

AMENDED IN ASSEMBLY MAY 2, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 712

Introduced by Assembly Member De Leon

February 22, 2007

An act to add Chapter 9.2 (commencing with Section 44299.25) to Part 5 of Division 26 of, and to repeal Sections 44299.27, 44299.28, 44299.29, 44299.31, and 44299.32 of, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 712, as amended, De Leon. Off-road solid waste and recycling vehicle clean air program.

Existing law requires the State Air Resources Board to adopt standards and regulations for off-road or nonvehicle engines, and to identify toxic air contaminants and establish airborne toxic control measures for toxic air contaminants.

Existing law requires each operator of a solid waste disposal facility to pay a quarterly fee to the State Board of Equalization.

This bill would require, commencing April 1, 2008, a person disposing of solid waste at a disposal facility that is subject to the quarterly fee described above to pay a fee of \$0.50 for each ton of solid waste submitted for disposal at the facility. The operator of the facility would be required to collect the fees and submit the fees to the State Board of Equalization, which would be required to transfer the fees to the Off-Road Solid Waste and Recycling Vehicle Clean Air Account, which the bill would establish within the Air Pollution Control Fund.

The bill would require the ~~state board~~ *State Air Resources Board* to expend the funds deposited in the account, upon appropriation by the Legislature, to pay an operator of an off-road solid waste and recycling vehicle, as defined, for the operator's eligible actual costs of complying with a specified ~~state board~~ *State Air Resources Board* regulation, if adopted, not including costs that have previously been paid with public funds. The ~~state board~~ *California Integrated Waste Management Board* would also be required to award grants up to a total amount not to exceed \$4,000,000 per year for demonstration projects that advance the commercialization of technologies that generate renewable transportation fuels from solid waste or recovered landfill gas and reduce greenhouse gases, and the distribution of these fuels, and projects that demonstrate the viability of using alternative fuels in off-road equipment, upon appropriation, for projects that divert organic materials from disposal in order to reduce greenhouse gas emissions from landfills. The ~~state board~~ *State Air Resources Board* would be required to report annually to the Legislature on the expenditures from the account and the emission reductions estimated to have been achieved by these expenditures. The provisions of the bill relating to imposition of the fee would be repealed January 1, ~~2019~~ 2015, and the bill would require funds then remaining in the account to be used for certain research and demonstration projects.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The State Air Resources Board identified diesel particulate
- 4 matter as a toxic air contaminant in 1998 and adopted a Diesel
- 5 Risk Reduction Plan in 2000 to reduce particulate matter emissions
- 6 from diesel-fueled engines and vehicles in order to reduce cancer
- 7 risks by 75 percent.
- 8 (b) The State Air Resources Board has proposed the adoption
- 9 of a specific control measure that will require all diesel-fueled
- 10 off-road vehicles, including those used by the solid waste and
- 11 recycling industry, to use prescribed emission control strategies
- 12 to retrofit, replace, or repower existing vehicles and engines to
- 13 reduce particulate matter emissions.

1 (c) It is the goal of this program to ensure the maximum feasible
2 reduction in both particulate matter and nitrogen oxides emissions.

3 (d) The funding mechanism established by this act is intended
4 to (1) ensure that California benefits immediately from the most
5 effective technologies to reduce both particulate matter and oxides
6 of nitrogen emissions as well as greenhouse gas emissions from
7 solid waste and recycling diesel fueled off-road vehicles, (2)
8 encourage the early implementation of the proposed in-use off-road
9 vehicle control measure by the solid waste and recycling industry,
10 ~~(3) promote projects that will demonstrate the commercial viability~~
11 ~~of producing clean transportation fuels from municipal solid waste~~
12 ~~and recovered landfill gas as a means of reducing both criteria air~~
13 ~~pollutants and greenhouse gas emissions from both on-road and~~
14 ~~off-road vehicles, and (4) support projects that demonstrate the~~
15 ~~viability of using alternative fuels in off-road equipment, including~~
16 ~~solid waste and recycling vehicles. and (3) promote projects that~~
17 *divert organic materials from disposal in order to reduce*
18 *greenhouse gas emissions from landfills.*

19 (e) Given the magnitude of the diesel emission reduction
20 requirements proposed by the State Air Resources Board and the
21 need for timely and effective implementation, it is in the public
22 interest to establish a temporary fee on persons disposing of solid
23 waste for the sole purpose of reducing emissions from solid waste
24 and recycling diesel-fueled off-road vehicles, promoting the
25 production, distribution, and use of clean nonfossil fuels within
26 California's solid waste and recycling industry, and ~~demonstrating~~
27 ~~the viability of using alternative fuels in off-road equipment~~
28 *reducing greenhouse gas emissions from landfills.*

29 (f) It is the intent of the Legislature that financial assistance be
30 provided through the fee revenues generated by this act to all public
31 and private operators of solid waste and recycling diesel-fueled
32 off-road vehicles that are subject to the State Air Resources Board's
33 proposed off-road vehicle control measure.

34 (g) The imposition of a fee on persons disposing of solid waste
35 at disposal facilities pursuant to this act would not result in the
36 imposition of a tax within the meaning of Section 3 of Article
37 XIII A of the California Constitution, because the amount and
38 nature of the fee has a fair and reasonable relationship to the
39 adverse environmental burdens imposed by the operation of
40 off-road solid waste and recycling vehicles and there is a sufficient

1 nexus between the fees imposed and the use of those fees to support
2 programs that reduce the diesel particulate matter and nitrogen
3 oxides emissions caused by those vehicles.

4 SEC. 2. Chapter 9.2 (commencing with Section 44299.25) is
5 added to Part 5 of Division 26 of the Health and Safety Code, to
6 read:

7

8 CHAPTER 9.2. OFF-ROAD SOLID WASTE AND RECYCLING
9 VEHICLE CLEAN AIR PROGRAM

10

11 44299.25. For purposes of this chapter, the following
12 definitions shall apply:

13 (a) "Account" means the Off-Road Solid Waste and Recycling
14 Vehicle Clean Air Account established pursuant to Section
15 44299.26.

16 (b) "Disposal facility" means disposal facility as defined in
17 Section 40121 of the Public Resources Code.

18 (c) "NO_x" means oxides of nitrogen.

19 (d) "Off-road solid waste and recycling vehicle" means an
20 off-highway motor vehicle as defined in Section 38006 of the
21 Vehicle Code that operates with a diesel fueled compression
22 ignition engine with maximum power of 25 horsepower or greater
23 that is used for the purpose of transferring, processing or disposing
24 of solid waste, for construction or maintenance activities at a solid
25 waste facility, or for transferring and processing recyclable
26 materials.

27 (e) "Operator of an off-road solid waste and recycling vehicle"
28 means either of the following:

29 (1) A city, county, city and county, or special district that
30 operates off-road solid waste and recycling vehicles.

31 (2) An individual, firm, limited liability company, partnership,
32 private corporation, or nonprofit entity that operates off-road solid
33 waste and recycling vehicles in the business of transferring,
34 processing or disposing of solid waste, or transferring and
35 processing recyclable materials pursuant to a contract, franchise,
36 license, permit, or other authorization granted by a public agency.

37 (f) "PM" means particulate matter.

38 (g) "Recycling" means recycling as defined in Section 40180
39 of the Public Resources Code.

1 (h) “Solid waste” means solid waste as defined in Section 40191
2 of the Public Resources Code.

3 44299.26. The Off-Road Solid Waste and Recycling Vehicle
4 Clean Air Account is hereby established within the Air Pollution
5 Control Fund, to be administered by the state board.

6 44299.27. (a) On and after April 1, 2008, a person disposing
7 of solid waste at a disposal facility that is subject to the
8 requirements of Section 48000 of the Public Resources Code, shall
9 pay a fee of 50 cents (\$0.50) for each ton of solid waste submitted
10 for disposal at the solid waste disposal facility.

11 (b) The operator of the solid waste disposal facility shall collect
12 the fee paid pursuant to subdivision (a) and shall submit the fee to
13 the State Board of Equalization in a manner consistent with the
14 manner in which the fee created by Section 48000 of the Public
15 Resources Code is submitted. For the purposes of this subdivision
16 “operator” has the same meaning described in Section 40160 of
17 the Public Resources Code.

18 (c) The State Board of Equalization shall transfer the fees
19 collected pursuant to this section to the account. All fees collected
20 by the State Board of Equalization shall be collected and
21 administered by the State Board of Equalization in a manner
22 consistent with Part 23 (commencing with Section 45001) of
23 Division 2 of the Revenue and Taxation Code.

24 (d) The state board shall reduce the fee imposed pursuant to this
25 section if it determines that projected revenues will exceed
26 projected demands for payment and shall notify the appropriate
27 policy committees of the Legislature if the state board projects
28 that the fee will generate inadequate revenues to meet anticipated
29 demands for payment.

30 (e) This section shall remain in effect only until January 1, ~~2019~~
31 2015, and as of that date is repealed, unless a later enacted statute,
32 that is enacted before January 1, ~~2019~~ 2015, deletes or extends
33 that date.

34 44299.28. (a) The state board shall expend the funds deposited
35 in the account, upon appropriation by the Legislature, to assist an
36 operator of an off-road solid waste and recycling vehicle in paying
37 for the operator’s eligible actual costs of complying with
38 regulations to reduce diesel PM and criteria air pollutant emissions
39 from in-use off-road vehicles, contained in Section 2449 of Title
40 13 of the California Code of Regulations, upon the adoption of

1 these regulations, including the operator's early implementation
2 of these regulations prior to their adoption. The costs the state
3 board may help pay include, but are not limited to, any of the
4 following:

5 (1) The reasonable cost of the best available control technology
6 to reduce diesel PM emissions from off-road solid waste and
7 recycling vehicles, including the cost of installation.

8 (2) The reasonable cost of the best available control technology
9 to reduce NO_x emissions from off-road solid waste and recycling
10 vehicles, including the cost of installation.

11 (3) The reasonable cost of purchasing and installing engine
12 backpressure monitors and similar devices approved by the state
13 board if required for the safe and effective use of the best available
14 control technology device on off-road solid waste and recycling
15 vehicles.

16 ~~(b) The state board shall also award grants up to a total amount
17 not to exceed four million dollars (\$4,000,000) per year for
18 demonstration projects that advance the commercialization of
19 technologies that generate renewable transportation fuels from
20 solid waste or recovered landfill gas and reduce greenhouse gases;
21 and the distribution of these fuels, and projects that demonstrate
22 the viability of using alternative fuels in off-road equipment.~~

23 ~~(e)~~

24 (b) The state board shall, after at least one public hearing,
25 develop and adopt guidelines and an appropriate process for
26 equitably distributing available funds from the account including
27 funding levels for retrofit, repower, replacement, and other best
28 available control technologies to achieve the greatest and most
29 cost-effective levels of PM and NO_x reductions, *and* equitably
30 distributing available funds from the account for best available
31 control technologies based on the use of alternative fuels, ~~and~~
32 ~~awarding grant funds for demonstration projects.~~

33 ~~(d)~~

34 (c) The state board shall expend, upon appropriation by the
35 Legislature, no more than 4 percent of the funds deposited each
36 fiscal year in the account for purposes of administering this chapter
37 including those actual and necessary costs incurred by the State
38 Board of Equalization for the collection of the fee authorized by
39 this chapter.

1 (d) (1) *The state board shall transfer an amount not to exceed*
2 *four million dollars (\$4,000,000) per year from the account to the*
3 *Integrated Waste Management Account created by Section 48001*
4 *of the Public Resources Code.*

5 (2) (A) *The California Integrated Waste Management Board*
6 *shall, upon appropriation by the Legislature from the funds*
7 *deposited into the Integrated Waste Management Account pursuant*
8 *to paragraph (1), award grants for projects that divert organic*
9 *materials from disposal in order to reduce greenhouse gas*
10 *emissions from landfills.*

11 (B) *Eligible projects include all of the following:*

12 (i) *Compost and mulch programs and market development of*
13 *these programs.*

14 (ii) *Food waste management programs and market development*
15 *of these programs.*

16 (iii) *Energy and fuel production, including anaerobic digestion,*
17 *hydrolysis, and landfill gas to energy. Eligible projects shall not*
18 *include thermal technologies.*

19 (C) *The California Integrated Waste Management Board shall*
20 *expend no more than 4 percent of the funds transferred to the*
21 *Integrated Waste Management Account pursuant to paragraph*
22 *(1) for administering the program created by this subdivision.*

23 (e) *This section shall remain in effect only until January 1, ~~2019~~*
24 *2015, and as of that date is repealed, unless a later enacted statute,*
25 *that is enacted before January 1, ~~2019~~ 2015, deletes or extends*
26 *that date.*

27 44299.29. (a) *The state board shall develop and distribute a*
28 *one-page form for the operator of an off-road solid waste and*
29 *recycling vehicle to document the actual costs of the operator for*
30 *which payment is sought. The state board shall include with the*
31 *form, instructions for submitting to the state board an invoice and*
32 *documentation to request payment for eligible costs.*

33 (b) *The state board shall not pay an operator of an off-road solid*
34 *waste and recycling vehicle for costs that have previously been*
35 *paid with funds awarded by a federal agency, the state board, a*
36 *local air pollution control or air quality management district, or*
37 *with any other source of public funds for the cost of deploying,*
38 *retrofitting, or repowering off-road solid waste and recycling*
39 *vehicles with best available control technologies. When submitting*
40 *an invoice to the state board, an operator shall deduct, from the*

1 total cost of the best available control technology, the amount of
2 any costs paid for with public grant funds awarded to, or previously
3 received by, the operator.

4 (c) To the extent practical, the state board shall make the
5 payments to an eligible operator within 30 working days of
6 receiving a complete invoice and required documentation.

7 (d) The state board may adopt regulations to implement this
8 section.

9 (e) This section shall remain in effect only until January 1, ~~2019~~
10 2015, and as of that date is repealed, unless a later enacted statute,
11 that is enacted before January 1, ~~2019~~ 2015, deletes or extends
12 that date.

13 44299.30. (a) If an operator of an off-road solid waste and
14 recycling vehicle knowingly submits false information to the state
15 board concerning the eligibility for the payment of funds pursuant
16 to this chapter, the state board shall, within 60 days of making this
17 determination, refer the information to the Attorney General for
18 investigation and appropriate action pursuant to the False Claims
19 Act (Article 9 (commencing with Section 12650) of Chapter 6 of
20 Part 2 of Division 3 of the Government Code).

21 (b) The state board shall keep accurate books, records, and
22 accounts on all disbursements from the account and may audit
23 invoices received from operators of off-road solid waste and
24 recycling vehicles to substantiate that payments made by the state
25 board are those eligible for payment pursuant to this chapter.

26 44299.31. (a) Beginning no later than January 1, 2009, the
27 state board shall report annually to the Legislature on the
28 expenditures from the account and the emission reductions
29 estimated to have been achieved by these expenditures.

30 (b) On or before January 1, 2009, the state board shall submit
31 to the appropriate policy committees of the Legislature an
32 assessment of whether the funding program created by this chapter
33 would be more effectively implemented through air pollution
34 control districts and air quality management districts in a manner
35 similar to the Carl Moyer Memorial Air Quality Standards
36 Attainment Program created by Chapter 9 (commencing with
37 Section 44275).

38 (c) This section shall remain in effect only until January 1, ~~2019~~
39 2015, and as of that date is repealed, unless a later enacted statute,

1 that is enacted before January 1, ~~2019~~ 2015, deletes or extends
2 that date.

3 44299.32. (a) The program implemented pursuant to this
4 chapter shall be fully supported from the fees collected pursuant
5 to Section 44299.27. Notwithstanding the scope of activity
6 mandated by this chapter, in no event shall this chapter be
7 interpreted to require services necessitating expenditures in a fiscal
8 year in excess of the fees, and earnings therefrom, collected
9 pursuant to Section 44299.27. This chapter shall be implemented
10 only to the extent that fee revenues generated pursuant to Section
11 44299.27 are available for expenditure for purposes of this chapter.
12 The fees collected pursuant to this chapter, and the earnings
13 therefrom, shall be used solely for the purpose of implementing
14 this chapter.

15 (b) This section shall remain in effect only until January 1, ~~2019~~
16 2015, and as of that date is repealed, unless a later enacted statute,
17 that is enacted before January 1, ~~2019~~ 2015, deletes or extends
18 that date.

19 44299.33. On and after January 1, ~~2019~~ 2015, if any
20 unexpended funds are available in the account, those funds shall
21 be expended by the state board for ~~additional~~ research and
22 demonstration projects related to innovative technologies to further
23 reduce criteria air pollutants and greenhouse gas emissions from
24 on-road and off-road solid waste and recycling vehicles.