
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 1857
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Urgency: No
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Hearing Date: 6/22/2022
Fiscal: Yes

SUBJECT: Solid waste

DIGEST: Repeals the provision of law that allows jurisdictions to count up to 10 percent of the waste sent to transformation toward their 50 percent diversion requirement.

ANALYSIS:

Existing law, under the Integrated Waste Management Act (IWMA):

- 1) Establishes a state recycling goal of 75% of solid waste generated by diverting from landfill disposal by 2020 through source reduction, recycling, and composting. (Public Resources Code (PRC) § 41780.01)
- 2) Requires each local jurisdiction to prepare and adopt a source reduction and recycling element (SRRE) with primary emphasis on implementation of all feasible source reduction, recycling, and composting programs while identifying the amount of landfill and transformation capacity that will be needed for solid waste that cannot be reduced at the source, recycled, or composted. (PRC §§41000 et seq, 41300 et seq)
- 3) Requires each local jurisdiction’s SRRE to include an implementation schedule that diverts 50% of solid waste from landfill disposal through source reduction, recycling, and composting. The amount diverted is known as the jurisdiction’s “diversion rate.” Since 2008, this requirement has shifted to a 50% disposal rate based on per capita disposal. (PRC §§41780, 41780.05)
- 4) Allows jurisdictions to count up to 10 percent of the waste that they send to transformation facilities toward the 50 percent diversion obligation if specified conditions are met, including that the facility began operating before January 1, 1995. (PRC §41783)
- 5) Defines “transformation” as incineration, pyrolysis, distillation, or biological conversion other than composting, but does not include composting,

gasification, EMSW conversion, or biomass conversion. (PRC §40201)

- 6) Defines “biomass conversion” as the production of heat, fuels, or electricity by the controlled combustion of, or the use of other noncombustion thermal conversion technologies (e.g., gasification or pyrolysis) of specified types of biomass, such as agricultural, forestry, and yard wastes. (PRC §40106)
- 7) Defines “engineered municipal solid waste conversion” (EMSW conversion) as the conversion of solid waste that meets specified conditions. (PRC §40131.2)
- 8) Defines “solid waste disposal,” “disposal,” “or “dispose” as the final disposition of solid wastes onto land, into the atmosphere, or into the waters of the state, except that:
 - a) For purposes of integrated waste management plans, defines those terms as management of solid waste through landfill disposal, transportation, or EMSW conversion, at a permitted solid waste facility, unless the term is expressly defined otherwise. (PRC §40192(b))
 - b) For purposes of waste tires, tire hauler registration, solid waste facility standards and their enforcement, and the Integrated Waste Management Fund, defines those terms to mean the final deposition of solid wastes onto land. (PRC §40192(c))

This bill:

- 1) Repeals the provision of law that allows jurisdictions to count waste sent to transformation for up to 10 percent of their 50 percent diversion requirement and makes other conforming changes.
- 2) Requires the Department of Resources Reduction and Recycling (CalRecycle), upon appropriation, to administer the Zero-Waste Equity Grant Program as a competitive grant program for local public agencies, cities, counties, and nonprofit organizations to support targeted strategies and investments in communities transitioning to a zero-waste circular economy. Requires CalRecycle, on or before July 1, 2023, to conduct at least two public workshops, as specified, including an online virtual option for participation, and to prepare and adopt guidelines and procedures for evaluating competitive grant applications.
 - a) In evaluating and selecting eligible zero-waste projects, requires CalRecycle to make investments in communities seeking to reduce their reliance on transformation. Requires CalRecycle, when selecting projects, to prioritize projects in communities where a transformation facility is

located as of January 1, 2022.

- b) Makes the following zero-waste projects eligible for grants in the following priority:
 - i) Infrastructure or programs that result in the reuse, repair, and sharing of goods and materials, including, but not limited to, projects that promote the recovery and exchange of household goods, food, clothing, and building materials; projects that repair and extend the life of projects, such as electronics, textiles, and furniture; projects that facilitate the use and sharing of infrequently used items, such as tools, equipment, books, and other household items; and projects that promote reusable containers and package-free products and stores.
 - ii) Infrastructure to support the recycling of source-separated products and materials, including, but not limited to, material recovery facilities that sort and process materials, glass beneficiation facilities, and dropoff programs.
 - c) Prohibits grants from being provided for a project that will result in combustion, the production of fuels or energy, or for any other disposal activities.
 - d) Requires CalRecycle to post on its website and submit to the Legislature a report on all eligible zero-waste projects funded, as specified.
- 3) Requires, on or before January 4, 2024, CalRecycle, in consultation with the California Workforce Development Board and the Division of Occupational Safety and Health, to submit policy recommendations to the Legislature on how to increase job opportunities and improve labor standards and worker pay related to the zero-waste job sector.

Background

- 1) *California's recycling goals.* An estimated 35 million tons of waste are disposed of in California's landfills annually. CalRecycle is tasked with diverting at least 75% of solid waste from landfills statewide by 2020. Local governments have been required to divert 50% of the waste generated within the jurisdiction from landfill disposal since 2000. AB 341 (Chesbro, Chapter 476, Statutes of 2011), requires commercial waste generators, including multi-family dwellings, to arrange for recycling services for the material they generate and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste generated by businesses out of the landfill. A follow up bill, AB 1826 (Chesbro, Chapter 727, Statutes of

2014), requires generators of organic waste (i.e., food waste and yard waste) to arrange for recycling services for that material to keep the material out of the landfill. California's recent recycling rate, which reached 50% in 2014, dropped to 42% in 2020.

- 2) *Transformation*. Transformation includes the incineration of solid waste to produce heat or electricity. Under the Act, transformation also includes pyrolysis, distillation, or biological conversion other than composting; however, it excludes biomass conversion. Transformation facility operators are required to report tonnages and origins of waste transformed and report the information to CalRecycle's Disposal Reporting System, maintain compliance with all applicable laws and permit requirements, and test ash quarterly for hazardous materials and manage it appropriately. There are two transformation facilities, both incinerators, in California: Covanta Stanislaus Inc. in Stanislaus County and Southeast Resource Recovery in Long Beach.

Comments

- 1) *Purpose of Bill*. According to the author, "AB 1857 corrects a deficiency in waste management law that has caused harm in overburdened communities for over three decades. The Integrated Waste Management Act "Act" (AB 939 in 1989) mandates that jurisdictions must divert at least 50% of their waste away from landfills and into source reduction, recycling, reuse, and composting activities. However, the Act permits jurisdictions to count up to 10% of the waste ("Diversion Credit") that they send to municipal solid waste incinerators towards their obligation to divert at least 50% of their waste away from landfills. It is past-due that the legislature update state-wide policy on municipal incinerators to better advance equity and sustainability in waste management law and make it clear that burning trash isn't recycling once and for all. Municipal waste incinerators are a reminder of how environmental racism can become normalized as a policy neutral solution when the story is always more complicated. It is hard to ignore the 30 years of lived experiences from frontline communities which live near an incinerator and the scientific data that shows the harmful health impacts from these facilities. Our state needs to turn away from municipal incineration as a viable option. Moreover, California needs to support zero-waste strategies with funding and policy changes to better leverage our investments going forward."
- 2) *Pros and Cons of Transformation*. Proponents of transformation state that it reduces greenhouse gas (GHG) emissions over landfilling by avoiding methane

emissions, recovers the metals from solid waste that would otherwise be landfilled, and provides a reliable energy source. Transformation reduces the volume of material by about 90%, and the remaining 10% is ash that is either landfilled in a solid waste landfill or a hazardous waste facility. According to information provided by the City of Long Beach, the Southeast Resource Recovery Facility operates up to 99% below federal emissions standards and its emissions are lower when compared to other local air emissions in the South Coast Air Quality Management District. Transformation facilities are used by a number of law enforcement agencies to destroy controlled substances, evidence, and seized firearms; some local governments have raised concerns about finding alternative disposal options for these materials if the facilities were to close.

However, because a transformation facility operates within or below what is required of the facility by federal law, does not mean it is without environmental impacts to the surrounding communities. According to the United States Environmental Protection Agency, solid waste incinerators typically emit hazardous air pollutants, including dioxin, furan, mercury, lead, cadmium, and other heavy metals. Other emissions from transformation facilities include nitrogen oxides, volatile organic compounds, particulate matter, and carbon monoxide. For this reason, they are required to have air pollution controls, such as afterburners to reduce carbon monoxide emissions, scrubbers to remove particulates and acid gases, filters to remove particulates, and dry sorbent injection for acid gas control. The types of pollution controls used depend on the composition of the wastes burned and on the design of the solid waste incinerator.

In addition to air emissions, incinerator ash is also an environmental concern. Ash should be disposed of in a solid waste landfill or in a hazardous waste facility, if testing determines it is hazardous. In March 2018, both the Los Angeles County Department of Public Health and CalRecycle inspection reports noted ash concerns at Southeast Resource Recovery, including ash accumulation along the roads at and near the site, and nearby drain grates were clogged with ash, posing health concerns for nearby residents and potential impacts to waterways.

The claim that transformation reduces GHG emissions over landfilling is disputed by a number of organizations and relies on the assumption that the portion of waste that is “biogenic” (e.g., food scraps, paper, wood, etc.) should not be counted towards the transformation facility’s GHG emissions because it is “carbon neutral” since plants and trees regrow. However, even without including the biogenic portion of the waste

steam, transformation facilities emit more carbon dioxide per megawatt hour than coal power plants. According to a report by Earthjustice, East Yard Communities for Environmental Justice, and the Valley Improvement Projects, incinerators emit more carbon dioxide per unit of energy than coal-fired power plants.

Transformation facilities in California are located in environmental justice communities. According to the report by Earthjustice, East Yard Communities for Environmental Justice, and the Valley Improvement Projects, the population within a 5-mile radius of Southeast Resource Recovery Facility is 81% people of color with a per capita income of \$28,312; the population within a 5-mile radius of Covanta Stanislaus is 80% people of color with a per capita income of \$23,534. According to the City of Long Beach, the nearest resident to the Southeast Resource Recovery Facility is 1.7 miles away.

- 3) *The Times They Are A-Changin'* – should transformation be considered recycling? The IWMA permits jurisdictions to claim waste sent to certain transformation facilities for up to 10% of a jurisdiction's diversion requirement. Jurisdictions claiming the transformation credit must ensure that all recyclable materials are removed from their solid waste before it burns and send the portion of their solid waste claimed as transformation to one of two CalRecycle-permitted active facilities in California. Both of those facilities are incinerators.

Of the state's 419 jurisdictions, 249 claim *some* level of diversion credit (not all claim the full 10 percent) for waste sent to transformation. Thus, opponents of the bill argue that removal of this credit would undermine a jurisdiction's ability to meet the diversion requirements and could potentially subject them to enforcement action by CalRecycle. Of the 249 jurisdictions claiming a credit, four jurisdictions (the cities of Industry, Paramount, Lawndale, and Bellflower) would not have met their diversion requirement without the transformation credit. However, a jurisdiction's failure to achieve the 50% diversion requirement can only result in enforcement action if CalRecycle determines that the jurisdiction did not make a "good faith effort" to implement its waste reduction and recycling programs.

The state has allowed incineration to be counted as recycling since 1989. At that time, recycling was not widely available statewide. In the last three decades, California has developed a robust recycling infrastructure that continues to grow and innovate. Allowing material sent to transformation to count as recycling provides an incentive for

jurisdictions to continue to rely on this technology instead of supporting existing recycling systems and investing in cleaner source reduction, recycling, and composting alternatives. This bill would end the diversion credit for solid waste sent to transformation.

- 4) *Will more solid waste be sent to landfills?* Opponents of the bill, such as League of California Cities, Los Angeles Division, argue that without the credit, jurisdictions in Los Angeles County that currently utilize South East Resource Recovery will have to transport the solid waste to other landfills throughout the state instead of sending to South East Recovery for transformation.

This bill does not prohibit jurisdictions from sending solid waste to incinerators for transformation and may continue to do so; the jurisdiction will not receive a credit for that solid waste to be applied towards their diversion requirements. This bill does not change the requirement that jurisdictions divert 50% of their solid waste away from landfills.

Additionally, opponents argue that, for those jurisdictions that do not rely on the 10% diversion credit to meet diversion requirements, jurisdictions will begin sending more solid waste to landfills because landfills are less expensive than transformation facilities. It is unknown what the disposal rates are of Covanta Stanislaus Inc. and Southeast Resource Recovery and how they compare to nearby landfills.

- 5) *Impacts to transformation facilities.* Opponents of the bill argue that removing the diversion credit will reduce the amount of material that is sent to transformation facilities and jeopardize its vitality, affecting the facilities' workers. This bill does not prohibit or eliminate transformation; it only removes the ability of local jurisdictions to count incineration as recycling.

Opponents also argue that transformation facilities are further affected by the implementation of SB 1383 regulations due to less material going to transformation facilities for incineration and instead will go to the new composting facilities. It is unknown what effect SB 1383 regulations will have on transformation facilities.

- 6) *Apples and oranges.* AB 1857 would also create a grant program that would provide grants to both zero-waste infrastructure projects and zero-waste program projects that result in the reuse, repair, and sharing of goods and materials. However, providing a grant to infrastructure projects and community programs are two very different things and it is unclear how the

grant program, once funding has been appropriated, would be implemented. Funding for infrastructure projects will likely be significantly more than funding for programs. Would CalRecycle be required to provide grant moneys equally to both infrastructure projects and community projects? Or should more financial assistance be dedicated towards infrastructure? *The author may wish to consider creating one grant program for each category – one for infrastructure projects and one for community projects.*

Additionally, the scope of the grant is broad, prioritizing the reuse, repair, and sharing of goods and materials, specifically highlighting a wide range of products from household goods, to electronics, to textiles, to books, to reusable containers, and more. With such a wide applicability, it may be difficult to CalRecycle to prioritize between the various grant applicants. *The author may wish to consider further refining the grant program to provide more direction to CalRecycle on implementation of the grant program, minimum requirements of grant applicants, and which types of programs should be prioritized.*

- 7) *Redefining solid waste disposal.* This bill proposes to redefine the definition of “solid waste disposal.” This change may have broader implications than how the term is used in the context of local jurisdictions’ diversion requirements and use of transformation facilities because the term applies to the entire IWMA. The IWMA also covers things such as tires, tire hauler registration, and solid waste facility standards and enforcement.

To avoid unintended consequences associated with redefining a broadly used term, the committee may wish to amend the bill to remove the provisions that redefine “solid waste disposal” and to make conforming changes.

- 8) Committee amendments. *Staff recommends the committee adopt the bolded amendments contained in comment 7, above.*

SOURCE: Californians Against Waste, EarthJustice, East Yard Communities for Environmental Justice, & Valley Improvement Projects (co-sponsors)

SUPPORT:

350 Silicon Valley
350 Southland Legislative Alliance
350 Ventura County Climate Hub
5 Gyres Institute, the
Active San Gabriel Valley

Ban Sup (single Use Plastic)
Biofuelwatch
Breast Cancer Prevention Partners
Bringit for A Better Planet
California Environmental Justice Coalition
California Environmental Voters
California Health Collaborative
California Interfaith Power & Light
Californians Against Waste
Calpirg, California Public Interest Research Group
Center for Biological Diversity
Central California Asthma Collaborative
Central Valley Air Quality Coalition
Climate Reality Project, San Fernando Valley
Coalition for Clean Air
Conejo Climate Coalition
Del Amo Action Committee
Don't Waste Arizona
Earthjustice
East Yard Communities for Environmental Justice
Ecology Center
Energy Justice Network
Environmental Justice Coalition for Water
Environmental Working Group
Food Empowerment Project
Friends Committee on Legislation of California
Friends of The Earth
Gaia
Grayson Neighborhood Council
Green Latinos
Greenaction for Health and Environmental Justice
Greenpeace USA
Heal the Bay
Indivisible California Green Team
Institute for Local Self-reliance
Long Beach Alliance for Clean Energy
Long Beach Gray Panthers
Mi Familia Vota
Moore Institute for Plastic Pollution Research
Natural Resources Defense Council (NRDC)
Northern California Recycling Association
Pacific Environment
Plastic Oceans International
Plastic Pollution Coalition

San Diego 350
Save Our Shores
Save the Albatross Coalition
Seventh Generation Advisors
Sierra Club California
Socal 350 Climate Action
Surfrider Foundation
The Center for Oceanic Awareness, Research, and Education
The Climate Center
The Last Beach Cleanup
The Last Plastic Straw
The Story of Stuff Project
Tri-valley Communities Against a Radioactive Environment (tri-valley Cares)
Upstream
Valley Improvement Projects (VIP)
West Berkeley Alliance for Clean Air and Safe Jobs
West Oakland Environmental Indicators Project
Wishtoyo Chumash Foundation
Yokuts Group of The Sierra Club
Zero Waste British Columbia
Zero Waste USA

OPPOSITION:

City of Bellflower
City of Industry
City of Long Beach
City of Paramount
Covanta Energy Corporation
IBEW Local 11
Los Angeles County Division, League of California Cities
Los Angeles County Solid Waste Management Committee/integrated Waste Management Task Force

ARGUMENTS IN SUPPORT: According to the San Fernando Valley Climate Reality Project, “We must acknowledge that a 10% “waste diversion credit” is not actual diversion if solid waste is simply sent from landfills to incinerators. It is also important to note that the Integrated Waste Management Act (1989) requires CalRecycle to “maximize” source reduction, recycling, composting and other options to reduce solid waste, but does not provide certification for the term “maximize”.

“We know that there are long-standing practices of siting waste facilities in low-income communities. As such, it becomes even more essential that we stop playing a numbers game with “diversion” and “maximization”, and actually reduce our waste. We cannot expect to achieve true waste reduction or lower greenhouse gas emissions unless we have accountability and real progress toward zero waste.

“Achieving zero waste should be the truest definition of waste management. We strongly encourage the passage of this bill to eliminate Diversion Credits”

ARGUMENTS IN OPPOSITION: According to the League of California Cities, Los Angeles County Division, “Approximately 65 jurisdictions in Los Angeles County and the immediate surrounding area utilize the SERFF to responsibly dispose of solid waste without having to transport it to landfills throughout California or other states. By undermining waste-to-energy as a viable alternative to landfilling, AB 1857 would negatively impact air quality in Southern California and the Los Angeles Basin.

“The SERRF is also an environmentally responsible tool for waste management that produces well over 200,000 megawatt hours of electricity per year, representing more than one-quarter of the annual residential electric load for Long Beach. Baseload energy produced at SERRF is sold and becomes part of the regional grid, providing a local renewable energy source.

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“Finally, we can’t overlook how the SERFF bolsters the local economy by providing dozens of well-paid, union jobs at the facility. Waste-to-energy is a leading technology helping to advance sustainability and union job opportunities.”

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