

ASSEMBLY BILL

No. 177

Introduced by Assembly Member Bogh

January 24, 2005

An act to amend Sections 40106, 40201, 41781.2, 41783, and 41783.1 of, and to add Section 40107 to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 177, as introduced, Bogh. Solid waste: biomass conversion: transformation.

(1) The existing California Integrated Waste Management Act of 1989 establishes an integrated waste management program administered by the California Integrated Waste Management Board. The act defines the term “biomass conversion” as meaning the controlled combustion of specified materials, when separated from other solid waste and used for producing electricity or heat, but excludes from that definition the controlled combustion of recyclable pulp or recyclable paper materials, or materials that contain sewage sludge, industrial sludge, medical waste, or specified hazardous or radioactive waste. The act also defines the term “transformation” as meaning incineration, pyrolysis, distillation, or biological conversion other than composting. The act provides that “transformation” does not include composting, gasification, or biomass conversion.

This bill would revise the definition of biomass conversion to instead mean the controlled combustion, thermal conversion, chemical conversion, or biological conversion, other than composting, of biomass waste used for producing electricity, heat, or a reconstituted product that meets the quality standards for use in the marketplace. The bill would define the term “biomass waste” as meaning organic

material that is source separated from the municipal solid waste stream or that is separated at a centralized facility. The bill would also revise the definition of transformation to mean the incineration of mixed solid waste, excluding composting, gasification, or biomass conversion.

(2) The act requires each city, county, city and county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components. On and after January 1, 2000, the element is required to divert 50% of the solid waste subject to the element, except as specified, through source reduction, recycling, and composting activities. Existing law allows the 50% diversion requirement to include not more than 10% through transformation, as defined, if specified conditions are met, including that the city, county, or regional agency does not include biomass conversion in its source reduction and recycling element. Existing law also provides that, for a city, county, or regional agency source reduction and recycling element submitted to the board after January 1, 1995, the 50% diversion requirement may not include more than 10% through biomass conversion, if specified conditions are met, including that the element does not include transformation.

This bill would delete the requirement that a source reduction and recycling element that includes transformation not include biomass conversion. The bill would also delete the 10% limit for waste diversion through biomass conversion for a source reduction and recycling element submitted after January 1, 1990, and would delete the requirement that the element not include transformation. The bill would also make conforming changes.

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

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

- 1 SECTION 1. Section 40106 of the Public Resources Code is
- 2 amended to read:
- 3 40106. ~~(a)~~—“Biomass conversion” means the controlled
- 4 combustion, ~~when separated from other solid waste and used for~~
- 5 ~~producing electricity or heat, of the following materials:~~
- 6 (1) ~~Agricultural crop residues.~~
- 7 (2) ~~Bark, lawn, yard, and garden clippings.~~

1 ~~(3) Leaves, silvicultural residue, and tree and brush pruning.~~

2 ~~(4) Wood, wood chips, and wood waste.~~

3 ~~(5) Nonrecyclable pulp or nonrecyclable paper materials.~~

4 ~~(b) "Biomass conversion" does not include the controlled~~
5 ~~combustion of recyclable pulp or recyclable paper materials, or~~
6 ~~materials that contain sewage sludge, industrial sludge, medical~~
7 ~~waste, hazardous waste, or either high-level or low-level~~
8 ~~radioactive waste.~~

9 ~~(c) For purposes of this section, "nonrecyclable pulp or~~
10 ~~nonrecyclable paper materials" means either of the following, as~~
11 ~~determined by the board:~~

12 ~~(1) Paper products or fibrous materials that cannot be~~
13 ~~technically, feasibly, or legally recycled because of the manner in~~
14 ~~which the product or material has been manufactured, treated,~~
15 ~~coated, or constructed.~~

16 ~~(2) Paper products or fibrous materials that have become~~
17 ~~soiled or contaminated and as a result cannot be technically,~~
18 ~~feasibly, or legally recycled *thermal conversion, chemical*~~
19 ~~*conversion, or biological conversion, other than composting, of*~~
20 ~~*biomass waste used for producing electricity, heat, or a*~~
21 ~~*reconstituted product that meets the quality standards for use in*~~
22 ~~*the marketplace.*~~

23 SEC. 2. Section 40107 is added to the Public Resources Code,
24 to read:

25 40107. "Biomass waste" means organic material that is source
26 separated from the municipal solid waste stream or that is
27 separated at a centralized facility.

28 SEC. 3. Section 40201 of the Public Resources Code is
29 amended to read:

30 40201. "Transformation" means *the incineration, pyrolysis,*
31 ~~*distillation, or biological conversion other than composting of*~~
32 ~~*mixed solid waste.*~~ "Transformation" does not include
33 composting, gasification, or biomass conversion.

34 SEC. 4. Section 41781.2 of the Public Resources Code is
35 amended to read:

36 41781.2. (a) (1) It is the intent of the Legislature in enacting
37 this section not to require cities, counties, and regional agencies
38 to revise source reduction and recycling elements prior to their
39 submittal to the board for review and approval, except as the
40 elements would otherwise be required to be revised by the board

1 pursuant to this part. Pursuant to Sections 41801.5 and 41811.5,
2 compliance with this section shall be determined by the board
3 when source reduction and recycling elements are submitted to
4 the board pursuant to Section 41791.5. However, ~~any~~ a city or
5 county may choose to revise its source reduction and recycling
6 element or any of its components prior to board review of the
7 source reduction and recycling element for the purpose of
8 complying with this section.

9 (2) It is further the intent of the Legislature in enacting this
10 section to ensure that compliance with the diversion requirements
11 of Section 41780 ~~shall be~~ *is* accurately determined based upon a
12 correlation between solid waste ~~which~~ *that* was disposed of at
13 permitted disposal facilities and diversion claims ~~which~~ *that* are
14 subsequently made for that solid waste.

15 (b) For the purposes of this section, the following terms have
16 the following meaning:

17 (1) “Action by a city, county, regional, or local governing
18 body” means franchise or contract conditions, rate or fee
19 schedules, zoning or land use decisions, disposal facility permit
20 conditions, or activities by a waste hauler, recycler, or disposal
21 facility operator acting on behalf of a city, county, regional
22 agency, or local governing body, or other action by the local
23 governing body if the local government action is specifically
24 related to the claimed diversion.

25 (2) “Scrap metal” includes ferrous metals, nonferrous metals,
26 aluminum scrap, other metals, and auto bodies, but does not
27 include aluminum cans, steel cans, or bimetal cans.

28 (3) “Inert solids” includes rock, concrete, brick, sand, soil,
29 fines, asphalt, and unsorted construction and demolition waste.

30 (4) “Agricultural wastes” includes solid wastes of plant and
31 animal origin, ~~which~~ *that* result from the production and
32 processing of farm or agricultural products, including manures,
33 orchard and vineyard prunings, and crop residues, ~~which~~ *that* are
34 removed from the site of generation for solid waste management.
35 Agriculture refers to SIC Codes 011 to 0291, inclusive.

36 (c) For purposes of determining the base amount of solid
37 waste from which the diversion requirements of this article shall
38 be calculated, “solid waste” does not include the diversion of
39 agricultural wastes; inert solids, including inert solids used for

1 structural fill; discarded, white-coated, major appliances; and
2 scrap metals; unless all of the following criteria are met:

3 (1) The city, county, or regional agency demonstrates that the
4 material was diverted from a permitted disposal facility through
5 an action by the city, county, or regional agency ~~which~~ *that*
6 specifically resulted in the diversion.

7 (2) The city, county, or regional agency demonstrates that,
8 prior to January 1, 1990, the solid waste ~~which~~ *that* is claimed to
9 have been diverted was disposed of at a permitted disposal
10 facility in the quantity being claimed as diversion. If historical
11 disposal data is not available, that demonstration may be based
12 upon information available to the city, county, or regional agency
13 ~~which~~ *that* substantiates a reasonable estimate of disposal
14 quantities ~~which~~ *that* is as accurate as is feasible in the absence
15 of historical disposal data.

16 (3) The city, county, or regional agency is implementing, and
17 will continue to implement, source reduction, recycling, and
18 composting programs, as described in its source reduction and
19 recycling element.

20 (d) If a city, county, or regional agency source reduction and
21 recycling element submitted pursuant to this chapter includes the
22 diversion of any of the wastes specified in subdivision (c) for
23 years preceding the year commencing January 1, 1990, that
24 diversion shall not apply to the diversion requirements of Section
25 41780, unless the criteria in subdivision (c) are met.

26 (e) If a city, county, or regional agency source reduction and
27 recycling element submitted pursuant to this chapter does not
28 contain information sufficient for the city, county, or regional
29 agency to demonstrate to the board whether the criteria in
30 subdivision (c) have been met, the city, county, or regional
31 agency may provide additional information following board
32 review of the source reduction and recycling element pursuant to
33 Section 41791.5. In providing the additional information,
34 Sections 41801.5 and 41811.5 shall apply.

35 (f) In demonstrating whether the requirements of paragraph (1)
36 of subdivision (c) have been met, the city, county, or regional
37 agency shall submit information to the board on local
38 government programs ~~which~~ *that* are specifically related to the
39 claimed diversion.

1 (g) Notwithstanding any other provision of law, for purposes
 2 of determining the base amount of solid waste from which the
 3 diversion requirements of this article shall be calculated for a
 4 city, county, or regional agency—~~which~~ *that* includes biomass
 5 conversion in its source reduction and recycling element pursuant
 6 to Section 41783.1, the base amount shall include those materials
 7 ~~disposed of~~ *processed* in the base year at biomass conversion
 8 facilities.

9 SEC. 5. Section 41783 of the Public Resources Code is
 10 amended to read:

11 41783. For ~~any~~ *a* city, county, or regional agency source
 12 reduction and recycling element submitted to the board after
 13 January 1, 1995, the 50 percent diversion requirement specified
 14 in paragraph (2) of subdivision (a) of Section 41780 may include
 15 not more than 10 percent through transformation, ~~as defined in~~
 16 ~~Section 40201~~, if all of the following conditions are met:

17 (a) The transformation project is in compliance with Sections
 18 21151.1 and 44150 of this code and Section 42315 of the Health
 19 and Safety Code.

20 (b) The transformation project uses front-end methods or
 21 programs to remove all recyclable materials from the waste
 22 stream prior to transformation to the maximum extent feasible.

23 (c) The ash or other residue generated from the transformation
 24 project is routinely tested at least once quarterly, or on a more
 25 frequent basis as determined by the agency responsible for
 26 regulating the testing and disposal of the ash or residue, and,
 27 notwithstanding Section 25143.5 of the Health and Safety Code,
 28 if hazardous wastes are present, the ash or residue is sent to a
 29 class 1 hazardous waste disposal facility.

30 (d) The board holds a public hearing in the city, county, or
 31 regional agency jurisdiction within which the transformation
 32 project is proposed, and, after the public hearing, the board
 33 makes both of the following findings, based upon substantial
 34 evidence ~~on~~ *in* the record:

35 (1) The city, county, or regional agency is, and will continue
 36 to be, effectively implementing all feasible source reduction,
 37 recycling, and composting measures.

38 (2) The transformation project will not adversely affect public
 39 health and safety or the environment.

1 (e) The transformation facility is permitted and operational on
2 or before January 1, 1995.

3 ~~(f) The city, county, or regional agency does not include~~
4 ~~biomass conversion, as authorized pursuant to Section 41783, in~~
5 ~~its source reduction and recycling element.~~

6 SEC. 6. Section 41783.1 of the Public Resources Code is
7 amended to read:

8 41783.1. ~~(a)~~ For any a city, county, or regional agency source
9 reduction and recycling element submitted to the board after
10 January 1, ~~1995~~ 1990, the 50 percent diversion requirement
11 specified in paragraph (2) of subdivision (a) of Section 41780
12 may include ~~not more than 10 percent through~~ biomass
13 conversion if all of the following conditions are met:

14 ~~(1)~~

15 (a) The biomass conversion project exclusively processes
16 biomass.

17 ~~(2)~~

18 (b) The biomass conversion project is in compliance with all
19 applicable air quality laws, rules, and regulations.

20 ~~(3)~~

21 (c) The ash or other residue from the biomass conversion
22 project is regularly tested to determine if it is hazardous waste
23 and, if it is determined to be hazardous waste, the ash or other
24 residue is sent to a class 1 hazardous waste disposal facility.

25 ~~(4)~~

26 (d) The board determines, at a public hearing, based upon
27 substantial evidence in the record, that the city, county, or
28 regional agency is, and will continue to be, effectively
29 implementing all feasible source reduction, recycling, and
30 composting measures.

31 ~~(5) The city, county, or regional agency does not include~~
32 ~~transformation, as authorized pursuant to Section 41783, in its~~
33 ~~source reduction and recycling element.~~