

ASSEMBLY BILL

No. 901

Introduced by Assembly Member Gordon

February 26, 2015

An act to amend Section 41821.5 of, to amend and renumber Section 41821.6 of, and to add Sections 41821.6, 41821.7, and 41821.8 to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 901, as introduced, Gordon. Solid waste: reporting requirements: enforcement.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste. Existing law requires disposal facility operators to submit information to counties from periodic tracking surveys on the disposal tonnages that are disposed of at the disposal facility by jurisdiction or region of origin. Existing law requires solid waste handlers and transfer station operators to provide information to the disposal facility on the origin of the solid waste they deliver to the disposal facility. Existing law requires recycling and composting facilities to submit periodic information to counties on the types and quantities of materials that are disposed of, sold to end users, or sold to exporters or transporters for sale outside of the state, by county of origin. Existing law requires counties to submit periodic reports to the cities within the county, to any regional agency of which the county is a member, and to the Department of Resources, Recycling and Recovery on the amounts of solid waste disposed of by jurisdiction or region of origin, and on the categories and amounts of solid waste diverted to recycling and

composting facilities within the county or region. Existing law authorizes the department to adopt regulations in this regard.

This bill would revise these provisions by, among other things, requiring recycling and composting operations and facilities to submit specified information directly to the department, rather than to counties, and would delete the requirement for counties to submit that information to cities, regional agencies, and the department. The bill would delete references to periodic tracking surveys. The bill would make other related changes to the various reporting requirements. The bill would provide for imposition of civil penalties on any person who refuses or fails to submit information required by the governing regulations, and on any person who knowingly or willfully files a false report, refuses to permit the department to inspect or examine associated records, or alters, cancels, or obliterates entries in the records, as specified. The bill would provide that the civil penalties may be imposed either in a civil action or administratively pursuant to process specified in the bill. The bill would provide for local agencies, on request, to be designated by the department to exercise the enforcement authority. The bill would require recovered civil penalties to be deposited in the Integrated Waste Management Account if recovered by action of the department, or to be retained by the local agency taking the enforcement action, as applicable. The bill would require moneys retained by a local agency pursuant to these provisions to be expended on specified solid waste activities.

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

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

1 SECTION 1. Section 41821.5 of the Public Resources Code
 2 is amended to read:
 3 41821.5. (a) Disposal facility operators shall submit to counties
 4 information ~~from periodic tracking surveys~~ on the disposal
 5 tonnages by jurisdiction or region of origin that are disposed of at
 6 each disposal facility. To enable disposal facility operators to
 7 provide that information, solid waste handlers and transfer station
 8 operators shall provide information to disposal facility operators
 9 on the origin of the solid waste that they deliver to the disposal
 10 facility.

1 (b) Recycling and composting *operations and* facilities shall
2 submit periodic information to ~~counties~~ *the department* on the
3 types and quantities of materials that are disposed of, *sold or*
4 *transferred to other recycling or composting facilities*, sold to end
5 users *inside of the state or outside of the state*, or that are sold to
6 exporters, *brokers*, or transporters for sale outside of the state, ~~by~~
7 ~~county of origin~~. ~~When materials are sold or transferred by one~~
8 ~~recycling or composting facility to another, for other than an end~~
9 ~~use of the material or for export, the seller or transferor of the~~
10 ~~material shall inform the buyer or transferee of the county of origin~~
11 ~~of the materials. The reporting requirements of this subdivision~~
12 ~~do not apply to entities that sell the byproducts of a manufacturing~~
13 ~~process. The department may provide this information to~~
14 ~~jurisdictions upon request.~~

15 (c) Each county shall submit ~~periodic~~ reports to the cities within
16 the county, to any regional agency of which it is a member agency,
17 and to the ~~board~~ *department*, on the amounts of solid waste
18 disposed by jurisdiction or region of origin, as specified in
19 subdivision (a), ~~and on the categories and amounts of solid waste~~
20 ~~diverted to recycling and composting facilities within the county~~
21 ~~or region, as specified in subdivision (b).~~

22 (d) The ~~board~~ *department* may adopt regulations pursuant to
23 this section requiring practices and procedures that are reasonable
24 and necessary to ~~perform the periodic tracking surveys required~~
25 ~~by~~ *implement* this section, and that provide a representative
26 accounting of solid wastes *and recyclable materials* that are
27 handled, processed, or disposed. Those regulations ~~or periodic~~
28 ~~tracking surveys~~ approved by the ~~board~~ *department* shall not
29 impose an unreasonable burden on waste *and recycling* handling,
30 processing, or disposal operations or otherwise interfere with the
31 safe handling, processing, and disposal of solid waste *and*
32 *recyclables*.

33 (e) *Any person who refuses or fails to submit information*
34 *required by regulations adopted pursuant to this section is liable*
35 *for a civil penalty of not less than five hundred dollars (\$500) and*
36 *not more than five thousand dollars (\$5,000) for each violation of*
37 *a separate provision or, for continuing violations, for each day*
38 *that the violation continues.*

39 (f) *Any person who knowingly or willfully files a false report,*
40 *or any person who refuses to permit the department or any of its*

1 *representatives to make inspection or examination of records, or*
2 *who fails to keep any records for the inspection of the department,*
3 *or who alters, cancels, or obliterates entries in the records for the*
4 *purpose of falsifying the records as required by regulations*
5 *adopted pursuant to this section, is liable for a civil penalty of not*
6 *less than five hundred dollars (\$500) and not more than ten*
7 *thousand dollars (\$10,000) for each violation of a separate*
8 *provision or, for continuing violations, for each day that the*
9 *violation continues.*

10 (g) *Liability under this section may be imposed in a civil action,*
11 *or liability may be imposed administratively pursuant to this*
12 *article.*

13 (h) *Upon request of a city, county, or city and county, that city,*
14 *county, or city and county may be designated, in writing, by the*
15 *department, to exercise the enforcement authority granted to the*
16 *department under this article. Any city, county, or city and county*
17 *so designated shall follow the same procedures set forth for the*
18 *department under this article. This designation shall not limit the*
19 *authority of the department to take action it deems necessary or*
20 *proper to ensure enforcement of this article.*

21 (i) *Notwithstanding Title 5 (commencing with Section 3426) of*
22 *Part 1 of Division 4 of the Civil Code and Article 11 (commencing*
23 *with Section 1060) of Chapter 4 of Division 8 of the Evidence*
24 *Code, all records required to be kept pursuant to this section and*
25 *implementing regulations shall be subject to inspection and copying*
26 *by the department or by a governmental entity designated by the*
27 *department.*

28 (j) *Notwithstanding the Uniform Electronic Transactions Act*
29 *(Title 2.5 (commencing with Section 1633.1) of Part 2 of Division*
30 *3 of the Civil Code), reports required by this section shall be*
31 *submitted electronically, using an electronic reporting format*
32 *system established by the department.*

33 SEC. 2. Section 41821.6 of the Public Resources Code is
34 amended and renumbered to read:

35 ~~41821.6.~~

36 41821.9. To assist market development efforts by the board,
37 local agencies, and the private sector, the board shall use existing
38 data resources collected from recycling, composting, and disposal
39 facilities, or from other sources, to provide periodic information
40 on the recovery and availability of recycled materials.

1 SEC. 3. Section 41821.6 is added to the Public Resources Code,
2 to read:

3 41821.6. In order to ensure that records required pursuant to
4 this article are properly maintained, in addition to inspecting
5 records, the department or its designee may conduct audits, perform
6 site inspections, observe facility operations, and otherwise
7 investigate the recordkeeping and reporting of persons subject to
8 the requirements of this article.

9 SEC. 4. Section 41821.7 is added to the Public Resources Code,
10 to read:

11 41821.7. (a) The department may issue an administrative
12 complaint to any person on whom civil liability may be imposed
13 pursuant to this article. The complaint shall allege the acts or
14 failures to act that constitute the basis for liability and the amount
15 of the proposed civil liability. The complaint shall be served by
16 personal service or certified mail and shall inform the party so
17 served that a hearing shall be conducted within 60 days after the
18 party has been served, unless the party waives the right to a hearing.

19 (b) If the party waives the right to a hearing, the department
20 shall issue an order setting liability in the amount proposed in the
21 complaint unless the department and the party have entered into
22 a settlement agreement, in which case the department shall issue
23 an order setting liability in the amount specified in the settlement
24 agreement. If the party has waived the right to a hearing or if the
25 department and the party have entered into a settlement agreement,
26 the order shall not be subject to review by any court or agency.

27 (c) Any hearing required under this section shall be conducted
28 by an independent hearing officer according to the procedures
29 specified in Chapter 5 (commencing with Section 11500) of Part
30 1 of Division 3 of Title 2 of the Government Code, except as
31 otherwise specified in this section.

32 SEC. 5. Section 41821.8 is added to the Public Resources Code,
33 to read:

34 41821.8. (a) Orders setting civil liability issued under this
35 section shall become effective and final upon issuance thereof,
36 and payment shall be made within 30 days of issuance. Copies of
37 these orders shall be served by personal service or by certified
38 mail upon the party served with the complaint and upon other
39 persons who appeared at the hearing and requested a copy.

1 (b) Within 30 days after service of a copy of a decision, any
2 person so served may file with the superior court a petition for
3 writ of mandate for review of the decision. Any person who fails
4 to file the petition within the 30-day period may not challenge the
5 reasonableness or validity of a decision or order of the hearing
6 officer in any judicial proceedings brought to enforce the decision
7 or order or for other remedies.

8 (c) Except as otherwise provided in this section, Section 1094.5
9 of the Code of Civil Procedure governs any proceedings conducted
10 pursuant to this subdivision. In all proceedings pursuant to this
11 subdivision, the court shall uphold the decision, if the decision is
12 based upon substantial evidence in the whole record.

13 (d) This section does not prohibit the court from granting any
14 appropriate relief within its jurisdiction.

15 (e) All penalties collected under this article shall be deposited
16 in the Integrated Waste Management Account created pursuant to
17 Section 48001 if the attorney who brought the action represented
18 the department, or shall be retained by a city, county, or city and
19 county designated pursuant to subdivision (c) of Section 41821.5,
20 if the attorney who brought the action represents the city, county,
21 or city and county. The moneys retained by the city, county, or
22 city and county shall be expended on duties required under this
23 article and implementing regulations.