

AMENDED IN ASSEMBLY JUNE 24, 2014

AMENDED IN ASSEMBLY JUNE 10, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE APRIL 22, 2014

SENATE BILL

No. 1249

Introduced by Senator Hill

February 20, 2014

An act to add Sections 25150.9, 25150.9.1, and 25150.9.2 to the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 1249, as amended, Hill. Hazardous waste: shredder waste.

(1) The California Integrated Waste Management Act of 1989 requires materials that require special handling, as defined, to be removed from major appliances and vehicles in which they are contained before crushing for transport or transferring to a baler or shredder for recycling.

The hazardous waste control laws prohibit a person who is not a certified appliance recycler from removing materials that require special handling from major appliances and imposes specified requirements regarding transporting, delivering, or selling discarded major appliances to a scrap recycling facility. *The department is authorized to grant a variance from the requirements of the hazardous waste control laws, under specified conditions and if the department makes one of specified findings.* A violation of the hazardous waste control laws is a crime.

This bill would authorize, until January 1, 2017, the Department of Toxic Substances Control, in consultation with the Department of Resources Recycling and Recovery, the State Water Resources Control

Board, and affected local air quality management districts, to adopt regulations establishing alternative management standards for a metal shredding facility for hazardous waste management activities within the jurisdiction of the Department of Toxic Substances Control, that would apply in lieu of the hazardous waste management standards if the department performs specified actions. The bill would include among those department actions preparing a preliminary analysis and a final analysis evaluating the hazardous waste management activities to which the alternative management standards would apply. The bill would require the department to provide notice that it proposes to adopt alternative management standards. The bill would prohibit the department from adopting alternative management standards that are less stringent than applicable standards under federal law and would require treated metal shredder waste to be disposed of in a specified manner. The bill would require the department to complete the analysis of the hazardous waste management activities and the subsequent regulatory action before January 1, 2017, and would make all hazardous waste determinations and policies, procedures, or guidance issued by the department before January 1, 2014, relating to metal shredder waste or treated metal shredder waste inoperative once the department has ~~taken regulatory action~~ *completed that analysis and either rescinds the conditional nonhazardous waste classification of that waste or adopts alternative management standards pursuant to this bill.* Because a violation of these requirements would be a crime, this bill would impose a state-mandated local program.

The bill would authorize the department to collect an annual fee from metal shredding facilities at a rate sufficient to cover the costs of the department to implement these provisions.

(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 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. The Legislature finds and declares all of the
2 following:

1 (a) Before 1984, all metal shredder waste was considered not
2 to be hazardous waste and was disposed of or used as alternative
3 daily cover in municipal solid waste landfills.

4 (b) In 1984, ~~California deemed metal shredder waste~~ *due to the*
5 *adoption of new state hazardous waste regulations, metal shredder*
6 *waste was classified* as a non-RCRA hazardous waste, or California
7 hazardous waste, due to the presence of lead, cadmium, copper,
8 and zinc at levels above the state’s regulatory thresholds, as well
9 as polychlorinated biphenyls in concentrations that, on some
10 occasions, exceeded either the federal or the California regulatory
11 thresholds, or both.

12 (c) Between 1986 and 1992, the Toxic Substances Control
13 Division of the Department of Health Services, which was the
14 predecessor to the Department of Toxic Substances Control
15 (DTSC), issued conditional nonhazardous waste classifications
16 *pursuant to subdivision (f) of Section 66260.200 of Title 22 of the*
17 *California Code of Regulations*, also referred to as “f letters,” to
18 seven shredder facilities in California that treated their metal
19 shredder waste to ~~affix the hazardous components into waste.~~
20 *stabilize the metals in the waste and reduce their solubility.* Once
21 a facility operator received a nonhazardous waste classification,
22 treated metal shredder waste was no longer regulated as a
23 hazardous ~~waste at the facility.~~ *waste.*

24 (d) In early 2001, DTSC began an initiative to evaluate the
25 adequacy of the metal shredder waste policy and compliance with
26 the conditional nonhazardous waste classifications, which included
27 new sampling and analysis. The *draft* report from that initiative
28 recommended rescinding the conditional nonhazardous waste
29 classifications. ~~However, DTSC took no further action.~~

30 (e) ~~In 2002, DTSC conducted an auto shredder initiative that~~
31 ~~found that both treated and untreated shredder waste exceeded~~
32 ~~state regulatory thresholds for lead, zinc, and cadmium. The report~~
33 ~~recommended that the DTSC policy and procedure that allowed~~
34 ~~the exemption for this waste be rescinded and that the waste stream~~
35 ~~be regulated as hazardous waste. No action was taken at that time.~~

36 (f) ~~In 2002, DTSC issued an “imminent and substantial~~
37 ~~endangerment” order against Pacific Steel Inc., because of dust~~
38 ~~that blew from contaminated piles of waste stored by Pacific Steel~~
39 ~~Inc. out in the open. The contaminated piles, which contained~~
40 ~~polychlorinated biphenyls and toxic metals such as lead, zinc, and~~

1 copper, polluted and threatened to pollute the air and water near
2 the facility. In 2011, DTSC issued a remedial action order against
3 Pacific Steel Inc. to clean up the site.

4 (g)

5 (e) In 2008, DTSC sent letters to operators of metal shredder
6 facilities expressing the department's intention to repeal the
7 conditional authorization that allows metal shredder waste to be
8 classified as a nonhazardous waste. However, DTSC has not, to
9 date, rescinded *did not rescind* the conditional waste classifications.

10 (h) In 2009, the California Integrated Waste Management Board,
11 now known as the Department of Resources Recycling and
12 Recovery, or CalRecycle, issued the "Alternative Daily Cover
13 White Paper." The paper states that, "[s]taff with DTSC have
14 indicated that [metal shredder waste] treatment is not effective,
15 the material should be considered hazardous, and [metal shredder
16 waste] should be required to be disposed [of] in Class I landfills.
17 DTSC staff also indicates that [metal shredder waste] feedstocks
18 are variable and have changed in the last 20 years (more electronic
19 components, white goods, chlorinated plastics). Sampling is costly,
20 and it is difficult to obtain representative samples of [metal
21 shredder waste]."

22 (i) In 2011, DTSC settled an enforcement action against SA
23 Recycling, LLC, which is jointly owned by Sims Metal
24 Management Ltd. and Adams Steel LLC, for \$2.9 million. The
25 action alleged that SA Recycling, LLC violated air pollution laws
26 when an explosion at its Port of Los Angeles metal shredding
27 facility at Terminal Island destroyed its air pollution control system
28 in May of 2007, and the company continued operating for weeks
29 without proper equipment. As a result, approximately 4.4 tons of
30 toxic particulate matter were released into the air, and migrated to
31 bay waters and the community of Wilmington, putting local
32 residents and the environment at risk.

33 (j) In January 2012, the Redwood City, California, metal
34 shredding location of Sims Metal Management was cited by the
35 United States Environmental Protection Agency for polluting the
36 San Francisco Bay. Inspectors found the company had unlawfully
37 discharged polychlorinated biphenyls, lead, copper, mercury, and
38 zinc into Redwood Creek, a tributary of San Francisco Bay. The
39 United States Environmental Protection Agency found
40 polychlorinated biphenyl at levels of 195 times of the accepted

1 levels and lead at levels of more than 10 times of the accepted
2 levels in sediment near where the shredding yard meets Redwood
3 Creek. This enforcement action was resolved in 2013.

4 (k) Additionally, there have been several fires in the last several
5 years at the Sims Metal Management Redwood City facility that
6 have caused the Bay Area Air Quality Management District to ask
7 residents to stay inside. Two fires occurred in November and
8 December of 2013, raising concerns about the proximity of this
9 facility to residents. In the fire in December of 2013, no one was
10 reported injured by the smoke or fire, which was limited to a debris
11 pile about 900 square feet in area and 30 feet tall, but the noxious
12 odor produced by the blaze was detected as far south as South San
13 Jose and across the San Francisco Bay in Oakland and Berkeley.

14 (l) Sims Metal Management’s recycling facilities in Hayward
15 and San Francisco experienced fires in 2009 and 2010, respectively,
16 according to records from the Bay Area Air Quality Management
17 District.

18 (m) In 2011, the United States Fish and Wildlife Service
19 investigated Sims Metal Management for allowing fibrous
20 automobile shredder residue to blow or drift into wetlands around
21 Bair Island, 800 feet downwind from the Redwood City facility.

22 (n) DTSC has failed to revoke the nonhazardous waste
23 classifications for treated shredder waste granted decades ago to
24 the metal shredding industry despite a 2001 legal opinion by DTSC
25 attorneys, which called the exemption “outdated and legally
26 incorrect,” and warnings from the department’s scientists that this
27 waste could become hazardous during the shredding process.

28 (o)

29 (f) It is the intent of the Legislature that the conditional
30 nonhazardous waste ~~classifications~~ *classifications, as documented*
31 *through the historical “f letters,”* be revoked and that metal
32 shredding facilities be thoroughly *evaluated and* regulated to ensure
33 adequate protection of the human health and the environment.

34 SEC. 2. Section 25150.9 is added to the Health and Safety
35 Code, to read:

36 25150.9. (a) The Legislature finds and declares that this section
37 is intended to address the unique circumstances associated with
38 the operation of metal shredding facilities, and the generation and
39 management of wastes generated by metal shredding facilities.
40 The Legislature further declares that this section does not set a

1 precedent applicable to the management, including disposal, of
2 other hazardous wastes.

3 (b) For purposes of this section, “metal shredding facility” means
4 an operation that uses a shredding technique to process end-of-life
5 vehicles, ~~waste appliances, and other forms of scrap metal to~~
6 facilitate the separation and sorting of ferrous metals, nonferrous
7 metals, and other recyclable materials from nonrecyclable materials
8 that are components of the end-of-life vehicles, ~~waste appliances,~~
9 and other forms of *scrap* metal ~~objects containing material to be~~
10 ~~discarded.~~ *objects*. “Metal shredding facility” does not include a
11 feeder yard, a metal crusher, or a metal baler, *if that facility does*
12 *not otherwise conduct metal shredding operations*.

13 (c) The department, in consultation with the Department of
14 Resources Recycling and Recovery, the State Water Resources
15 Control Board, and affected local air quality management districts,
16 may adopt regulations establishing management standards for
17 metal shredding facilities for hazardous waste management
18 activities within the department’s jurisdiction as an alternative to
19 the requirements specified in this chapter and the regulations
20 adopted pursuant to this chapter, if the department does all of the
21 following:

22 (1) Prepares an analysis of the activities to which the alternative
23 management standards will apply pursuant to subdivision (d). The
24 department shall first prepare the analysis as a preliminary analysis
25 and make it available to the public at the same time that the
26 department gives notice, pursuant to Section 11346.4 of the
27 Government Code, that it proposes to adopt the alternative
28 management standards. The department shall include in the notice
29 a statement that the department has prepared a preliminary analysis
30 and a statement concerning where a copy of the preliminary
31 analysis can be obtained. The information in the preliminary
32 analysis shall be updated and the department shall make the
33 analysis available to the public as a final analysis not less than 10
34 working days before the date that the regulation is adopted.

35 (2) Demonstrates at least one of the conclusions set forth in
36 paragraphs (1) to (4), inclusive, of subdivision (e).

37 (3) Imposes, as may be necessary, conditions and limitations
38 as part of the alternative management standards that ensure that
39 the hazardous waste management activity to which the alternative

1 management standards will apply will not pose a significant
2 potential hazard to human health or safety or to the environment.

3 (d) Before the department gives notice of a proposal to adopt
4 the alternative management standards pursuant to subdivision (c),
5 and before the department adopts the regulation, the department
6 shall evaluate the operative environmental and public health
7 regulatory oversight of metal shredding facilities, identifying
8 activities that need to be addressed by the alternative management
9 standards, or other advisable regulatory or statutory changes, and
10 shall evaluate the hazardous waste management activities and
11 prepare, as required by paragraph (1) of subdivision (c), an analysis
12 that addresses all of the following aspects of the activity, to the
13 extent that the alternative management standards can affect these
14 aspects of the activity:

15 (1) The types of hazardous waste and the estimated amounts of
16 each hazardous waste that are managed as part of the activity and
17 the hazards to human health or safety or to the environment posed
18 by reasonably foreseeable mismanagement of those hazardous
19 wastes and their hazardous constituents. The estimate of the
20 amounts of each hazardous waste that are managed as part of the
21 activity shall be based upon information reasonably available to
22 the department.

23 (2) The complexity of the activity, and the amount and
24 complexity of operator training, equipment installation and
25 maintenance, and monitoring that are required to ensure that the
26 activity is conducted in a manner that safely and effectively
27 manages each hazardous waste.

28 (3) The chemical or physical hazards that are associated with
29 the activity and the degree to which those hazards are similar to,
30 or different from, the chemical or physical hazards that are
31 associated with the production processes that are carried out in the
32 facilities that produce the hazardous waste that is managed as part
33 of the activity.

34 (4) The types of accidents that might reasonably be foreseen to
35 occur during the management of particular types of hazardous
36 waste streams as part of the activity, the likely consequences of
37 those accidents, and the reasonably available actual accident history
38 associated with the activity.

39 (5) The types of locations where the activity may be carried out,
40 an estimate of the number of these locations, and the types of

1 hazards that may be posed by proximity to the land uses described
2 in Section 25227. The estimate of the number of locations where
3 the activity may be carried out shall be based upon information
4 reasonably available to the department.

5 (e) The department shall not give notice proposing the adoption
6 of, and the department shall not adopt, a regulation pursuant to
7 subdivision (c) unless it first demonstrates at least one of the
8 following, ~~for each requirement that the alternative management~~
9 ~~standards are intended to replace~~, using the information developed
10 in the analysis prepared pursuant to subdivision (d):

11 (1) The requirements that the alternative management standards
12 replace are not significant or important in either of the following
13 situations:

14 (A) Preventing or mitigating potential hazards to human health
15 or safety or to the environment posed by the activity.

16 (B) Ensuring that the activity is conducted in compliance with
17 other applicable requirements of this chapter and the regulations
18 adopted pursuant to this chapter.

19 (2) A requirement is imposed and enforced by another public
20 agency that provides protection of human health and safety and
21 the environment that is as effective as, and equivalent to, the
22 protection provided by the requirement, or requirements, that the
23 alternative management standards replace.

24 (3) Conditions or limitations imposed as part of the alternative
25 management standards will provide protection of human health
26 and safety and the environment equivalent to the requirement, or
27 requirements, that the alternative management standards replace.

28 (4) Conditions or limitations imposed as part of the alternative
29 management standards accomplish the same regulatory purpose
30 as the requirement, or requirements, that the alternative
31 management standards replace, but at less cost or with greater
32 administrative convenience, and without increasing potential risks
33 to human health or safety or to the environment.

34 (f) The department shall not adopt alternative management
35 standards pursuant to this section if those standards are less
36 stringent than the standards that would otherwise apply under the
37 federal act.

38 (g) Nothing in the alternative management standards authorized
39 by this section is intended to duplicate or conflict with other laws,
40 rules, or regulations adopted by other state agencies or affected

1 local air quality management districts. The department shall, as
2 much as possible, align the alternative management standards with
3 the laws, rules, and regulations of other state agencies or affected
4 local air quality management districts.

5 (h) The owner or operator of a metal shredding facility that may
6 be subject to the alternative management standards shall provide
7 to the department all information and data determined by the
8 department to be relevant to the evaluation and preparation of the
9 analysis required by paragraphs (1) to (5), inclusive, of subdivision
10 (d).

11 (i) The alternative management standards adopted by the
12 department pursuant to this section may, to the extent it is
13 consistent with the standards that would otherwise apply under
14 the federal act, allow for treated metal shredder waste to be
15 classified and managed as nonhazardous waste, provided that the
16 analysis prepared pursuant to subdivision (d) demonstrates that
17 classification and management as hazardous waste is not necessary
18 to prevent or mitigate potential hazards to human health or safety
19 or to the environment posed by the treated metal shredder waste.

20 ~~(j) (1) Notwithstanding Sections 25189.5 and 25201, treated~~
21 ~~metal shredder waste shall be disposed of in either a class I~~
22 ~~hazardous waste landfill or, if the management standards adopted~~
23 ~~by the department pursuant to this section result in it being~~
24 ~~classified as a nonhazardous waste, as specified by the alternative~~
25 ~~management standards.~~

26 ~~(2) If the alternative management standards adopted by the~~
27 ~~department pursuant to this section result in treated metal shredder~~
28 ~~waste being classified as nonhazardous waste and deem it~~
29 ~~appropriate, the material may be used as alternative daily cover or~~
30 ~~for beneficial reuse pursuant to Section 41781.3 of the Public~~
31 ~~Resources Code and its implementing regulations.~~

32 ~~(3) Upon the department's final regulatory action required in~~
33 ~~regard to the consideration of alternative management standards~~
34 ~~pursuant to this section, the current disposal and beneficial use~~
35 ~~practices determinations allowed pursuant to the hazardous waste~~
36 ~~determinations issued by the department before January 1, 2014,~~
37 ~~shall cease to apply.~~

38 *(j) (1) The disposal of treated metal shredder waste shall be*
39 *regulated pursuant to this chapter and the regulations adopted*

1 *pursuant to this chapter, unless alternative management standards*
2 *are adopted by the department pursuant to this section.*

3 *(2) If the alternative management standards adopted by the*
4 *department pursuant to this section result in treated metal shredder*
5 *waste being classified as nonhazardous waste, the material may*
6 *be managed in either of the following manners:*

7 *(A) It may be used as alternative daily cover or for beneficial*
8 *reuse pursuant to Section 41781.3 of the Public Resources Code*
9 *and the regulations adopted to implement that section.*

10 *(B) It may be placed in a unit that meets the waste discharge*
11 *requirements issued pursuant to Division 7 (commencing with*
12 *Section 13000) of the Water Code that allow for discharges of*
13 *designated waste, as defined in Section 13173 of the Water Code,*
14 *or of treated metal shredder waste.*

15 *(3) This section does not limit the use of treated metal shredder*
16 *waste as alternative daily cover pursuant to Section 41781.3 of*
17 *the Public Resources Code and the regulations adopted to*
18 *implement that section, or for other authorized beneficial uses if*
19 *that use is made under the authority of the hazardous waste*
20 *determinations governing metal shredder waste issued by the*
21 *department before January 1, 2014, and that use is before the*
22 *department does either of the following:*

23 *(A) Rescinds the conditional nonhazardous waste classifications*
24 *issued pursuant to Section 25143 with regard to treated metal*
25 *shredder waste.*

26 *(B) Completes the adoption of alternative management*
27 *standards pursuant to this section.*

28 *(k) The department shall complete the analysis described in*
29 *paragraph (1) of subdivision (c) and subsequent regulatory action*
30 *before January 1, 2017. All hazardous waste determinations and*
31 *policies, procedures, or guidance issued by the department before*
32 *January 1, 2014, governing or related to the generation, treatment,*
33 *and management of metal shredder waste or treated metal shredder*
34 *waste shall be inoperative and have no further effect once the*
35 *department has taken the required regulatory action. completes its*
36 *analysis pursuant to subdivision (c) and takes one of the following*
37 *actions:*

38 *(1) Rescinds the conditional nonhazardous waste classifications*
39 *issued pursuant to Section 25143 with regard to that waste.*

1 (2) *Adopts alternative management standards pursuant to this*
2 *section.*

3 (l) The authority of the department to adopt original regulations
4 pursuant to this section shall remain in effect only until January
5 1, 2017, unless a later enacted statute, which is enacted before
6 January 1, 2017, deletes or extends that date. This subdivision does
7 not invalidate any regulation adopted pursuant to this section before
8 the expiration of the department's authority.

9 (m) A regulation adopted pursuant to this section on or before
10 January 1, 2017, shall continue in force and effect after that date,
11 until repealed or revised by the department.

12 SEC. 3. Section 25150.9.1 is added to the Health and Safety
13 Code, to read:

14 25150.9.1. The department is authorized to collect an annual
15 fee from all metal shredding facilities that are subject to the
16 requirements of this chapter or to the alternative management
17 standards adopted pursuant to Section 25150.9. The department
18 shall establish and adopt by regulation a fee schedule that is set at
19 a rate sufficient to reimburse the department's costs to implement
20 this chapter as applicable to metal shredder facilities. The fee
21 schedule established by the department may be updated periodically
22 as necessary and shall provide for the assessment of no more than
23 the reasonable costs of the department to implement this chapter.

24 SEC. 4. Section 25150.9.2 is added to the Health and Safety
25 Code, to read:

26 ~~25150.9.2. If treated metal shredder waste is accepted by a~~
27 ~~solid waste landfill that manages and disposes of the treated metal~~
28 ~~shredder waste in accordance with the alternative management~~
29 ~~standards adopted by the department pursuant to Section 25150.9,~~
30 ~~the treated metal shredder waste, upon acceptance by the solid~~
31 ~~waste landfill, shall thereafter be deemed to be a solid waste, and~~
32 ~~not a hazardous waste, for purposes of this chapter and Section~~
33 ~~40191 of the Public Resources Code.~~

34 25150.9.2. *Treated metal shredder waste that meets both of*
35 *the following conditions shall be deemed to be a solid waste for*
36 *the purposes of this chapter and Section 40191 of the Public*
37 *Resources Code:*

38 (a) *The waste is accepted by a solid waste landfill for disposal*
39 *or for use as alternative daily cover or other beneficial uses.*

1 **(b)** *The management of that waste complies with the alternative*
2 *management standards adopted by the department pursuant to*
3 *Section 25150.9.*

4 SEC. 5. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.