

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2296

Introduced by Assembly Member Montanez

February 22, 2006

An act to amend Sections 43500, 43501, 43502, 43505, 43506, 43509, 43510, 43600, 43601, 43602, 43606, and 43610.1 of, and to add Section 43611 to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2296, as amended, Montanez. Solid waste: landfill: ~~post-closure financial assurance closure~~, *postclosure maintenance, and corrective action.*

~~Existing law~~

(1) *The California Integrated Waste Management Act of 1989* requires a person owning or operating a solid waste landfill to submit to the California Integrated Waste Management Board (*board*), the appropriate California regional water quality control board (*regional water board*), and the local enforcement agency, a closure plan and a postclosure maintenance plan for the solid waste landfill. The act requires that person to also submit to the board evidence of financial ability in an amount, as specified, to provide for closure and postclosure maintenance contained in the closure and postclosure maintenance ~~plan plans~~ for the landfill.

This bill would ~~express an intent of the Legislature to enact additional legislation relating to financial assurance demonstration applicable to postclosure maintenance activities at solid waste landfills~~. *require a person owning or operating a solid waste landfill*

to also submit a plan for corrective action, as the bill would define that term, for the solid waste landfill, to the board, the regional water board, and the local enforcement agency, as specified. The bill would require the person also to submit to the board evidence of financial ability to provide for closure, postclosure maintenance, and corrective action, as specified. The bill would make related changes regarding the submittal and approval of a corrective action plan, cost estimates for corrective action, and financial assurances.

The bill would make conforming changes.

The bill would require the board to adopt regulations on or before January 1, 2008, that would require closure, postclosure maintenance, and corrective action cost estimates to be based on cost the state may incur if the state would have to assume responsibility for those activities due to the failure of the owner or operator, as specified. The bill would require the board to adopt other, related regulations.

To the extent the bill would impose new duties on a local enforcement agency with respect to the corrective action plan, the bill would impose a state-mandated local program.

The bill would provide that the Legislature intends to enact legislation to require an enforcement agency to provide a public notice and conduct a public hearing when a solid waste facility operator proposes to change the design or operation of an existing permitted facility that would require the operator to obtain a new solid waste facilities permit that is different from the permit that he or she holds.

(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: ~~no~~-yes.
 State-mandated local program: ~~no~~-yes.

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

- 1 ~~SECTION 1. It is the intent of the Legislature to enact~~
- 2 ~~legislation relating to financial assurance demonstration~~

1 applicable to postclosure maintenance activities at solid waste
2 landfills.

3 *SECTION 1. Section 43500 of the Public Resources Code is*
4 *amended to read:*

5 43500. (a) The Legislature hereby finds and declares that the
6 long-term protection of air, water, and land from pollution due to
7 the disposal of solid waste is best achieved by requiring financial
8 assurances of the *costs of closure and, postclosure maintenance,*
9 *and corrective action* of solid waste landfills.

10 (b) (1) *As used in this article and Article 4 (commencing with*
11 *Section 43600) "corrective action" means the required response*
12 *to all known or reasonably foreseeable releases of pollution to*
13 *the environment.*

14 (2) *As used in paragraph (1), the response includes, but is not*
15 *limited to, the replacement of the final cover at an interval not*
16 *less frequently than the covers are guaranteed, and the repair of*
17 *clogged leachate collection lines based upon an investigation of*
18 *the frequency of blockages that cannot be cleaned out and field*
19 *data on the cost of repairing clogged lines.*

20 *SEC. 2. Section 43501 of the Public Resources Code is*
21 *amended to read:*

22 43501. (a) ~~Any~~A person owning or operating a solid waste
23 landfill, as defined in Section 40195.1, shall do both of the
24 following:

25 (1) Upon application to become an operator of a solid waste
26 facility pursuant to Section 44001, certify to the board and the
27 local enforcement agency that all of the following have been
28 accomplished:

29 (A) The owner or operator has prepared an initial estimate of
30 closure ~~and,~~ postclosure maintenance, *and corrective action*
31 *costs.* ~~The~~

32 (i) *The board shall adopt regulations that provide for an*
33 *increase in the initial closure, postclosure maintenance, and*
34 *corrective action cost estimate estimates to account for cost*
35 *overruns due to unforeseeable circumstances, and to provide a*
36 *reasonable contingency comparable to that which is built into*
37 *cost estimates for other, similar public works projects.*

38 (ii) *The board shall adopt regulations on or before January 1,*
39 *2008, that require closure, postclosure maintenance, and*
40 *corrective action cost estimates to be based on costs the state*

1 *may incur if the state would have to assume responsibility for the*
 2 *closure, postclosure maintenance, or corrective action due to the*
 3 *failure of the owner or operator. Cost estimates shall include, but*
 4 *not be limited to, prevailing wages as determined by the Director*
 5 *of Industrial Relations pursuant to the Labor Code, and the*
 6 *replacement and repair costs for longer-lived items, including,*
 7 *but not limited to, repair of the environmental control systems.*
 8 *Cost estimates shall be detailed to identify the maintenance costs,*
 9 *repair costs, and replacement costs throughout the postclosure*
 10 *maintenance and corrective action period of the solid waste*
 11 *landfill.*

12 (B) The owner or operator has established a trust fund or
 13 equivalent financial arrangement acceptable to the board, as
 14 specified in Article 4 (commencing with Section 43600).

15 (C) The amounts that the owner or operator will deposit
 16 annually in the trust fund or equivalent financial arrangement
 17 acceptable to the board will ensure adequate resources for closure
 18 ~~and~~, postclosure maintenance, *and corrective action.*

19 (2) Submit to the regional water board, the local enforcement
 20 agency, and the board a plan for the closure of the solid waste
 21 landfill ~~and~~, a plan for the postclosure maintenance of the solid
 22 waste landfill, *and a plan for corrective action for the solid waste*
 23 *landfill.*

24 (b) Notwithstanding subparagraph (C) of paragraph (1) of
 25 subdivision (a) or any other provision of law, if the owner or
 26 operator is a county with a population of 200,000 or less, as
 27 determined by the 1990 decennial census, the county shall not be
 28 required to make annual deposits in excess of the amount
 29 required by the federal act or any other applicable federal law, or
 30 by any board-approved formula—~~which~~ *that* meets the
 31 requirements of the federal act.

32 (c) If not in conflict with federal law or regulations, a county
 33 or city may, with regard to a solid waste landfill owned or
 34 operated by the county or city, base its estimate of closure and
 35 postclosure maintenance costs on the costs of employing county
 36 or city employees or persons under contract with the county or
 37 city in performing closure and postclosure maintenance.
 38 However, even if, to meet federal requirements, the costs
 39 estimate is based on the most expensive costs of closure and
 40 postclosure maintenance performed by a third party, the county

1 or city may, to effect cost savings, employ county or city
2 employees or employ persons under contract to actually perform
3 closure operations or postclosure maintenance operations.

4 *SEC. 3. Section 43502 of the Public Resources Code is*
5 *amended to read:*

6 43502. All documentation relating to the preparation of the
7 closure~~and~~, postclosure maintenance, *and corrective action* costs
8 shall be retained by the owner or operator and shall be available
9 for inspection by the board or the enforcement agency at
10 reasonable times.

11 *SEC. 4. Section 43505 of the Public Resources Code is*
12 *amended to read:*

13 43505. The closure plan~~and~~, the postclosure maintenance
14 plan, *and the corrective action plan* may be revised only upon
15 the filing of a written application therefor by the owner or
16 operator, and the approval, or amendment and approval, by the
17 board.

18 *SEC. 5. Section 43506 of the Public Resources Code is*
19 *amended to read:*

20 43506. (a) After receiving a complete closure plan~~and~~,
21 postclosure maintenance plan, *and corrective action plan*, the
22 regional water board shall approve or disapprove the plans
23 pursuant to the authority and time schedules specified in Division
24 7 (commencing with Section 13000) of the Water Code. The
25 board shall incorporate the action of the regional water board and
26 shall only approve plans that include an acceptable mechanism
27 for providing the necessary funds to implement the plans.

28 (b) In reviewing closure plans~~and~~, postclosure maintenance
29 plans, *and corrective action plans* pursuant to this section, the
30 regional water boards shall review and take action on those
31 portions of the plans~~which~~ *that* are related to the protection of
32 the waters of the state and the board shall review and take action
33 on the remaining portions of the plans.

34 *SEC. 6. Section 43509 of the Public Resources Code is*
35 *amended to read:*

36 43509. (a) The board, in consultation with the state water
37 board and in compliance with Section 40055, shall adopt and
38 amend regulations specifying closure plan~~and~~, postclosure
39 maintenance plan, *and corrective action plan* adoption
40 procedures and uniform standards to implement Section 43601.

1 Regulations adopted pursuant to this section shall not include
2 standards and requirements contained in regulations adopted by
3 ~~the State Water Resources Control Board~~ *state water board*
4 pursuant to Division 7 (commencing with Section 13000) of the
5 Water Code. The regulations shall also require solid waste
6 landfill owners or operators to calculate, and periodically revise,
7 cost estimates for closure ~~and for~~, postclosure maintenance, *and*
8 *corrective action*, for as long as the solid waste could have an
9 adverse effect on the quality of the waters of the state, but not
10 less than 30 years after closure unless all wastes are removed in
11 accordance with federal and state law.

12 (b) The board may adopt regulations that authorize the
13 adoption of both preliminary and final closure ~~and~~, postclosure
14 maintenance, *and corrective action* plans. Regulations for
15 preliminary closure ~~and~~, postclosure maintenance, *and corrective*
16 *action* plans may require less specificity and engineering detail
17 than final closure ~~and~~, postclosure maintenance, *and corrective*
18 *action* plans, and these regulations shall apply only in those cases
19 in which there is reasonable certainty that the solid waste landfill
20 will not close for at least one year following approval of the
21 plans. Preliminary closure ~~and~~, postclosure maintenance, *and*
22 *corrective action* plans shall provide sufficient detail to enable
23 the owner or operator and the board to accurately estimate the
24 costs for closure ~~and~~, postclosure maintenance, *and corrective*
25 *action*.

26 (c) If a solid waste landfill owner or operator has submitted a
27 closure plan ~~and~~, postclosure maintenance plan ~~which~~, *and*
28 *corrective action plan* that satisfies the requirements of this
29 chapter, and ~~which~~ that has been approved by the local
30 enforcement agency, the board, and the appropriate regional
31 water board, the plans shall be deemed to have satisfactorily
32 complied with all state requirements for the adoption of a closure
33 plan ~~and~~, postclosure maintenance plan, *and corrective action*
34 *plan*.

35 *SEC. 7. Section 43510 of the Public Resources Code is*
36 *amended to read:*

37 43510. ~~(a)~~ The regulations adopted by the board pursuant to
38 this article and Article 4 (commencing with Section 43600) shall
39 not duplicate or conflict with the regulations imposing closure
40 ~~and~~, postclosure maintenance, *and corrective action*

1 requirements adopted by the state water board ~~which, that~~ are
2 found in Chapter 15 (commencing with Section 2510) of ~~Chapter~~
3 *Division 3* of Title 23 of the California Code of Regulations.

4 ~~(b) On or before June 30, 1995, the board and the state water~~
5 ~~board shall revise the regulations adopted pursuant to this article~~
6 ~~and Article 4 (commencing with Section 43600) of this chapter~~
7 ~~and Section 13172 of the Water Code for the purpose of~~
8 ~~consolidating the requirements of the board and the state water~~
9 ~~board for closure and postclosure maintenance into one set of~~
10 ~~regulations.~~

11 *SEC. 8. Section 43600 of the Public Resources Code is*
12 *amended to read:*

13 43600. (a) ~~Except as otherwise provided in subdivision (b),~~
14 ~~any person owning or operating a solid waste landfill, as defined~~
15 ~~in Section 40195.1, shall, with the closure plan and postclosure~~
16 ~~maintenance plan submitted pursuant to subdivision (b) of~~
17 ~~Section 43501, submit to the board evidence of financial ability~~
18 ~~to provide for the cost of closure and postclosure maintenance, in~~
19 ~~an amount that is equal to the estimated cost of closure and 15~~
20 ~~years of postclosure maintenance, contained in the closure plan~~
21 ~~and the postclosure maintenance plan submitted.~~

22 ~~(b) On and after the effective date of the federal regulations set~~
23 ~~forth in Subpart G (commencing with Section 258.70) of Part~~
24 ~~258 of Title 40 of the Code of Federal Regulations, any A person~~
25 ~~owning or operating a solid waste landfill on or after January 1,~~
26 ~~1988, shall, with the closure plan and, postclosure maintenance~~
27 ~~plan, and corrective action plan submitted pursuant to~~
28 ~~subdivision (b) of Section 43501, submit to the board evidence of~~
29 ~~financial ability to provide for closure and, postclosure~~
30 ~~maintenance, and corrective action, in an amount that is equal to~~
31 ~~the estimated cost of closure and, a minimum of 30 years of~~
32 ~~postclosure maintenance, and corrective action, contained in the~~
33 ~~closure plan and the, postclosure maintenance plan, and~~
34 ~~corrective action plans submitted. Financial assurance~~
35 ~~requirements for postclosure maintenance and corrective action~~
36 ~~shall continue until the waste no longer poses a threat to public~~
37 ~~health and safety or the environment.~~

38 *SEC. 9. Section 43601 of the Public Resources Code is*
39 *amended to read:*

1 43601. (a) The evidence of financial ability shall be
2 sufficient to meet the closure~~and~~, postclosure maintenance, *and*
3 *corrective action* costs when needed.

4 (b) The owner or operator of a solid waste landfill shall
5 provide evidence of financial ability through the use of any of the
6 mechanisms set forth in Part 258 (commencing with Section
7 258.1) of Title 40 of the Code of Federal Regulations or through
8 the use of any other mechanisms approved by the board.
9 However, the board may adopt regulations that reasonably
10 condition the use of one or more of those mechanisms to ensure
11 adequate protection of public health and safety and the
12 environment, but shall not exclude the use of any mechanism
13 permitted under federal law. In addition, the evidence of financial
14 ability submitted pursuant to Section 43600 shall provide that
15 funds shall be available to the regional water boards upon the
16 issuance of any order under Chapter 5 (commencing with Section
17 13300) of Division 7 of the Water Code to implement closure
18 ~~and~~, postclosure, *and corrective action* activities.

19 (c) The state water board or the appropriate regional water
20 board shall have access to the financial assurance funds for
21 closure and postclosure activities, and to financial assurance
22 funds for corrective action, as necessary, to address water quality
23 problems, if the owner or operator of the solid waste landfill has
24 failed to implement the required closure and postclosure
25 activities or corrective action activities.

26 (d) The owner or operator may request disbursement for
27 expenditures to conduct closure, postclosure maintenance, or
28 corrective actions from the financial assurance mechanism
29 established for that activity. Requests for disbursement shall be
30 granted by the board only if sufficient funds are remaining in the
31 financial assurance mechanism to cover the remaining approved
32 total costs of closure, postclosure maintenance, or corrective
33 actions, as appropriate.

34 (e) If the evidence of financial ability for closure, postclosure,
35 or corrective action is demonstrated by use of insurance, the
36 board may approve the insurance mechanism if it is in
37 compliance with either paragraph (1) or (2) as follows:

38 (1) The issuer of the insurance policy is either:

1 (A) Licensed by the Department of Insurance to transact the
2 business of insurance in the State of California as an admitted
3 carrier.

4 (B) Eligible to provide insurance as an excess and surplus
5 lines insurer in California through a surplus lines broker currently
6 licensed under the regulations of the Department of Insurance
7 and upon the terms and conditions prescribed by the Department
8 of Insurance.

9 (2) If the insurance carrier is established by a solid waste
10 facility operator to meet the financial assurance obligations of
11 that operator, insurance may be approved by the board that meets
12 all of the following requirements:

13 (A) The insurance mechanism is in full compliance with the
14 requirements for insurance that are specified in subdivision (d) of
15 Section 258.74 of Title 40 of the Code of Federal Regulations.

16 (B) The insurance carrier is an insurer domiciled in the United
17 States and licensed in its state of domicile to write that insurance.

18 (C) The insurance carrier only provides financial assurance to
19 the operator that has established the insurance carrier as a form of
20 self-insurance and does not engage in the business of marketing,
21 brokering, or providing insurance coverage to other parties.

22 (D) The insurance carrier shall maintain a rating of A- or
23 better by A.M. Best, or other equivalent rating by any other
24 agency acceptable to the board.

25 (E) If requested by the board, an independent financial audit
26 report evaluating the assets and liabilities of the insurance carrier
27 and confirming compliance with the statutory and regulatory
28 requirements of the state of domicile and an independent
29 actuarial opinion on the independence and financial soundness of
30 the insurance carrier by an actuary in good standing with the
31 Casualty Actuarial Society or the American Academy of
32 Actuaries regarding the adequacy of the loss reserves maintained
33 by the insurance carrier shall be submitted to the board upon
34 application and annually thereafter.

35 (f) A solid waste facility operator using or proposing to use an
36 insurance company to demonstrate financial assurance may be
37 required by the board to pay a fee for the actual and necessary
38 cost of reviewing information submitted by the operator pursuant
39 to paragraph (2) of subdivision (e) up to an amount not to exceed

1 ten thousand dollars (\$10,000), unless a higher amount is
2 mutually agreed to by the operator and the board.

3 (g) The funds collected pursuant to subdivision (f) shall be
4 deposited in the Integrated Waste Management Account and
5 shall be available, upon appropriation by the Legislature, for
6 expenditure by the board to fund the review specified in
7 subdivision (f).

8 *SEC. 10. Section 43602 of the Public Resources Code is*
9 *amended to read:*

10 43602. (a) ~~Except as provided in subdivision (b), evidence of~~
11 ~~financial ability required of an owner or operator of a solid waste~~
12 ~~landfill, as defined in Section 40195.1, shall be adjusted to equal~~
13 ~~the estimated costs of closure and 15 years of postclosure~~
14 ~~maintenance in the approved plans. Revisions in the plans prior~~
15 ~~to closure shall be accompanied by corresponding revisions in~~
16 ~~cost estimates and financial assurances.~~

17 (b) ~~On and after the effective date of the federal regulations set~~
18 ~~forth in Subpart G (commencing with Section 258.70) of Part~~
19 ~~258 of Title 40 of the Code of Federal Regulations, the evidence~~
20 *Evidence* of financial ability required of an owner or operator of
21 a solid waste landfill shall be adjusted to equal the estimated
22 costs of closure ~~and, a minimum of 30 years of postclosure~~
23 ~~maintenance, and corrective action in the approved plans.~~
24 ~~Revisions in the plans prior to closure shall be accompanied by~~
25 ~~corresponding revisions in cost estimates and financial~~
26 ~~assurances. Financial assurance requirements for postclosure~~
27 ~~maintenance and corrective action shall continue until the waste~~
28 ~~no longer poses a threat to public health and safety or the~~
29 ~~environment.~~

30 *SEC. 11. Section 43606 of the Public Resources Code is*
31 *amended to read:*

32 43606. (a) Except for financial arrangements approved by
33 the board pursuant to this article, no indemnification, hold
34 harmless, or similar agreement or conveyance is effective to
35 transfer from the owner or operator of a disposal site to any other
36 person any obligations imposed on the owner or operator under
37 this article.

38 (b) Notwithstanding subdivision (a), nothing in this section
39 prohibits ~~any~~ an agreement between the owner and the operator
40 regarding their respective obligations for closure ~~and~~, postclosure

1 maintenance, *and corrective action* of a disposal site, and nothing
2 in this section prohibits a cause of action that an owner or
3 operator has or would have against the other party by reason of
4 that agreement.

5 *SEC. 12. Section 43610.1 of the Public Resources Code is*
6 *amended to read:*

7 43610.1. A disposal site owner or operator who meets the
8 requirements of this article and its implementing regulations shall
9 be deemed to have satisfactorily complied with all state
10 requirements for financial ability to provide for closure—and,
11 postclosure maintenance, *and corrective action* costs.

12 *SEC. 13. Section 43611 is added to the Public Resources*
13 *Code, to read:*

14 43611. *The Legislature intends to enact legislation to require*
15 *an enforcement agency to provide a public notice and conduct a*
16 *public hearing when a solid waste facility operator proposes to*
17 *change the design or operation of an existing permitted facility*
18 *that would require the operator to obtain a new solid waste*
19 *facilities permit that is different from the permit that he or she*
20 *holds.*

21 *SEC. 14. No reimbursement is required by this act pursuant*
22 *to Section 6 of Article XIII B of the California Constitution*
23 *because a local agency or school district has the authority to levy*
24 *service charges, fees, or assessments sufficient to pay for the*
25 *program or level of service mandated by this act, within the*
26 *meaning of Section 17556 of the Government Code.*