

Senate Bill No. 1249

CHAPTER 756

An act to add Sections 25150.82, 25150.84, and 25150.86 to, and to repeal Section 25143.6 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 28, 2014. Filed with Secretary of State September 28, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1249, 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 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, 2018, 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 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.

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 at a specified type of disposal unit as alternative daily cover or for beneficial reuse or placed in that specified type of 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, 2018, and would make all hazardous waste classifications and policies, procedures, or guidance issued by the department before January 1, 2014, relating to metal shredder waste or treated metal shredder waste inoperative on January 1, 2018, if 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 and would require the department to establish and adopt regulations necessary to administer the fee and to establish a fee schedule at a rate sufficient to cover the costs of the department to implement these provisions. The bill would establish a separate subaccount in the Hazardous Waste Control Account, and would require that the fees be deposited into the subaccount, to be available upon appropriation by the Legislature. The bill would exempt a metal shredder facility which pays this annual fee from certain hazardous waste control law fees as those fees pertain to metal shredding activities and the generation, handling, management, transportation, and disposal of metal shredder waste.

(2) Existing law provides that, in general, regulations shall be adopted pursuant to the Administrative Procedure Act. Existing law requires emergency regulations be approved by the Office of Administrative Law and prohibits an emergency regulation from being in effect more than 180 days unless certain procedures are followed.

The bill would authorize a regulation adopted pursuant to the above-described fee provisions to be adopted as an emergency regulation, as specified. The bill would require that such an emergency regulation be filed with, but not be repealed by, the Office of Administrative Law, and would require that the regulation remain in effect for 2 years or until revised by the department, whichever occurs sooner.

(3) Existing law, on or before February 15, 1988, required specified regional water quality control boards to prepare a list of specified types of landfills that are authorized to accept and dispose of shredder waste.

This bill would repeal this provision.

(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.

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

SECTION 1. The Legislature finds and declares all of the following:

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

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

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

(d) In early 2001, DTSC began an initiative to evaluate the adequacy of the metal shredder waste policy and compliance with the conditional nonhazardous waste classifications, which included new sampling and analysis. The draft report from that initiative recommended rescinding the conditional nonhazardous waste classifications.

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

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

SEC. 2. Section 25143.6 of the Health and Safety Code is repealed.

SEC. 3. Section 25150.82 is added to the Health and Safety Code, to read:

25150.82. (a) The Legislature finds and declares that this section is intended to address the unique circumstances associated with the operation of metal shredding facilities, and the generation and management of wastes generated by metal shredding facilities. The Legislature further declares that this section does not set a precedent applicable to the management, including disposal, of other hazardous wastes.

(b) For purposes of this section, “metal shredding facility” means an operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal to facilitate the separation and sorting of ferrous metals, nonferrous metals, and other recyclable materials from nonrecyclable materials that are components of the end-of-life vehicles,

appliances, and other forms of scrap metal. “Metal shredding facility” does not include a feeder yard, a metal crusher, or a metal baler, if that facility does not otherwise conduct metal shredding operations.

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

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

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

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

(d) Before the department gives notice of a proposal to adopt the alternative management standards pursuant to subdivision (c), and before the department adopts the regulation, the department shall do all of the following:

(1) Evaluate the operative environmental and public health regulatory oversight of metal shredding facilities, identifying activities that need to be addressed by the alternative management standards, or other advisable regulatory or statutory changes.

(2) Evaluate the hazardous waste management activities.

(3) Prepare, as required by paragraph (1) of subdivision (c), an analysis that addresses all of the following aspects of the activity, to the extent that the alternative management standards can affect these aspects of the activity:

(A) The types of hazardous waste and the estimated amounts of each hazardous waste that are managed as part of the activity and the hazards to human health or safety or to the environment posed by reasonably foreseeable mismanagement of those hazardous wastes and their hazardous constituents. The estimate of the amounts of each hazardous waste that are

managed as part of the activity shall be based upon information reasonably available to the department.

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

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

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

(E) The types of locations where hazardous waste management activities associated with metal shredding and management of treated metal shredder waste may be carried out and the types of hazards or risks that may be posed by proximity to the land uses described in Section 25227. The estimate of the number of locations where the activity may be carried out shall be based upon information reasonably available to the department.

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

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

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

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

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

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

(4) Conditions or limitations imposed as part of the alternative management standards accomplish the same regulatory purpose as the requirement, or requirements, that the alternative management standards replace, but at less cost or with greater administrative convenience, and

without increasing potential risks to human health or safety or to the environment.

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

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

(h) The owner or operator of a metal shredding facility, or solid waste disposal facility that has accepted treated metal shredder waste, that may be subject to the alternative management standards shall provide to the department all information and data determined by the department to be relevant to the evaluation and preparation of the analysis required by subparagraphs (A) to (E), inclusive, of paragraph (3) of subdivision (d).

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

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

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

(A) It may be used at a unit described in subparagraph (B) as alternative daily cover or for beneficial reuse pursuant to Section 41781.3 of the Public Resources Code and the regulations adopted to implement that section.

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

(3) This section does not limit the disposal or use of treated metal shredder waste as alternative daily cover pursuant to Section 41781.3 of the Public Resources Code and the regulations adopted to implement that section, or for other authorized beneficial uses if that disposal or use is at a facility meeting the requirements of subparagraph (B) of paragraph (2), is made under the authority of the hazardous waste determinations governing metal

shredder waste issued by the department before January 1, 2014, and is made before the department does either of the following:

(A) Rescinds, in accordance with applicable law, the conditional nonhazardous waste classifications issued pursuant to subdivision (f) of Section 66260.200 of Title 22 of the California Code of Regulations with regard to treated metal shredder waste.

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

(k) The department shall complete the analysis described in paragraph (1) of subdivision (c) and subsequent regulatory action before January 1, 2018. All hazardous waste classifications and policies, procedures, or guidance issued by the department before January 1, 2014, governing or related to the generation, treatment, and management of metal shredder waste or treated metal shredder waste shall be inoperative and have no further effect on January 1, 2018, if the department completes its analysis pursuant to subdivision (c) and takes one of the following actions:

(1) Rescinds the conditional nonhazardous waste classifications issued pursuant to subdivision (f) of Section 66260.200 of Title 22 of the California Code of Regulations with regard to that waste.

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

(l) The authority of the department to adopt original regulations pursuant to this section shall remain in effect only until January 1, 2018, unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date. This subdivision does not invalidate any regulation adopted pursuant to this section before the expiration of the department's authority.

(m) A regulation adopted pursuant to this section on or before January 1, 2018, shall continue in force and effect after that date, until repealed or revised by the department.

SEC. 4. Section 25150.84 is added to the Health and Safety Code, to read:

25150.84. (a) The department is authorized to collect an annual fee from all metal shredding facilities that are subject to the requirements of this chapter or to the alternative management standards adopted pursuant to Section 25150.82. The department shall establish and adopt regulations necessary to administer this fee and to establish a fee schedule that is set at a rate sufficient to reimburse the department's costs to implement this chapter as applicable to metal shredder facilities. The fee schedule established by the department may be updated periodically as necessary and shall provide for the assessment of no more than the reasonable and necessary costs of the department to implement this chapter, as applicable to metal shredder facilities.

(b) The Controller shall establish a separate subaccount in the Hazardous Waste Control Account. The fees collected pursuant to this section shall be deposited into the subaccount and be available for expenditure by the department upon appropriation by the Legislature.

(c) A regulation adopted pursuant to this section may be adopted as an emergency regulation in accordance with Chapter 3.5 (commencing with

Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, an emergency regulation adopted by the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

(d) (1) A metal shredding facility paying an annual fee in accordance with this section shall be exempt from the following fees as the fees pertain to metal shredding activities and the generation, handling, management, transportation, and disposal of metal shredder waste:

(A) A fee imposed pursuant to subdivision (a) or (d) of Section 25205.7.

(B) A disposal fee imposed pursuant to Section 25174.1.

(C) A facility fee imposed pursuant to Section 25205.2.

(D) A generator fee imposed pursuant to Section 25205.5.

(E) A transportable treatment unit fee imposed pursuant to Section 25205.14.

(2) A metal shredding facility is not exempt from the fees listed in paragraph (1) for any other hazardous waste the metal shredding facility generates and handles.

SEC. 5. Section 25150.86 is added to the Health and Safety Code, to read:

25150.86. Treated metal shredder waste that is managed in accordance with the alternative management standards adopted by the department pursuant to Section 25180.82 and that is accepted by a solid waste landfill or other authorized location for disposal or for use as alternative daily cover or other beneficial use shall thereafter be deemed to be a solid waste for purposes of this chapter and Section 40191 of the Public Resources Code.

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