 39152 with regard to the possible reinspection of the facility.

39152. (a) An authorized representative of the state board or district or an authorized or designated officer, who, in the course of conducting an inspection, detects a minor violation shall issue a notice to comply before leaving the site at which the minor violation



is alleged to have occurred if the authorized representative finds that a notice to comply is warranted.

(b) A person who receives a notice to comply pursuant to subdivision (a) shall have the period specified in the notice to comply from the date of receipt of the notice to comply in which to achieve compliance with the requirement cited on the notice to comply. Within five working days of achieving compliance, the person who received the notice to comply shall sign the notice to comply and return it to the state board's or district's representative or an authorized or designated officer, stating that the person has complied with the notice to comply. A false statement that compliance has been achieved is a violation of this division pursuant to Section 42400.2 or 42402.2.

(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 cited minor violation and the manner in which each minor violation may be brought into compliance.

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

(e) Except as otherwise provided in subdivision (g), a notice to comply shall be the only means by which the state board's or district's representative or an authorized or designated officer shall cite a minor violation. The state board's or district's representative or an authorized or designated officer shall not take any other enforcement action specified in this division to enforce the minor violation against a person who has received a notice to comply if the person is in compliance with this section.

(f) If a person who receives a notice to comply pursuant to subdivision (a) disagrees with one or more of the alleged violations cited in the notice to comply, the person shall give written notice of appeal to the state board or district, which shall develop a process for reviewing and determining the disposition of the appeal.

(g) Notwithstanding any other provision of this section, if a person fails to comply with a notice to comply within the prescribed period, or if the state board or district 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, the state board or district or an authorized or designated officer may take any needed enforcement action authorized by this division.

(h) A notice to comply issued to a person pursuant to this section shall contain a statement that the inspected facility may be subject to reinspection at any time. Nothing in this section shall be construed



as preventing the reinspection of a facility to ensure compliance or to ensure that minor violations cited in a notice to comply have been corrected.

(i) Nothing in this section shall be construed as preventing the state board or district or an authorized or designated officer, on a case-by-case basis, from requiring a person subject to a notice to comply to submit reasonable and necessary documentation to support a claim of compliance by the person.

(j) Nothing in this section restricts the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law. Furthermore, nothing in this section prevents the state board or district, or any representative of the state board or district, from cooperating with, or participating in, such a proceeding.

(k) Notwithstanding any other provision of this section, if the state board or district or an authorized or designated officer determines that the circumstances surrounding a particular minor violation are such that the assessment of a civil penalty pursuant to this division is warranted or required by federal law, in addition to issuance of a notice to comply, the state board or district or an authorized or designated officer shall assess a civil penalty in accordance with this division, if the state board or district or an authorized or designated officer makes written findings that set forth the basis for the determination of the state board or district.

39153. (a) On or before January 1, 2000, the state board shall report to the Legislature on actions taken by the state board and the districts to implement this chapter and the results of that implementation. Each district shall provide the state board with the information that the state board requests to determine the degree to which the purposes described in subdivision (a) of Section 39150 have been achieved.

(b) This chapter shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2001, deletes or extends that date.

SEC. 2. Section 42400.2 of the Health and Safety Code is amended to read:

42400.2. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is subject to a fine of not more than twenty-five thousand dollars (\$25,000) or imprisonment in the county jail for not more than one year, or both.

(b) For purposes of this section, "corrective action" means the termination of the emission violation or the grant of a variance from



the applicable order, rule, regulation, or permit pursuant to Article 2 (commencing with Section 42350). If a district regulation regarding process upsets or equipment breakdowns would allow continued operation of equipment which is emitting air contaminants in excess of allowable limits, compliance with that regulation is deemed to be corrective action.

(c) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, notice to comply, or order of the state board or of a district, is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(d) (1) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury to the health or safety of a considerable number of persons or the public, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(2) As used in this subdivision, “actual injury” means any physical injury which, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.

(e) Each day during any portion of which a violation occurs constitutes a separate offense.

(f) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

SEC. 3. Section 13268 of the Water Code is amended to read:

13268. (a) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.



(c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, knowingly failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or knowingly falsifying any information provided therein, is guilty of a misdemeanor and may be civilly liable in accordance with subdivision (d).

This subdivision shall not be applicable to any waste discharge which is subject to Chapter 5.5 (commencing with Section 13370).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

SEC. 4. Chapter 5.8 (commencing with Section 13399) is added to Division 7 of the Water Code, to read:

CHAPTER 5.8. MINOR VIOLATIONS

13399. (a) The Legislature hereby finds and declares that the purpose of this chapter is to establish an enforcement policy for violations of this division that the enforcement agency finds are minor when the danger they pose to, or the potential that they have for endangering, human health, safety, or welfare or the environment are taken into account.

(b) It is the intent of the Legislature in enacting this chapter to provide a more resource-efficient enforcement mechanism, faster compliance times, and the creation of a productive and cooperative working relationship between the state board, the regional boards, and the regulated community while maintaining protection of human health and safety and the environment.

(c) This chapter applies solely to the actions of the state board and the regional boards in administering this division and has no application to the administrative enforcement actions of other public agencies.

(d) The state board and each regional board shall implement this chapter by determining the types of violations of this division, or of the regulations, rules, standards, orders, permit conditions, or other requirements adopted pursuant to this division that the state board or the regional board finds are minor violations in accordance with subdivisions (e) and (f). The state board shall implement this chapter through adoption of regulations or state policy for water quality



control pursuant to Article 3 (commencing with Section 13140) of Chapter 3.

(e) In determining the types of violations that are minor violations, the state board or regional board shall consider all of the following factors:

- (1) The magnitude of the violation.
- (2) The scope of the violation.
- (3) The severity of the violation.
- (4) The degree to which a violation puts human health, safety, or welfare or the environment into jeopardy.
- (5) The degree to which a violation could contribute to the failure to accomplish an important goal or program objective as established by this division.

(6) The degree to which a violation may make it difficult to determine if the violator is in compliance with other requirements of this division.

(f) For purposes of this chapter, a minor violation of this division shall not include any of the following:

- (1) Any knowing, willful, or intentional violation of this division.
- (2) Any violation of this division that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.
- (3) Any violation that is a chronic violation or that is committed by a recalcitrant violator.

(g) In determining whether a violation is chronic or a violator is recalcitrant, for purposes of paragraph (3) of subdivision (f), the state board or regional board shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of this division or the requirements adopted pursuant to this division.

13399.1. For purposes of this chapter, “notice to comply” means a written method of alleging a minor violation that is in compliance with all of the following requirements:

(a) The notice to comply is written in the course of conducting an inspection by an authorized representative of the state board or regional board. If testing is required by the state board or regional board to determine compliance, and the testing cannot be conducted during the course of the inspection, the representative of the state board or regional board shall have a reasonable period of time to conduct the required testing. If, after the test results are available, the representative of the state board or regional board determines that the issuance of a notice to comply is warranted, the representative shall immediately notify the facility owner or operator in writing.

(b) A copy of the notice to comply is presented to a person who is an owner, operator, employee, or representative of the facility being inspected at the time that the notice to comply is written. If offsite testing is required pursuant to subdivision (a), a copy of the



notice to comply may be mailed to the owner or operator of the facility.

(c) The notice to comply clearly states the nature of the alleged minor violation, a means by which compliance with the requirement cited by the representative of the state board or regional board may be achieved, and a time limit in which to comply, which shall not exceed 30 days.

(d) The notice to comply shall contain the information specified in subdivision (h) of Section 13399.2 with regard to the possible reinspection of the facility.

13399.2. (a) An authorized representative of the state board or regional board, who, in the course of conducting an inspection, detects a minor violation shall issue a notice to comply before leaving the site at which the minor violation is alleged to have occurred if the authorized representative finds that a notice to comply is warranted.

(b) A person who receives a notice to comply pursuant to subdivision (a) shall have the period specified in the notice to comply from the date of receipt of the notice to comply in which to achieve compliance with the requirement cited on the notice to comply. Within five working days of achieving compliance, the person who received the notice to comply shall sign the notice to comply, and return it to the representative of the state board or regional board, stating that the person has complied with the notice to comply. A false statement that compliance has been achieved is a violation of this division pursuant to subdivision (a) of Section 13268, Section 13385, or subdivision (e) of Section 13387.

(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 cited minor violation and the manner in which each minor violation may be brought into compliance.

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

(e) Except as otherwise provided in subdivision (g), a notice to comply shall be the only means by which the representative of the state board or regional board shall cite a minor violation. The representative of the state board or regional board shall not take any other enforcement action specified in this division against a person who has received a notice to comply if the person is in compliance with this section.

(f) If a person who receives a notice to comply pursuant to subdivision (a) disagrees with one or more of the alleged violations cited in the notice to comply, the person shall give written notice of appeal to the state board or regional board.



(g) Notwithstanding any other provision of this section, if a person fails to comply with a notice to comply within the prescribed period, or if the state board or regional board 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, the state board or regional board may take any needed enforcement action authorized by this division.

(h) A notice to comply issued to a person pursuant to this section shall contain a statement that the inspected facility may be subject to reinspection at any time. Nothing in this section shall be construed as preventing the reinspection of a facility to ensure compliance or to ensure that minor violations cited in a notice to comply have been corrected.

(i) Nothing in this section shall be construed as preventing the state board or regional board, on a case-by-case basis, from requiring a person subject to a notice to comply to submit reasonable and necessary documentation to support a claim of compliance by the person.

(j) Nothing in this section restricts the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law. Furthermore, nothing in this section prevents the state board or regional board, or a representative of the state board or regional board, from cooperating with, or participating in, such a proceeding.

(k) Notwithstanding any other provision of this section, if the state board or regional board determines that the circumstances surrounding a particular minor violation are such that the assessment of a civil penalty pursuant to this division is warranted or required by federal law, in addition to issuance of a notice to comply, the state board or regional board shall assess a civil penalty in accordance with this division, if the state board or regional board makes written findings that set forth the basis for the determination of the state board or regional board.

13399.3. (a) On or before January 1, 2000, the state board shall report to the Legislature on actions taken by the state board and the regional boards to implement this chapter and the results of that implementation. Each regional board shall provide the state board with the information that the state board requests to determine the degree to which the purposes described in subdivision (a) of Section 13399 have been achieved.

(b) This chapter shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2001, deletes or extends that date.

SEC. 5. Section 13387 of the Water Code is amended to read:



13387. (a) Any person who intentionally or negligently does any of the following is subject to criminal penalties as provided in subdivisions (b), (c), and (d):

(1) Violates Section 13375 or 13376.

(2) Violates any waste discharge requirements or dredged or fill material permit.

(3) Violates any order or prohibition issued pursuant to Section 13243 or 13301, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(4) Violates any requirement of Section 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act, as amended.

(5) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substances which the person knew or reasonably should have known could cause personal injury or property damage.

(6) Introduces any pollutant or hazardous substance into a sewer system or into a publicly owned treatment works, except in accordance with any applicable pretreatment requirements, which pollutant or hazardous substance causes the treatment works to violate waste discharge requirements.

(b) Any person who negligently commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000), nor more than twenty-five thousand dollars (\$25,000), for each day in which the violation occurs, or by imprisonment for not more than one year in the county jail, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, subdivision (c), or subdivision (d), punishment shall be by a fine of not more than fifty thousand dollars (\$50,000) for each day in which the violation occurs, or by imprisonment of not more than two years, or by both.

(c) Any person who knowingly commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000), nor more than fifty thousand dollars (\$50,000), for each day in which the violation occurs, or by imprisonment for not more than three years, or by both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision or subdivision (d), punishment shall be by a fine of not more than one hundred thousand dollars (\$100,000) for each day in which the violation occurs, or by imprisonment of not more than six years, or by both.

(d) (1) Any person who knowingly commits any of the violations set forth in subdivision (a), and who knows at the time that the person thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than two hundred fifty thousand dollars (\$250,000) or imprisonment of not more than 15 years, or both. A person which is



an organization shall, upon conviction under this subdivision, be subject to a fine of not more than one million dollars (\$1,000,000). If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, the maximum punishment shall be a fine of not more than five hundred thousand dollars (\$500,000) or imprisonment of not more than 30 years, or both. A person which is an organization shall, upon conviction for a violation committed after a first conviction of the person under this subdivision, be subject to a fine of not more than two million dollars (\$2,000,000). Any fines imposed pursuant to this subdivision shall be in addition to any fines imposed pursuant to subdivision (c).

(2) In determining whether a defendant who is an individual knew that the defendant's conduct placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for actual awareness or actual belief that the defendant possessed, and knowledge possessed by a person other than the defendant, but not by the defendant personally, cannot be attributed to the defendant.

(e) Any person who knowingly makes any false statement, representation, or certification in any record, report, plan, notice to comply, or other document filed with a regional board or the state board, or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required under this division shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000), or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, punishment shall be by a fine of not more than twenty-five thousand dollars (\$25,000) per day of violation, or by imprisonment of not more than four years, or by both.

(f) For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) For purposes of this section, "organization," "serious bodily injury," "person," and "hazardous substance" shall have the same meaning as in Section 309(c) of the Federal Water Pollution Control Act, as amended.

(h) Funds collected pursuant to this section shall be paid to the State Water Pollution Cleanup and Abatement Account.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district will be incurred because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Moreover no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain other costs 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, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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