

AMENDED IN SENATE AUGUST 30, 2013
AMENDED IN SENATE AUGUST 14, 2013
AMENDED IN SENATE AUGUST 12, 2013
AMENDED IN SENATE JUNE 19, 2013
AMENDED IN ASSEMBLY MAY 8, 2013
AMENDED IN ASSEMBLY APRIL 18, 2013
AMENDED IN ASSEMBLY MARCH 21, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1126

**Introduced by Assembly Members Gordon and Mullin
(Principal coauthor: Assembly Member Wilk)**

February 22, 2013

An act to amend Sections 40121, 40180, 40192, 40194, 40200, 40201, 41700, 41721, 41780.05, 41781, and 50001 of, and to add Section 40131.2 to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1126, as amended, Gordon. Solid waste: ~~biomass conversion:~~ engineered municipal solid waste (EMSW) conversion.

(1) The California Integrated Waste Management Act of 1989 (act), which is administered by the Department of Resources Recycling and Recovery, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan. With certain exceptions, the source reduction and recycling element of that plan is required to divert 50% of all solid

waste, through source reduction, recycling, and composting activities. Existing law allows the 50% diversion requirement to include, pursuant to specified conditions, not more than 10% through biomass conversion, which is defined as the controlled combustion of specific materials for use in producing electricity or heat. Existing law defines the term “transformation” and excludes from that definition composting, gasification, and biomass conversion.

This bill would define the terms “EMSW conversion” and “EMSW conversion facility,” and would make conforming changes to existing definitions with regard to those operations and facilities. The bill would additionally exclude EMSW conversion from the definition of transformation, and would ~~provide that~~ *allow a transformation facility that conducts EMSW conversion is an EMSW conversion facility meets specified requirements relating to EMSW conversion to elect to be considered an EMSW facility for purposes of the act, except as provided.*

(2) The act requires the integrated waste management plan required to be adopted by a county to include a countywide siting element that provides a description of the areas to be used for the development of certain facilities. The act excludes certain solid wastes, for purposes of determining the base rate for the diversion of solid waste, and requires that the amount of solid waste diverted include solid waste diverted from a disposal facility or transformation facility. Existing law requires the department to determine compliance with the act’s 50% diversion requirement, based on the jurisdiction’s change in its per capita disposal rate and specifies the procedure for determining that rate.

This bill would require the countywide siting element to include a description of the areas to be used for the development of adequate EMSW conversion, thereby imposing a state-mandated local program by imposing new duties upon local agencies.

This bill would additionally exclude certain used tires or waste tires or biomass materials *that are converted at an EMSW conversion facility* from ~~the solid waste calculation used in that base rate determination~~ *and the per capita disposal determination and would require, for purposes of the solid waste calculation used in the base rate determination, the amount of solid waste to include solid waste diverted from an EMSW conversion facility.*

(3) Existing law prohibits a person from establishing or expanding a solid waste facility in a county, after a countywide or regional agency integrated waste management plan has been approved, unless the solid

waste facility is, among other things, a disposal facility or a transformation facility that meets certain criteria.

This bill would additionally include, as one of those facilities, an EMSW conversion facility.

(4) 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 a specified reason.

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

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

1 SECTION 1. Section 40121 of the Public Resources Code is
2 amended to read:

3 40121. “Disposal facility” or “facility” means a facility or
4 location where disposal of solid waste occurs or an EMSW
5 conversion facility.

6 SEC. 2. Section 40131.2 is added to the Public Resources Code,
7 to read:

8 40131.2. (a) “Engineered municipal solid waste conversion”
9 or “EMSW conversion” means the conversion of solid waste
10 through a process that meets all of the following requirements:

11 (1) The waste to be converted is beneficial and effective in that
12 it replaces or supplements the use of fossil fuels.

13 (2) The waste to be converted, the resulting ash, and any other
14 products of conversion do not meet the criteria or guidelines for
15 the identification of a hazardous waste adopted by the Department
16 of Toxic Substances Control pursuant to Section 25141 of the
17 Health and Safety Code.

18 (3) The conversion is efficient and maximizes the net calorific
19 value and burn rate of the waste.

20 (4) The waste to be converted contains less than 25 percent
21 moisture and less than 25 percent noncombustible waste.

22 (5) The waste received at the facility for conversion is handled
23 in compliance with the requirements for the handling of solid waste
24 imposed pursuant to this division, and no more than a seven-day
25 supply of that waste, based on the throughput capacity of the
26 operation or facility, is stored at the facility at any one time.

1 (6) No more than 500 tons per day of waste is converted at the
 2 facility where the operation takes place.

3 (7) The waste has an energy content equal to, or greater than,
 4 5,000 BTU per pound.

5 (8) The waste to be converted is mechanically processed at a
 6 transfer or processing station to reduce the fraction of chlorinated
 7 plastics and ~~materials that do not maximize the net calorific value~~
 8 ~~and burn rate of the waste.~~ *materials.*

9 (b) “Engineered municipal solid waste conversion facility” or
 10 “EMSW facility” means a facility where municipal solid waste
 11 conversion that meets the requirements of subdivision (a) takes
 12 place.

13 (c) Notwithstanding Section 40201, a transformation facility
 14 where solid waste conversion takes place that meets *all of* the
 15 requirements of subdivision (a) ~~shall be~~ *may elect to be* considered
 16 an EMSW facility for purposes of this division and Division 31
 17 (commencing with Section 50000), *except that if a portion of a*
 18 *transformation facility’s operations does not meet the requirements*
 19 *of subdivision (a), the facility shall be considered to be a*
 20 *transformation facility.*

21 SEC. 3. Section 40180 of the Public Resources Code is
 22 amended to read:

23 40180. “Recycle” or “recycling” means the process of
 24 collecting, sorting, cleansing, treating, and reconstituting materials
 25 that would otherwise become solid waste, and returning them to
 26 the economic mainstream in the form of raw material for new,
 27 reused, or reconstituted products which meet the quality standards
 28 necessary to be used in the marketplace. “Recycling” does not
 29 include transformation, as defined in Section 40201 or EMSW
 30 conversion.

31 SEC. 4. Section 40192 of the Public Resources Code is
 32 amended to read:

33 40192. (a) Except as provided in subdivisions (b) and (c),
 34 “solid waste disposal,” “disposal,” or “dispose” means the final
 35 deposition of solid wastes onto land, into the atmosphere, or into
 36 the waters of the state.

37 (b) For purposes of Part 2 (commencing with Section 40900),
 38 “solid waste disposal,” “dispose,” or “disposal” means the
 39 management of solid waste through landfill disposal,

1 transformation, or EMSW conversion, at a permitted solid waste
2 facility, unless the term is expressly defined otherwise.

3 (c) For purposes of Chapter 16 (commencing with Section
4 42800) and Chapter 19 (commencing with Section 42950) of Part
5 3, Part 4 (commencing with Section 43000), Part 5 (commencing
6 with Section 45000), Part 6 (commencing with Section 45030),
7 and Chapter 2 (commencing with Section 47901) of Part 7, “solid
8 waste disposal,” “dispose,” or “disposal” means the final deposition
9 of solid wastes onto land.

10 SEC. 5. Section 40194 of the Public Resources Code is
11 amended to read:

12 40194. “Solid waste facility” includes a solid waste transfer
13 or processing station, a composting facility, a gasification facility,
14 a transformation facility, an EMSW conversion facility, and a
15 disposal facility. For purposes of Part 5 (commencing with Section
16 45000), “solid waste facility” additionally includes a solid waste
17 operation that may be carried out pursuant to an enforcement
18 agency notification, as provided in regulations adopted by the
19 department.

20 SEC. 6. Section 40200 of the Public Resources Code is
21 amended to read:

22 40200. (a) “Transfer or processing station” or “station”
23 includes those facilities utilized to receive solid wastes, temporarily
24 store, separate, convert, or otherwise process the materials in the
25 solid wastes, or to transfer the solid wastes directly from smaller
26 to larger vehicles for transport, and those facilities utilized for
27 transformation.

28 (b) “Transfer or processing station” or “station” does not include
29 any of the following:

30 (1) A facility, whose principal function is to receive, store,
31 separate, convert, or otherwise process in accordance with state
32 minimum standards, manure.

33 (2) A facility, whose principal function is to receive, store,
34 convert, or otherwise process wastes that have already been
35 separated for reuse and are not intended for disposal.

36 (3) The operations premises of a duly licensed solid waste
37 handling operator who receives, stores, transfers, or otherwise
38 processes wastes as an activity incidental to the conduct of a refuse
39 collection and disposal business in accordance with regulations
40 adopted pursuant to Section 43309.

1 (4) An EMSW conversion facility.

2 SEC. 7. Section 40201 of the Public Resources Code is
3 amended to read:

4 40201. “Transformation” means incineration, pyrolysis,
5 distillation, or biological conversion other than composting.
6 “Transformation” does not include composting, gasification,
7 EMSW conversion, or biomass conversion.

8 SEC. 8. Section 41700 of the Public Resources Code is
9 amended to read:

10 41700. Each county shall prepare a countywide siting element
11 that provides a description of the areas to be used for development
12 of adequate transformation, EMSW conversion, or disposal
13 capacity concurrent and consistent with the development and
14 implementation of the county and city source reduction and
15 recycling elements adopted pursuant to this part.

16 SEC. 9. Section 41721 of the Public Resources Code is
17 amended to read:

18 41721. (a) The countywide siting element shall be approved
19 by the county and by a majority of the cities within the county that
20 contain a majority of the population of the incorporated area of
21 the county except in those counties that have only two cities, in
22 which case the element is subject to approval of the city that
23 contains the majority of the population of the incorporated area of
24 the county. Each city shall act upon the countywide siting element
25 within 90 days after receipt of the siting element. If a city fails to
26 act upon the siting element within 90 days after receiving the siting
27 element, the city shall be deemed to have approved the siting
28 element as submitted.

29 (b) Notwithstanding subdivision (a), a siting element providing
30 for an EMSW conversion facility is only required to be approved
31 by the city in which it is located, or if the EMSW is not located in
32 a city, by the county.

33 SEC. 10. Section 41780.05 of the Public Resources Code is
34 amended to read:

35 41780.05. (a) After January 1, 2009, pursuant to the review
36 authorized by Section 41825, the department shall determine each
37 jurisdiction’s compliance with Section 41780 for the years
38 commencing with January 1, 2007, by comparing each
39 jurisdiction’s change in its per capita disposal rate in subsequent
40 years with the equivalent per capita disposal rate that would have

1 been necessary for the jurisdiction to meet the requirements of
2 Section 41780 on January 1, 2007, as calculated pursuant to
3 subdivisions (c) and (d).

4 (b) (1) For purposes of paragraph (5) of subdivision (e) of
5 Section 41825, in making a determination whether a jurisdiction
6 has made a good faith effort to implement its source reduction and
7 recycling element or its household hazardous waste element, the
8 department shall consider, but is not limited to the consideration
9 of, the jurisdiction's per capita disposal rate and whether the
10 jurisdiction adequately implemented its diversion programs.

11 (2) When determining whether a jurisdiction has made a good
12 faith effort pursuant to Section 41825 to implement its source
13 reduction and recycling element or its household hazardous waste
14 element, the department shall consider that an increase in the per
15 capita disposal rate is the result of the amount of the jurisdiction's
16 disposal increasing faster than the jurisdiction's growth. The
17 department shall use this increase in the per capita disposal rate
18 that is in excess of the equivalent per capita disposal rate as a factor
19 in determining whether the department is required, pursuant to
20 Section 41825, to more closely examine a jurisdiction's program
21 implementation efforts. This examination may indicate that a
22 jurisdiction is required to expand existing programs or implement
23 new programs, in accordance with the procedures specified in
24 Article 4 (commencing with Section 41825) and in Article 5
25 (commencing with Section 41850).

26 (3) When reviewing the level of program implementation
27 pursuant to Sections 41825 and 41850, the department shall use,
28 as a factor in determining compliance with Section 41780, the
29 amount determined pursuant to subdivision (d) when comparing
30 a jurisdiction's per capita disposal rate in subsequent years.

31 (c) (1) (A) Except as otherwise provided in this subdivision,
32 for purposes of this section, "per capita disposal" or "per capita
33 disposal rate" means the total annual disposal, in pounds, from a
34 jurisdiction divided by the total population in a jurisdiction, as
35 reported by the Department of Finance, divided by 365 days.

36 (B) "Per capita disposal" does not include used tires or waste
37 tires, as defined in Article 1 (commencing with Section 42800) of
38 Chapter 16 of Part 3, *that are converted at an EMSW conversion*
39 *facility*.

1 (C) “Per capita disposal” does not include biomass material, as
2 ~~described~~ *defined* in subdivision (a) of Section 40106, that is
3 converted at an EMSW conversion facility.

4 (2) (A) If a jurisdiction is predominated by commercial or
5 industrial activities and by solid waste generation from those
6 sources, the department may alternatively calculate per capita
7 disposal to reflect those differing conditions.

8 (B) When making a calculation for a jurisdiction subject to this
9 paragraph, “per capita disposal” or “per capita disposal rate” means
10 the total annual disposal, in pounds, from a jurisdiction divided
11 by total industry employment in a jurisdiction, as reported by the
12 Employment Development Department, divided by 365 days.

13 (C) The department shall calculate the per capita disposal rate
14 for a jurisdiction subject to this paragraph using the level of
15 industry employment in a jurisdiction instead of the level of
16 population in a jurisdiction.

17 (3) If the department determines that the method for calculating
18 the per capita disposal rate for a jurisdiction provided by paragraph
19 (1) or (2) does not accurately reflect that jurisdiction’s disposal
20 reduction, the department may use an alternative per capita factor,
21 other than population or industry employment, to calculate the per
22 capita disposal rate that more accurately reflects the jurisdiction’s
23 efforts to divert solid waste.

24 (d) The department shall calculate the equivalent per capita
25 disposal rate for each jurisdiction as follows:

26 (1) Except as otherwise provided in this subdivision, the
27 equivalent per capita disposal rate for a jurisdiction shall be
28 determined using the method specified in this paragraph.

29 (A) The calculated generation tonnage for each year from 2003
30 to 2006, inclusive, shall be multiplied by 0.5 to yield the 50 percent
31 equivalent disposal total for each year.

32 (B) The 50 percent equivalent disposal total for each year shall
33 be multiplied by 2,000, divided by the population of the jurisdiction
34 in that year, and then divided by 365 to yield the 50 percent
35 equivalent per capita disposal for each year.

36 (C) The four 50 percent equivalent per capita disposal amounts
37 from the years 2003 to 2006, inclusive, shall be averaged to yield
38 the equivalent per capita disposal rate.

39 (2) If a jurisdiction is predominated by commercial or industrial
40 activities and by solid waste generation from those sources, the

1 department may alternatively calculate the equivalent per capita
2 disposal rate to reflect those conditions by using the level of
3 industry employment in a jurisdiction instead of the level of
4 population in that jurisdiction.

5 (3) If the department determines that the method for calculating
6 the equivalent per capita disposal rate for a jurisdiction pursuant
7 to this subdivision does not accurately reflect a jurisdiction's per
8 capita disposal rate that would be equivalent to the amount required
9 to meet the 50 percent diversion requirements of Section 41780,
10 the department may use an alternative per capita factor, other than
11 population or industry employment, to calculate the equivalent per
12 capita disposal rate that more accurately reflects the jurisdiction's
13 diversion efforts.

14 (4) The department shall modify the percentage used in
15 paragraph (1) to maintain the diversion requirements approved by
16 the department for a rural jurisdiction pursuant to Section 41787
17 or for a reduction granted pursuant to Section 41786.

18 (5) The department may modify the years included in making
19 a calculation pursuant to this subdivision for an individual
20 jurisdiction to eliminate years in which the calculated generation
21 amount is shown not to be representative or accurate, based upon
22 a generation study completed in one of the five years 2003 to 2007,
23 inclusive. In these cases, the department shall not allow the use of
24 an additional year other than 2003, 2004, 2005, 2006, or 2007.

25 (6) The department may modify the method of calculating the
26 equivalent per capita disposal rate for an individual jurisdiction to
27 accommodate the incorporation of a new city, the formation of a
28 new regional agency, or changes in membership of an existing
29 regional agency. These modifications shall ensure that a new entity
30 has a new equivalent per capita disposal rate and that the existing
31 per capita disposal rate of an existing entity is adjusted to take into
32 account the disposal amounts lost by the creation of the new entity.

33 (7) The department shall not incorporate generation studies or
34 new base year calculations for a year commencing after 2006 into
35 the equivalent per capita disposal rate, unless a generation study
36 that included the year 2007 was commenced on or before June 30,
37 2008.

38 (8) If the department determines that the equivalent per capita
39 disposal rate cannot accurately be determined for a jurisdiction,
40 or that the rate is no longer representative of a jurisdiction's waste

1 stream, the department shall evaluate trends in the jurisdiction's
2 per capita disposal to establish a revised equivalent per capita
3 disposal rate for that jurisdiction.

4 SEC. 11. Section 41781 of the Public Resources Code is
5 amended to read:

6 41781. (a) Except as provided in Sections 41781.1, and
7 41781.2, for the purpose of determining the base rate of solid waste
8 from which diversion requirements shall be calculated, "solid
9 waste" includes only the following:

10 (1) The amount of solid waste generated within a local agency's
11 jurisdiction, the types and quantities of which were disposed of at
12 a permitted disposal facility as of January 1, 1990. Nothing in this
13 section requires local agencies to perform waste characterization
14 in addition to the waste characterization requirements established
15 under Sections 41030, 41031, 41330, 41331, and 41332.

16 (2) The amount of solid waste diverted from a disposal facility,
17 transformation facility, or EMSW facility, through source
18 reduction, recycling, or composting.

19 (b) For the purposes of this section, "solid waste" does not
20 include any of the following:

21 ~~(1) Solid solid waste that would not normally be disposed of~~
22 ~~at a disposal facility.~~

23 ~~(2) Used tires or waste tires, as defined in Article 1 (commencing~~
24 ~~with Section 42800) of Chapter 16 of Part 3, or biomass material,~~
25 ~~as described in subdivision (a) of Section 40106, which are~~
26 ~~converted at an EMSW conversion facility.~~

27 (c) For the purposes of this chapter, the amount of solid waste
28 from which the required reductions are measured shall be the
29 amount of solid waste existing on January 1, 1990, with future
30 adjustments for increases or decreases in the quantity of waste
31 caused only by changes in population or changes in the number
32 or size of governmental, industrial, or commercial operations in
33 the jurisdiction.

34 SEC. 12. Section 50001 of the Public Resources Code is
35 amended to read:

36 50001. (a) Except as provided by subdivision (b), after a
37 countywide or regional agency integrated waste management plan
38 has been approved by the Department of Resources Recycling and
39 Recovery pursuant to Division 30 (commencing with Section
40 40000), a person shall not establish or expand a solid waste facility,

1 as defined in Section 40194, in the county unless the solid waste
2 facility meets one of the following criteria:

3 (1) The solid waste facility is a disposal facility, a transformation
4 facility, or an EMSW conversion facility, the location of which is
5 identified in the countywide siting element or amendment to that
6 element, which has been approved pursuant to Section 41721.

7 (2) The solid waste facility is a facility that is designed to
8 recover for reuse or recycling at least 5 percent of the total volume
9 of material received by the facility, and that is identified in the
10 nondisposal facility element that has been approved pursuant to
11 Section 41800 or is included in an update to that element.

12 (b) Solid waste facilities other than those specified in paragraphs
13 (1) and (2) of subdivision (a) shall not be required to comply with
14 the requirements of this section.

15 (c) The person or agency proposing to establish a solid waste
16 facility shall prepare and submit a site identification and description
17 of the proposed facility to the task force established pursuant to
18 Section 40950. Within 90 days after the site identification and
19 description is submitted to the task force, the task force shall meet
20 and comment on the proposed solid waste facility in writing. These
21 comments shall include, but are not limited to, the relationship
22 between the proposed solid waste facility and the implementation
23 schedule requirements of Section 41780 and the regional impact
24 of the facility. The task force shall transmit these comments to the
25 person or public agency proposing establishment of the solid waste
26 facility, to the county, and to all cities within the county. The
27 comments shall become part of the official record of the proposed
28 solid waste facility.

29 (d) The review and comment by the local task force shall not
30 be required for an update to a nondisposal facility element.

31 SEC. 13. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 a local agency or school district has the authority to levy service
34 charges, fees, or assessments sufficient to pay for the program or
35 level of service mandated by this act, within the meaning of Section
36 17556 of the Government Code.

O