

AMENDED IN ASSEMBLY AUGUST 4, 2014

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~~ *Department of Toxic Substances Control* 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 metal shredding facility facilities 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 law.

The bill would require the disposal of treated metal shredder waste to be regulated pursuant to the hazardous waste control laws, unless the department adopts those alternative management standards and would authorize treated metal shredder waste to be used as alternative daily cover or for beneficial reuse or placed in a specified disposal unit, if the alternative management standards result in the treated metal shredder waste being classified as nonhazardous waste. 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 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:

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

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

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

1 (e) In 2008, DTSC sent letters to operators of metal shredder
2 facilities expressing the department's intention to repeal the
3 conditional authorization that allows metal shredder waste to be
4 classified as a nonhazardous waste. However, DTSC did not
5 rescind the conditional waste classifications.

6 (f) It is the intent of the Legislature that the conditional
7 nonhazardous waste classifications, as documented through the
8 historical "f letters," be revoked and that metal shredding facilities
9 be thoroughly evaluated and regulated to ensure adequate
10 protection of the human health and the environment.

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

13 25150.9. (a) The Legislature finds and declares that this section
14 is intended to address the unique circumstances associated with
15 the operation of metal shredding facilities, and the generation and
16 management of wastes generated by metal shredding facilities.
17 The Legislature further declares that this section does not set a
18 precedent applicable to the management, including disposal, of
19 other hazardous wastes.

20 (b) For purposes of this section, "metal shredding facility" means
21 an operation that uses a shredding technique to process end-of-life
22 vehicles, appliances, and other forms of scrap metal to facilitate
23 the separation and sorting of ferrous metals, nonferrous metals,
24 and other recyclable materials from nonrecyclable materials that
25 are components of the end-of-life vehicles, appliances, and other
26 forms of scrap ~~metal objects~~. *metal*. "Metal shredding facility"
27 does not include a feeder yard, a metal crusher, or a metal baler,
28 if that facility does not otherwise conduct metal shredding
29 operations.

30 (c) The department, in consultation with the Department of
31 Resources Recycling and Recovery, the State Water Resources
32 Control Board, and affected local air quality management districts,
33 may adopt regulations establishing management standards for
34 metal shredding facilities for hazardous waste management
35 activities within the department's jurisdiction as an alternative to
36 the requirements specified in this chapter and the regulations
37 adopted pursuant to this chapter, if the department does all of the
38 following:

39 (1) Prepares an analysis of the activities to which the alternative
40 management standards will apply pursuant to subdivision (d). The

1 department shall first prepare the analysis as a preliminary analysis
2 and make it available to the public at the same time that the
3 department gives notice, pursuant to Section 11346.4 of the
4 Government Code, that it proposes to adopt the alternative
5 management standards. The department shall include in the notice
6 a statement that the department has prepared a preliminary analysis
7 and a statement concerning where a copy of the preliminary
8 analysis can be obtained. The information in the preliminary
9 analysis shall be updated and the department shall make the
10 analysis available to the public as a final analysis not less than 10
11 working days before the date that the regulation is adopted.

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

14 (3) Imposes, as may be necessary, conditions and limitations
15 as part of the alternative management standards that ensure that
16 the hazardous waste management activity to which the alternative
17 management standards will apply will not pose a significant
18 potential hazard to human health or safety or to the environment.

19 (d) Before the department gives notice of a proposal to adopt
20 the alternative management standards pursuant to subdivision (c),
21 and before the department adopts the regulation, the department
22 shall evaluate the operative environmental and public health
23 regulatory oversight of metal shredding facilities, identifying
24 activities that need to be addressed by the alternative management
25 standards, or other advisable regulatory or statutory changes, and
26 shall evaluate the hazardous waste management activities and
27 prepare, as required by paragraph (1) of subdivision (c), an analysis
28 that addresses all of the following aspects of the activity, to the
29 extent that the alternative management standards can affect these
30 aspects of the activity:

31 (1) The types of hazardous waste and the estimated amounts of
32 each hazardous waste that are managed as part of the activity and
33 the hazards to human health or safety or to the environment posed
34 by reasonably foreseeable mismanagement of those hazardous
35 wastes and their hazardous constituents. The estimate of the
36 amounts of each hazardous waste that are managed as part of the
37 activity shall be based upon information reasonably available to
38 the department.

39 (2) The complexity of the activity, and the amount and
40 complexity of operator training, equipment installation and

1 maintenance, and monitoring that are required to ensure that the
2 activity is conducted in a manner that safely and effectively
3 manages each hazardous waste.

4 (3) The chemical or physical hazards that are associated with
5 the activity and the degree to which those hazards are similar to,
6 or different from, the chemical or physical hazards that are
7 associated with the production processes that are carried out in the
8 facilities that produce the hazardous waste that is managed as part
9 of the activity.

10 (4) The types of accidents that might reasonably be foreseen to
11 occur during the management of particular types of hazardous
12 waste streams as part of the activity, the likely consequences of
13 those accidents, and the reasonably available actual accident history
14 associated with the activity.

15 (5) The types of locations where the activity may be carried out,
16 an estimate of the number of these locations, and the types of
17 hazards that may be posed by proximity to the land uses described
18 in Section 25227. The estimate of the number of locations where
19 the activity may be carried out shall be based upon information
20 reasonably available to the department.

21 (e) The department shall not give notice proposing the adoption
22 of, and the department shall not adopt, a regulation pursuant to
23 subdivision (c) unless it first demonstrates at least one of the
24 following, using the information developed in the analysis prepared
25 pursuant to subdivision (d):

26 (1) The requirements that the alternative management standards
27 replace are not significant or important in either of the following
28 situations:

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

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

34 (2) A requirement is imposed and enforced by another public
35 agency that provides protection of human health and safety and
36 the environment that is as effective as, and equivalent to, the
37 protection provided by the requirement, or requirements, that the
38 alternative management standards replace.

39 (3) Conditions or limitations imposed as part of the alternative
40 management standards will provide protection of human health

1 and safety and the environment equivalent to the requirement, or
2 requirements, that the alternative management standards replace.

3 (4) Conditions or limitations imposed as part of the alternative
4 management standards accomplish the same regulatory purpose
5 as the requirement, or requirements, that the alternative
6 management standards replace, but at less cost or with greater
7 administrative convenience, and without increasing potential risks
8 to human health or safety or to the environment.

9 (f) The department shall not adopt alternative management
10 standards pursuant to this section if those standards are less
11 stringent than the standards that would otherwise apply under the
12 federal act.

13 (g) Nothing in the alternative management standards authorized
14 by this section is intended to duplicate or conflict with other laws,
15 rules, or regulations adopted by other state agencies or affected
16 local air quality management districts. The department shall, as
17 much as possible, align the alternative management standards with
18 the laws, rules, and regulations of other state agencies or affected
19 local air quality management districts.

20 (h) The owner or operator of a metal shredding facility that may
21 be subject to the alternative management standards shall provide
22 to the department all information and data determined by the
23 department to be relevant to the evaluation and preparation of the
24 analysis required by paragraphs (1) to (5), inclusive, of subdivision
25 (d).

26 (i) The alternative management standards adopted by the
27 department pursuant to this section may, to the extent it is
28 consistent with the standards that would otherwise apply under
29 the federal act, allow for treated metal shredder waste to be
30 classified and managed as nonhazardous waste, provided that the
31 analysis prepared pursuant to subdivision (d) demonstrates that
32 classification and management as hazardous waste is not necessary
33 to prevent or mitigate potential hazards to human health or safety
34 or to the environment posed by the treated metal shredder waste.

35 (j) (1) The disposal of treated metal shredder waste shall be
36 regulated pursuant to this chapter and the regulations adopted
37 pursuant to this chapter, unless alternative management standards
38 are adopted by the department pursuant to this section.

39 (2) If the alternative management standards adopted by the
40 department pursuant to this section result in treated metal shredder

1 waste being classified as nonhazardous waste, the material may
2 be managed in either of the following manners:

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

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

11 (3) This section does not limit the *disposal or* use of treated
12 metal shredder waste as alternative daily cover pursuant to Section
13 41781.3 of the Public Resources Code and the regulations adopted
14 to implement that section, or for other authorized beneficial uses
15 if ~~that use~~ *that disposal or use is at a facility meeting the* requirements of subparagraph (B) of paragraph (2), is made under
16 the authority of the hazardous waste determinations governing
17 metal shredder waste issued by the department before January 1,
18 2014, and ~~that use~~ is *made* before the department does either of
19 the following:

20 (A) Rescinds the conditional nonhazardous waste classifications
21 issued pursuant to ~~Section 25143 subdivision (f) of Section~~
22 *66260.200 of Title 22 of the California Code of Regulations* with
23 regard to treated metal shredder waste.

24 (B) Completes the adoption of alternative management standards
25 pursuant to this section.

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

35 (1) Rescinds the conditional nonhazardous waste classifications
36 issued pursuant to ~~Section 25143 subdivision (f) of Section~~
37 *66260.200 of Title 22 of the California Code of Regulations* with
38 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. Treated metal shredder waste that ~~meets both of~~
27 ~~the following conditions shall be deemed to be a solid waste for~~
28 ~~the purposes of this chapter and Section 40191 of the Public~~
29 ~~Resources Code:~~

30 (a) ~~The waste is accepted by a solid waste landfill for disposal~~
31 ~~or for use as alternative daily cover or other beneficial uses.~~

32 (b) ~~The management of that waste complies with the alternative~~
33 ~~management standards adopted by the department pursuant to~~
34 ~~Section 25150.9. is managed in accordance with the alternative~~
35 ~~management standards adopted by the department pursuant to~~
36 ~~Section 25150.9 and that is accepted by a solid waste landfill or~~
37 ~~other authorized location for disposal or for use as alternative~~
38 ~~daily cover or other beneficial use shall thereafter be deemed to~~
39 ~~be a solid waste for purposes of this chapter and Section 40191~~
40 ~~of the Public Resources Code.~~

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

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