

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1256 (Wieckowski)
Version: March 10, 2022
Hearing Date: April 19, 2022
Fiscal: No
Urgency: No
AM

SUBJECT

Waste management: disposable propane cylinders

DIGEST

This bill prohibits the sale or offer for sale of disposable propane cylinders, as defined, in this state on and after January 1, 2028. The bill imposes civil penalties on a person who violates this prohibition in the amount of \$500 per day for the first violation, \$1,000 per day for a second violation, and \$2,000 per day for the third violation and any subsequent violations. Under the bill, a city attorney or county counsel is authorized to impose those civil penalties, and any civil penalties collected are to be paid to the office of the city attorney or county counsel, whichever office brought the action.

EXECUTIVE SUMMARY

Single-use disposable propane cylinders create waste management issues due to their potential hazardous nature when not completely emptied and the high cost to local governments to dispose of them safely and correctly. It is estimated that 40 to 60 million of these disposable cylinders are sold in the United States each year and that the vast majority of the ones sold in California end up in landfills. This bill, in an attempt to decrease the waste caused by these single-use disposable propane cylinders, prohibits them from being sold or offered for sale in the state beginning January 1, 2028. A violation of this ban would be punished by specified civil penalties and an action to enforce the ban can be brought by a city attorney or county counsel.

The bill is sponsored by the California Product Stewardship Council, and supported by various local governments, waste management groups, environmental organizations, and Little Kamper, LP, a manufacturer of refillable cylinders. The bill is opposed by Worthington Industries, a manufacturer of propane cylinders. The bill passed out of the Senate Environmental Quality Committee on a vote of 5 to 2.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires, under the Integrated Waste Management Act of 1989, that local governments divert at least 50 percent of solid waste from landfill disposal and establishes a statewide goal that 75 percent of solid waste be diverted from landfill disposal by 2020. (Pub. Res. Code §§ 41780.01 & 42921.)
- 2) Establishes that counties and cities will provide services for the collection of household hazardous waste (HHW) and that the state will provide an expedited and streamlined regulatory structure to facilitate the collection of HHW. (Health & Safe. Code § 25218)
 - a) Defines HHW as hazardous waste generated incidental to owning or maintaining a place of residence, but does not include waste generated in the course of operating a business at a residence. (*Id.* at subd. (e).)
- 3) Prohibits specified stores from providing single-use carryout bags to a customer at the point of sale and makes a violation of this provision subject to specified civil penalties. (Pub. Res. Code §§ 42283 & 42285.)
- 4) Requires retailers of rechargeable batteries, under the Rechargeable Battery Recycling Act of 2006, to establish a system for accepting rechargeable batteries for reuse, recycling, or proper disposal. (Pub. Res. Code §§ 42451-42456.)
- 5) Requires all retailers of cellular telephones, under the Cell Phone Recycling Act of 2004, to have in place a system for the collection, reuse, and recycling of cell phones, and requires the Department of Toxic Substance Control to provide information on cell phone recycling. (Pub. Res. Code §§ 42490-42499.)

This bill:

- 1) Prohibits a disposable propane cylinder from being sold or offered for sale in this state on and after January 1, 2028.
- 2) Defines “disposable propane cylinder” as a nonrefillable propane canister, weighing approximately two pounds when filled with propane, with a designation of “DOT 39” from the United States Department of Transportation.
- 3) Authorizes a city attorney or county counsel to impose civil liability on a person who violates these provisions in the amount of \$500 per day for the first violation, \$1,000 per day for a second violation, and \$2,000 per day for the third violation and any subsequent violations. Any civil penalty collected is to be paid to the office of the city attorney or county counsel, whichever brought the action.

COMMENTS

1. Stated need for the bill

The author writes:

California can do much better when it comes to reusing and refilling products and disposing of materials, often hazardous materials, that are often discarded haphazardly. SB 1256 would ban single-use 2 pound propane cylinders and help California to transition to reusable cylinders that can help consumers save money and help improve our environment. Currently, most propane cylinders end up in the trash. Those that are not empty should be taken to household hazardous waste facilities. However, these facilities are often not easily accessible. Due to the costs and handling involved, even those canisters that are properly disposed take a significant diversion of financial resources from facilities, which are typically funded by local governments.

These propane cylinders place a great burden on our municipalities, park systems, and material recovery facilities. It is time to transition away from single-use products that harm our environment, pose a threat to the safety of workers, and end up in our landfills. SB 1256 would result in more reusable propane cylinders for consumers to refill which will lead to a cleaner and safer California.

2. This bill bans the sale or offer for sale of disposable propane cylinders in California beginning on January 1, 2028, and provides for civil liability for any violation

The Senate Environmental Quality Committee analyzed the current cost to locals of proper disposal of disposable propane cylinders, impacts of the bill on waste management, campaigns promoting the use of refillable cylinders, and the availability of refillable cylinders, and that analysis is incorporated here by reference. The bill is sponsored by the California Product Stewardship Council and supported by various local governments, waste management groups, and environmental organizations. The bill is opposed by Worthington Industries, a manufacturer of both refillable and non-refillable cylinders.

This bill is intended to decrease waste by banning the sale or offer for sale of disposable propane cylinders in California beginning January 1, 2028, and defines “disposable propane cylinder” as a nonrefillable propane canister, weighing approximately two pounds when filled with propane, with a designation of “DOT 39” from the United States Department of Transportation. These type of single-use propane cylinders are generally used in camping stove, portable heaters, lanterns, portable showers, tailgating grills, boat engines, scooters, lawn care equipment, insect foggers, and welding equipment. The bill makes a violation of its provisions punishable by a civil penalty in the amount of \$500 per day for the first violation, \$1,000 per day for a second violation,

and \$2,000 per day for the third violation and any subsequent violations. A city attorney or county counsel is authorized to impose the civil penalty.

In California, an empty propane tank or cylinder can be disposed of in curbside trash or recycling, but if the tank or cylinder is not empty then it is considered HHW and must be disposed of at an HHW facility. It is extremely difficult to know whether a cylinder is completely empty. An improperly disposed of cylinder creates a serious risk of explosion, resulting in fires, and poses a grave danger to sanitation workers. For example, in 2016, and again in 2017, disposable propane cylinders exploded at a Kent County, Michigan materials recovery facility causing over \$68,000 in damages from one tank and knocking a worker off a baler.¹ More locally, the Sunnyvale Materials Recovery and Transfer (SMaRT) Station experienced an explosion and baler fire in 2016, which was most likely caused by a disposable propane gas cylinder, with another similar incident occurring in 2017.²

Additionally, it is estimated that 40 to 60 million 1 pound propane cylinders are sold in the United States each year.³ If California accounts for 10 percent of the population, then one can extrapolate that 4 to 6 million are sold in California each year. Yosemite National Park collects anywhere from 20,000 to 25,000 cylinders a year.⁴ Estimates to manage this hazardous waste at Yosemite National Park are \$3 per cylinder⁵ and \$3.50 per cylinder in Lassen National Park.⁶ The Senate Environmental Quality Committee notes that only a quarter of the cylinders sold in California are recovered through HHW facilities, with the remaining majority ending up in landfills, and that local governments are likely spending upwards of \$3 million a year to handle cylinders recovered through HHW facilities.⁷ Refillable cylinders have a life of 10 to 12 years.

¹ Arlene Karidis, *Propane Tanks Wreak Havoc at MRFs and Disposal Sites*, Waster360 (May 23, 2019), available at <https://www.waste360.com/safety/propane-tanks-wreak-havoc-mrfs-and-disposal-sites> (as of Apr. 2, 2022).

² *Hazardous Waste Management: The New Refillable 1 lb. Propane Cylinders: Sparking the Paradigm Shift Away From Disposables*, WasteAdvantage Magazine (Apr. 27, 2017), available at <https://wasteadvantagemag.com/hazardous-waste-management-the-new-refillable-1-lb-propane-cylinders-sparking-the-paradigm-shift-away-from-disposables/> (as of Apr. 2, 2022).

³ *Id.*; see also *The Definitive Camp Guide to Sustainable Propane*, IGNIK (Oct. 6, 2020), available at <https://ignik.com/blogs/news/the-definitive-camp-guide-to-sustainable-propane> (as of Apr. 2, 2022).

⁴ Karidis *supra* at fn. 1.

⁵ Karidis *supra* at fn. 1.

⁶ *Hazardous Waste Management: The New Refillable 1 lb. Propane Cylinders: Sparking the Paradigm Shift Away From Disposables* *supra* at fn. 2.

⁷ Sen. Com. on Environmental Quality, Analysis of Sen. Bill No. 1256 (2021-2022 Reg. Sess.) as amended Mar. 10, 2022 at pg. 4.

The Senate Environmental Quality Committee analyzed the availability of refillable propane cylinders, stating:

According to data provided by the sponsor, since the introduction of refillable propane cylinders in 2013, approximately 380,000 have been sold in California, this number represents a doubling in just the last two years. The bill sponsor states that the current refillable tank manufacturing capacity stands at approximately one million per year. While the current estimate of demand for disposables is around four million per year, arguably, consumers demand would drop once they transition to refillable cylinders, as these products have a ten-year lifespan.

For refillables to work, consumers need access to cylinders where they are likely to use them. According to the sponsors of this proposal, there are at least 419 locations across the state that sell/or refill one-pound propane cylinders. U-Haul is now selling and refilling propane cylinders statewide at most stores that have propane. Sports Basement, an outdoors products chain in the San Francisco Bay area, is another retailer joining the effort. It buys refillable cylinders from FlameKing and sells them at its stores. And it also exchanges empty cylinders for filled ones. The company has exchanged more than 5,500 canisters since 2017. Sports Basement also has sold more than 10,000 of them since 2017, representing double the number of reusable canisters than disposable ones it sells.

Worthington Industries, the sole opponent of the bill, is a leading US-based manufacturer of non-refillable cylinders. Worthington Industries proposes a product stewardship approach instead of an outright ban, similar to what the Connecticut Legislature is currently considering, is better public policy.⁸ They also argue that the bill would dictate a product design that benefits an individual company with a patented product used in refillable propane cylinders.

The author and sponsor have stated that they are in negotiations with the opposition about a product stewardship program.

3. Statements in support

The sponsor of the bill, the California Product Stewardship Council, and a coalition of various local governments, waste management groups, environmental organizations, and Little Kamper, LP, a manufacturer of refillable cylinders, write:

[...] One consumer product that has been a longtime concern is the single-use 1lb propane cylinders typically used in camping stoves, lanterns, welding equipment, and more. It is estimated that between 40-60 million of these single-use 1lb propane cylinders are sold in the United States every year. California

⁸ CT HB 5142 (2022).

accounts for roughly 12% of the population of the United States, so we can safely estimate that somewhere between 4.8 and 7.2 million single-use 1lb propane cylinders are sold into California each year. Further, it is estimated that only about 1 million of these disposal cylinders are recovered and recycled, with the remaining cylinders ending up in landfills throughout the state.

Local, state, and national parks have long struggled with the impacts of improperly disposed single-use 1lb propane cylinders. A 2019 article from Waste 360 reported that the Yosemite National Park collects between 20,000 and 25,000 tanks a year and trucks them more than two hours away to a facility that processes low-grade hazardous waste. One of Yosemite's sustainability initiatives is focused on reducing improper disposal of propane tanks by promoting use of refillable tanks. As a result, the only cylinders available for purchase inside of Yosemite are refillable.

4. Statements in opposition

Worthington Industries writes in opposition:

While there are legitimate public policy concerns with the collection and recycling of all refillable and non-refillable 1 lb propane and other gas cylinders, this bill does nothing to solve those concerns.[...]

SB 1256 would dictate a product design that benefits an individual company with a patented product: YSN Imports, Inc (YSN). YSN holds patent US8479767 for the refillable valve used in the 1 lb refillable propane cylinder marketed today under the Little Kamper and Flame King brands. YSN's patent, along with its long-term agreement with its overseas manufacturer, provides significant competitive advantage. For another entity to introduce a 1 lb consumer refillable product to the market, they would be required to enter into a license agreement with YSN or to procure the product from YSN.

The product promoted by the ban, the 1 lb refillable propane cylinder, does not resolve the waste management issues raised in the bill premise. Both refillable and non-refillable propane cylinders require systems for collection and management at end-of-life. Transition to use of 1 lb refillable cylinders without consideration of consumer disposal methods and systems does not eliminate the stated waste management challenges. In addition, eliminating the availability of non-refillable 1 lb propane cylinders will result in consumers increasing their use of non-refillable isobutane cylinders, which have similar waste management challenges to propane cylinders and are not addressed by the proposed ban.

Given these considerations, Worthington Industries opposes SB 1256 (Wieckowski) and urges the Judiciary Committee to work with Worthington to

submit producer responsibility legislation for gas cylinders in its place. This alternative policy approach would address all similar gas cylinders including isobutane cylinders that are currently excluded, ensuring all products are safely captured at the end-of-life and circulated back into the economy. Worthington would be pleased to work closely with the California legislators, as we did in Connecticut, to develop this legislation.

SUPPORT

California Product Stewardship Council (sponsor)
California Interfaith Power & Light
California Resource Recovery Association
California Waste & Recycling Association
Californians Against Waste
City of Sunnyvale
City of Vallejo
City of Thousand Oaks
County of Santa Clara
Del Norte Solid Waste Management Authority
Delta Diablo
Little Kamper, LP
National Stewardship Action Council
Republic Services, Inc.
Resource Recovery Coalition of California
Rethink Waste
Sea Hugger
StopWaste
Western Placer Waste Management Authority
Zero Waste Sonoma

OPPOSITION

Worthington Industries

RELATED LEGISLATION

Pending Legislation: SB 54 (Allen, 2021) prohibits producers of single-use, disposable packaging or single-use, disposable food service ware producers from offering for sale, selling, distributing, or importing in or into the state those products manufactured after January 1, 2032, unless it is recyclable or compostable. This bill is currently pending referral in the Assembly.

Prior Legislation:

SB 212 (Jackson, Ch. 1004, Stats. 2018) requires entities that sell drugs or sharps in the state to individually, or with other entities, develop and implement a statewide home-generated drug stewardship plan, or a home-generated sharps waste stewardship plan, or both, for the collection and proper disposal of home-generated drug and sharps waste. Requires CalRecycle to oversee and enforce each stewardship plan.

AB 2347 (Ruskin, Ch. 572, Stats. 2008) establishes California's Mercury Thermostat Collection Act of 2008 to require thermostat manufacturers to establish a collection and recycling program for out-of-service mercury-added thermostats.

AB 1125 (Pavley, Ch. 572, Stats. 2005) enacts the Rechargeable Battery Recycling Act of 2006, and requires retailers of rechargeable batteries, by July 1, 2006, to establish a system for accepting rechargeable batteries for reuse, recycling, or proper disposal.

AB 2901 (Pavley, Ch. 891, Stats. 2004) enacts the Cell Phone Recycling Act of 2004 and requires all retailers of cellular telephone to have in place a system for the collection, reuse and recycling of cell phones, requires the Department of Toxic Substance Control to provide information on cell phone recycling.

AB 1369 (Pavley, Ch. 626, Stats. 2004) prohibits the sale, offer for sale or promotional distribution of mercury-added thermostats in this state, beginning January 1, 2006, unless the mercury-added thermostat meets specified criteria.

PRIOR VOTES:

Senate Environmental Quality Committee (Ayes 5, Noes 2)
