

AMENDED IN SENATE APRIL 18, 2006

SENATE BILL

No. 1797

Introduced by Senator Perata

February 24, 2006

~~An act to add Section 25143.6.1 to the Health and Safety Code, and to repeal and add Section 42171 of the Public Resources Code, An act to amend Sections 25141 and 25141.5 of, and to repeal Section 25141.2 of, the Health and Safety Code, relating to hazardous waste.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1797, as amended, Perata. Hazardous waste: ~~landfill cover; metallic recyclables; identification.~~

(1) Existing law provides for the regulation of hazardous waste under the hazardous waste control laws by the Department of Toxic Substances Control. Existing law requires the department to develop and adopt, by regulation, criteria, and guidelines for the identification of hazardous waste, *as specified. Existing law provides that except as otherwise provided, a regulation adopted pursuant to that requirement for the identification of hazardous waste, as it read on January 1, 1995, that is in effect on January 1, 1995, shall be deemed to comply with the intent of that requirement.*

~~This bill would require residue generated from the shredding of discarded automobiles, appliances, or other metallic recyclables to be regulated as a hazardous waste only if the residue exhibits the characteristics of toxicity specified in certain regulations adopted pursuant to the federal Resource Conservation and Recovery Act of 1976 (RCRA).~~

~~(2) Under the existing California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste~~

~~Management Board, materials that require special handling, as defined, are required to be removed from major appliances and vehicles in which they are contained prior to crushing for transport or transferring to a baler or shredder for recycling. Existing law requires any hazardous material that becomes a hazardous waste when released or removed to be managed pursuant to specified hazardous waste control requirements.~~

~~Existing law requires the board to evaluate and report on the use of recycling residue for use as solid waste landfill cover.~~

~~This bill would repeal that evaluation requirement and would instead allow residue that is generated from the shredding of discarded automobiles that is not a hazardous waste to be used in any solid waste landfill as a cover material or extender, if the residue meets specified physical characteristics.~~

~~*This bill would delete the provision that those specified regulations shall be deemed to comply with the intent of that requirement.*~~

~~*(2) Existing law, except as otherwise provided, prohibits the department from publishing a notice of a proposal to adopt, amend, or repeal regulations pursuant to the rulemaking provisions of the Administrative Procedure Act, pertaining to the criteria and guidelines for the identification of hazardous waste or to management standards for special wastes until the findings of the external scientific review entity have been issued and the department has reviewed those findings. Existing law imposes other requirements on the department with respect to public comment on, external scientific peer review of, and the bases for, those regulations.*~~

~~*The bill would repeal those provisions.*~~

~~*(3) Existing law requires the department, when classifying waste pursuant to specified criteria, to incorporate its decision into a regulation, if it determines that the waste's classification as a hazardous waste is likely to have broad application beyond the producer who initiated the request. Existing law requires that, unless the department makes a determination, after January 1, 1996, by regulation, that additional criteria are necessary to protect the public health, safety, and environment of the state, the department use specified criteria and procedures for the identification and regulation of specified types of hazardous waste. Existing law requires regulations adopted pursuant to that requirement to be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and the general*~~

welfare, and authorizes those regulations to be adopted as emergency regulations. Existing law requires, notwithstanding regulations adopted by the department prior to January 1, 1996, and unless otherwise required, specified substances not to be classified as hazardous waste due solely to the characteristic of acute oral toxicity.

The bill would, instead require the department, when classifying waste as hazardous, to incorporate its decision into a regulation, if it determines that the classification of hazardous waste is likely to have a broad application beyond the producer who initiated the request, without reference to classifying the waste pursuant to specified criteria. The bill would delete the requirement that the department's determination that additional criteria, in addition to those specified by statute, are necessary to protect the public health, safety, and environment of the state be made after January 1, 1996, and by regulation. The bill would delete the reference to regulations adopted by the department prior to January 1, 1996, in the requirement that specified substances not be classified as hazardous waste due solely to the characteristic of acute oral toxicity. The bill would delete the requirement that specified regulations be considered as necessary for the immediate preservation of the public peace, health and safety, and the general welfare, and the authorization for those regulations to be adopted as emergency regulations. The bill would delete an obsolete date reference.

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 25141 of the Health and Safety Code is
2 amended to read:

3 25141. (a) The department shall develop and adopt by
4 regulation criteria and guidelines for the identification of
5 hazardous wastes and extremely hazardous wastes.

6 (b) The criteria and guidelines adopted by the department
7 pursuant to subdivision (a) shall identify waste or combinations
8 of waste, that may do either of the following, as hazardous waste
9 because of its quantity, concentration, or physical, chemical, or
10 infectious characteristics:

1 (1) Cause, or significantly contribute to, an increase in
2 mortality or an increase in serious irreversible, or incapacitating
3 reversible, illness.

4 (2) Pose a substantial present or potential hazard to human
5 health or the environment, due to factors including, but not
6 limited to, carcinogenicity, acute toxicity, chronic toxicity,
7 bioaccumulative properties, or persistence in the environment,
8 when improperly treated, stored, transported, or disposed of, or
9 otherwise managed.

10 ~~(e) Except as provided in Section 25141.5, any regulations~~
11 ~~adopted pursuant to this section for the identification of~~
12 ~~hazardous waste as it read on January 1, 1995, which are in effect~~
13 ~~on January 1, 1995, shall be deemed to comply with the intent of~~
14 ~~this section as amended by this act during the 1995 portion of the~~
15 ~~1995-96 Regular Session of the Legislature.~~

16 *SEC. 2. Section 25141.2 of the Health and Safety Code is*
17 *repealed.*

18 ~~25141.2. (a) (1) Except as provided in paragraph (2), the~~
19 ~~department shall not publish a notice of a proposal to adopt,~~
20 ~~amend, or repeal regulations pursuant to the rulemaking~~
21 ~~provisions of the Administrative Procedure Act (Chapter 3.5~~
22 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
23 ~~2 of the Government Code) pertaining to the criteria and~~
24 ~~guidelines for the identification of hazardous waste or to~~
25 ~~management standards for special wastes until the findings of the~~
26 ~~external scientific peer review entity convened pursuant to~~
27 ~~Section 57004 have been issued and the department has reviewed~~
28 ~~those findings.~~

29 ~~(2) Notwithstanding any other provision of law, the~~
30 ~~department shall not publish a notice of a proposal to adopt,~~
31 ~~amend, or repeal the regulations specified in paragraph (1) before~~
32 ~~January 1, 1999.~~

33 ~~(b) With respect to the regulations specified in subdivision (a),~~
34 ~~the department shall submit for public comment its analysis of~~
35 ~~any hazardous waste management activity to be exempted from~~
36 ~~this chapter pursuant to subdivision (b) of Section 25150.6 and~~
37 ~~its demonstration that the exemption satisfies the requirements of~~
38 ~~subdivision (c) of Section 25150.6 on the earlier of the following~~
39 ~~dates:~~

- 1 ~~(1) The date that the department issues its draft environmental~~
2 ~~impact report on the proposed regulations.~~
- 3 ~~(2) The date the department publishes its notice of proposed~~
4 ~~regulatory action pursuant to the rulemaking provisions of the~~
5 ~~Administrative Procedure Act (Chapter 3.5 (commencing with~~
6 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the~~
7 ~~Government Code).~~
- 8 ~~(e) Subdivision (b) does not prohibit the department from~~
9 ~~revising its analysis or demonstration to respond to public~~
10 ~~comments before the adoption of the regulations.~~
- 11 ~~(d) The department shall, prior to adopting the final version of~~
12 ~~any regulations specifying the criteria and guidelines for the~~
13 ~~identification of hazardous waste pursuant to Section 25141 and~~
14 ~~submitting the adopted regulations to the Office of~~
15 ~~Administrative Law, do all of the following:~~
- 16 ~~(1) Determine which aspects of the final version of the~~
17 ~~regulations have been changed subsequent to an external~~
18 ~~scientific peer review of the scientific basis and scientific~~
19 ~~portions of the regulations as initially proposed and identify the~~
20 ~~scientific basis and empirical data or other scientific findings,~~
21 ~~conclusions, and assumptions upon which the changes are~~
22 ~~premised.~~
- 23 ~~(2) Submit each change identified pursuant to paragraph (1),~~
24 ~~together with all supporting scientific material, to external~~
25 ~~scientific peer review pursuant to paragraph (1) of subdivision~~
26 ~~(d) of Section 57004 if both of the following apply:~~
- 27 ~~(A) The change is related to establishing a regulatory level,~~
28 ~~standard, or other requirement for the protection of public health,~~
29 ~~safety, or the environment.~~
- 30 ~~(B) The change is not directly related to, and is not a response~~
31 ~~to, the findings of the external scientific peer review of the~~
32 ~~regulations as initially proposed.~~
- 33 ~~(3) Comply with the requirements of paragraph (2) of~~
34 ~~subdivision (d) of Section 57004.~~
- 35 ~~(e) (1) The department may utilize the CalTox model and the~~
36 ~~criteria and guidelines for the identification of hazardous waste,~~
37 ~~if the criteria and guidelines have been adopted pursuant to the~~
38 ~~rulemaking provisions of the Administrative Procedure Act~~
39 ~~(Chapter 3.5 (commencing with Section 11340) of Part 1 of~~

1 Division 3 of Title 2 of the Government Code), to generate new
2 values for soluble constituents:

3 (2) Notwithstanding paragraph (1), the department shall not
4 amend or repeal the regulations adopted pursuant to this chapter
5 that are in effect on the effective date of the act adding this
6 section during the 1997–98 Regular Session, with respect to the
7 testing procedure employed to measure solubility or with respect
8 to the regulatory thresholds measured by that testing procedure
9 until an external scientific peer review entity convened pursuant
10 to Section 57004 makes the following finding:

11 (A) The new proposed testing procedure for solubility is based
12 on sound scientific knowledge, methods, and practices and will
13 predict, with a reasonable degree of accuracy, the long-term
14 mobility in landfill leachate of each hazardous constituent for
15 which the department has established by regulation a soluble
16 threshold limit concentration.

17 (B) For those hazardous constituents whose long-term
18 mobility in landfill leachate cannot be accurately measured by
19 any testing procedure that can be developed within a reasonable
20 period of time, the soluble threshold limit concentration can be
21 adjusted in a scientifically sound manner to compensate for the
22 extent of inaccuracy of the testing procedure for that constituent.

23 (3) In establishing revised total threshold limit concentrations
24 in any proposed regulations pertaining to the criteria and
25 guidelines for the identification of hazardous waste pursuant to
26 Section 25141, the department shall not base the total threshold
27 limit concentration for any hazardous constituent in whole, or in
28 part, on an assumption that when wastes are placed on or in the
29 land outside of a permitted disposal facility, those wastes will be
30 mixed or diluted, unless an external scientific peer review entity
31 convened pursuant to Section 57004 finds that the department
32 has demonstrated, in a sound scientific manner, that the
33 assumption that dilution or mixing will occur when the wastes
34 are applied or disposed to land is a reasonable representation of
35 waste management practices in the state, while taking into
36 account reasonably foreseeable mismanagement of wastes, and
37 that these application or disposal practices do not pose significant
38 public health or environmental risks.

39 *SEC. 3. Section 25141.5 of the Health and Safety Code is*
40 *amended to read:*

1 25141.5. (a) When classifying a waste as hazardous pursuant
2 to the criteria in paragraph (8) of subdivision (a) of Section
3 66261.24 of Title 22 of the California Code of Regulations, as
4 that section read on January 1, 1993, the department shall
5 incorporate the department's *its* decision into a regulation, if the
6 department *it* determines that the waste's classification as a
7 hazardous waste is likely to have broad application beyond the
8 producer who initiated the request.

9 (b) Unless the department makes a determination after January
10 1, 1996, by regulation, that additional criteria are necessary to
11 protect the public health, safety, and environment of the state, the
12 department shall use the following criteria and procedures for the
13 identification and regulation of the following types of hazardous
14 waste:

15 (1) In identifying wastes that are hazardous due to the
16 characteristic of reactivity, the department shall rely on objective
17 analytical tests, procedures, and numerical thresholds set forth in
18 the regulations or guidance documents adopted by the United
19 States Environmental Protection Agency.

20 (2) (A) ~~On and after January 1, 1997, in~~ In identifying wastes
21 that are hazardous due to the characteristic of acute oral toxicity,
22 as defined in the regulations adopted by the department pursuant
23 to this chapter, the department shall use an oral LD50 threshold
24 of less than 2,500 milligrams per kilogram, unless the department
25 adopts revised regulations setting forth a different threshold for
26 acute oral toxicity, based on a review and update of the scientific
27 basis for this criterion.

28 (B) Notwithstanding any other provision of this chapter ~~or the~~
29 ~~regulations adopted by the department prior to January 1, 1996,~~
30 to the extent consistent with the federal act, the substances listed
31 in this subparagraph shall not be classified as hazardous waste
32 due solely to the characteristic of acute oral toxicity. The
33 language in parentheses following the scientific name of each of
34 the substances listed in this paragraph describes one or more
35 common uses of each substance, and is provided for
36 informational purposes only.

37 (i) Acetic acid (vinegar).

38 (ii) Aluminum chloride (used in deodorants).

39 (iii) Ammonium bromide (used in textile finishing and as an
40 anticorrosive agent).

- 1 (iv) Ammonium sulfate (used as a food additive and in
2 fertilizer).
- 3 (v) Anisole (used in perfumes and food flavoring).
- 4 (vi) Boric acid (used in eyewashes and heat resistant glass).
- 5 (vii) Calcium fluoride (used to fluoridate drinking water).
- 6 (viii) Calcium formate (used in brewing and as a briquette
7 binder).
- 8 (ix) Calcium propionate (used as a food additive).
- 9 (x) Cesium chloride (used in brewing and in mineral waters).
- 10 (xi) Magnesium chloride (used as a flocculating agent).
- 11 (xii) Potassium chloride (used as a salt substitute and a food
12 additive).
- 13 (xiii) Sodium bicarbonate (baking soda, used in antacids and
14 mouthwashes).
- 15 (xiv) Sodium borate decahydrate (borax, used in laundry
16 detergents).
- 17 (xv) Sodium carbonate (soda ash, used in textile processing).
- 18 (xvi) Sodium chloride (table salt).
- 19 (xvii) Sodium iodide (used as an iodine supplement and in
20 cloud seeding).
- 21 (xviii) Sodium tetraborate (borax, used in laundry detergents).
- 22 (xix) The following oils commonly used as food flavorings:
23 allspice oil, ceylon cinnamon oil, clarified slurry oil, dill oils, or
24 lauryl leaf oil.
- 25 (3) (A) Except as provided in subparagraph (B), a waste that
26 would be classified as hazardous solely because it exceeds total
27 threshold limit concentrations, as defined in regulations adopted
28 by the department, shall be excluded from classification as a
29 hazardous waste for purposes of disposal in, and is allowed to be
30 disposed in, a disposal unit regulated as a permitted class I, II, or
31 III disposal unit, pursuant to Section 2531 of Title 23, and
32 Sections 20250 and 20260 of Title 27 of the California Code of
33 Regulations, if, prior to disposal, the waste is managed in
34 accordance with the management standards adopted by the
35 department, by regulation, if any, for this specific type of waste.
- 36 (B) Subparagraph (A) shall not apply to a hazardous waste that
37 is a liquid, a sludge or sludge-like material, soil, a solid that is
38 friable, powdered, or finely divided, a nonfilterable and
39 nonmillable tarry material, or a waste that contains an organic

1 substance that exceeds the total threshold limit concentration
2 established by the department for that substance.

3 (C) For purposes of ~~this~~ subparagraph (B), the following
4 definitions shall apply:

5 (i) A waste is liquid if it meets the test specified in subdivision
6 (i) of Section 66268.32 of Title 22 of the California Code of
7 Regulations.

8 (ii) “Sludge or sludge-like material” means ~~any~~ a solid,
9 semisolid, or liquid waste generated from a municipal,
10 commercial, or industrial wastewater treatment plant, water
11 supply treatment plant, or air pollution control facility, but does
12 not include the treated effluent from wastewater treatment plants.

13 (iii) “Friable, powdered, or finely divided” has the same
14 meaning as used in the regulations adopted by the department
15 pursuant to this chapter.

16 (iv) “Nonfilterable and nonmillable tarry material” has the
17 same meaning as used in the regulations adopted by the
18 department pursuant to this chapter.

19 (D) This paragraph does not affect the authority of a city or
20 county regarding solid waste management under existing
21 provisions of law.

22 ~~(e) Any regulations adopted pursuant to subdivision (b) shall
23 be considered by the Office of Administrative Law as necessary
24 for the immediate preservation of the public peace, health and
25 safety, and general welfare, and may be adopted as emergency
26 regulations in accordance with Chapter 3.5 (commencing with
27 Section 11340) of Part 1 of Division 3 of Title 2 of the
28 Government Code.~~

29 ~~SECTION 1. Section 25143.6.1 is added to the Health and
30 Safety Code, to read:~~

31 ~~25143.6.1. Notwithstanding any other provision of law,
32 residue generated from the shredding of discarded automobiles,
33 appliances, or other metallic recyclables shall be regulated as a
34 hazardous waste pursuant to this chapter only if the residue
35 exhibits the characteristics of toxicity, as specified in Section
36 261.24 of Title 40 of the Code of Federal Regulations.~~

37 ~~SEC. 2. Section 42171 of the Public Resources Code is
38 repealed.~~

39 ~~SEC. 3. Section 42171 is added to the Public Resources
40 Code, to read:~~

1 ~~42171. Residue that is generated from the shredding of~~
2 ~~discarded automobiles that is not a hazardous waste for the~~
3 ~~purpose of Section 25143.6.1 of the Health and Safety Code may~~
4 ~~be used in any solid waste landfill as cover material or an~~
5 ~~extender, if the residue has the physical characteristics required~~
6 ~~in the regulations adopted by the board for cover materials~~
7 ~~pursuant to Section 43020.~~

O