

AMENDED IN SENATE SEPTEMBER 4, 2009

AMENDED IN SENATE SEPTEMBER 1, 2009

AMENDED IN SENATE JULY 9, 2009

AMENDED IN SENATE JUNE 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 274

Introduced by Assembly Member Portantino

February 12, 2009

An act to amend Sections 48000 and 48001 of, to add Section 48001.5 to, and to add Article 2.1 (commencing with Section 48010) to Chapter 2 of Part 7 of Division 30 of, the Public Resources Code, and to amend Section 45901 of the Revenue and Taxation Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 274, as amended, Portantino. Solid waste: landfills: closure plans.

Existing law requires an operator of a solid waste disposal facility to pay a quarterly fee to the State Board of Equalization (*state board*) based on the amount of solid waste disposed of at each disposal site. Commencing with the 1995–96 fiscal year, the act requires the California Integrated Waste Management Board (*board*) to establish the amount of the fee, as specified, and limits the fee to a maximum of \$1.40 per ton. The fees are required to be deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund, and the board is authorized to expend the money in the account, upon appropriation by the Legislature, to administer and implement the act.

This bill, on and after January 1, 2012, would authorize an operator of a solid waste disposal facility that is required to meet financial assurance requirements and is in operation on July 1, 2011, to elect to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund created by this bill.

The bill would require that a participating operator pay a fee of \$0.12 per ton per disposal site. The bill would require the fee to be collected in the same manner as the solid waste disposal fee described above, and require the board to fulfill certain administrative reporting requirements to the state board. The bill would also require that the fee be deposited in the fund and made available to the board for expenditure, upon appropriation by the Legislature, for postclosure activities and corrective actions not performed by any owner or operator of a solid waste landfill when the owner or operator fails to comply with the board's final order, the financial assurance mechanisms are inadequate to fund necessary compliance activities, the solid waste landfill was operating pursuant to a valid solid waste facilities permit on or after January 1, 1988, and the board has first used and exhausted all immediately available financial assurance mechanism provided by the operator.

The bill would require that the fee ~~and this act would~~ not be operative on and after January 1, 2012, unless the board received, on or before July 1, 2011, letters of participation in the State Solid Waste Postclosure and Corrective Action Trust Fund from landfill operators representing at least 50% of the total annual waste disposal tonnage in 2010, as determined by the board. The bill would make conforming changes.

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 48000 of the Public Resources Code is
- 2 amended to read:
- 3 48000. (a) Each operator of a disposal facility shall pay a fee
- 4 quarterly to the State Board of Equalization which is based on the
- 5 amount, by weight or volumetric equivalent, as determined by the
- 6 board, of all solid waste disposed of at each disposal site.
- 7 (b) (1) The fee for solid waste disposed of shall be one dollar
- 8 and thirty-four cents (\$1.34) per ton. Commencing with the
- 9 1995–96 fiscal year, the amount of the fee shall be established by

1 the board at an amount that is sufficient to generate revenues
2 equivalent to the approved budget for that fiscal year, including a
3 prudent reserve, but shall not exceed one dollar and forty cents
4 (\$1.40) per ton.

5 (2) On and after January 1, 2012, the amount of the fee
6 established by the board pursuant to paragraph (1) shall be
7 increased by twelve cents (\$0.12) per ton for each operator of a
8 solid waste landfill that notifies the board that it elects to participate
9 in the State Solid Waste Postclosure and Corrective Action Trust
10 Fund pursuant to Article 2.1.

11 (c) The board shall notify the state board on the first day of the
12 period in which the rate shall take effect of any rate change adopted
13 pursuant to paragraphs (1) and (2) of subdivision (b).

14 (d) The board and the state board shall ensure that all of the fees
15 for solid waste imposed pursuant to this section that are collected
16 at a transfer station are paid to the state board in accordance with
17 this article.

18 (e) (1) The fee imposed by paragraph (2) of subdivision (b)
19 shall not be operative *on or* after January 1, 2012, unless the board
20 receives, on or before ~~January 1, 2012~~ *July 1, 2011*, letters of
21 participation in the State Solid Waste Postclosure and Corrective
22 Action Trust Fund from landfill operators representing at least 50
23 percent of the total volume of waste disposed of in 2010.

24 (2) The board shall notify the state board, on or before ~~January~~
25 ~~30, 2012~~ *August 31, 2011*, if the fee imposed by paragraph (2) of
26 subdivision (b) shall become operative, pursuant to paragraph (1).

27 SEC. 2. Section 48001 of the Public Resources Code is
28 amended to read:

29 48001. The revenue from the fees paid pursuant to paragraph
30 (1) of subdivision (b) of Section 48000 shall, after payment of
31 refunds and administrative costs of collection, be deposited in the
32 Integrated Waste Management Account, which is hereby created
33 in the fund.

34 SEC. 3. Section 48001.5 is added to the Public Resources Code,
35 to read:

36 48001.5. (a) The revenue from the fees paid pursuant to
37 paragraph (2) of subdivision (b) of Section 48000 shall, after
38 payment of refunds and administrative costs of collection, be
39 deposited in the State Solid Waste Postclosure and Corrective
40 Action Trust Fund, which is hereby created in the State Treasury.

(b) Fees, revenues, and all interest earned shall be available to the board, upon appropriation by the Legislature, to carry out the purposes of Article 2.1, including all of the following:

(1) Corrective action and postclosure activities pursuant to subdivision (b) of Section 48011.

(2) Administrative costs incurred by the board in implementing Article 2.1.

(3) Any startup costs incurred by the board in implementing Article 2.1 that were incurred before fees were paid pursuant to paragraph (2) of subdivision (b) of Section 48000.

SEC. 4. Article 2.1 (commencing with Section 48010) is added to Chapter 2 of Part 7 of Division 30 of the Public Resources Code, to read:

Article 2.1. State Solid Waste Postclosure and Corrective Action Trust Fund

48010. (a) (1) An operator of a landfill ~~that is required to~~ maintain evidence of financial ability pursuant to Article 4 (commencing with Section 43600) of Chapter 2 of Part 4, that is operating the landfill on July 1, 2011, and that elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund pursuant to this article, shall submit written notice to the board on or before July 1, 2011.

(2) An operator of multiple landfills that elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund is required to submit written notice that includes all of the operator's operating landfills and all other landfills in which that operator has in common ownership.

(3) The board shall provide to the state board the name and address, and any other information necessary to administer and collect the fee imposed pursuant to paragraph (2) of subdivision (b) of Section 48000, of every operator of a landfill electing to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund on or before August 31, 2011.

(b) If an operator that is operating a landfill on July 1, 2011, submits a written notification to the board that it elects to participate after the trust fund fee goes into effect, the operator shall pay all trust fund fees applicable from January 1, 2012, and a 5-percent penalty before being allowed to participate.

1 (c) For new landfills that receive a solid waste facility permit
2 after July 1, 2011, the operator's election to participate in the State
3 Solid Waste Postclosure and Corrective Action Trust Fund shall
4 be submitted in writing to the board before the board concurs in
5 the issuance of the permit pursuant to Section 44009.

6 (d) All elections to participate made by landfill operators
7 pursuant to this section are final, binding, and irrevocable for those
8 operators and their successors and assignees.

9 48011. (a) For the purposes of this article, "solid waste
10 landfill" means a disposal site that is required to maintain evidence
11 of financial ability pursuant to Part 4 (commencing with Section
12 43600) of Chapter 2 of Part 4.

13 (b) The board may expend money in the State Solid Waste
14 Postclosure and Corrective Action Trust Fund to pay for corrective
15 action and postclosure activities that have not been performed by
16 the owner or operator of a solid waste landfill, upon a determination
17 by the board that all of the following conditions are met:

18 (1) The solid waste landfill owner or operator has failed to
19 comply with a final enforcement order issued by the enforcement
20 agency, the regional water board, or the board.

21 (2) The financial assurance mechanisms are inadequate to pay
22 for the required corrective action or postclosure maintenance
23 activities or both that action and those activities.

24 (3) The solid waste landfill was operating pursuant to a valid
25 solid waste facilities permit on or after January 1, 1988, when the
26 state's requirements for solid waste landfill financial assurances
27 went into effect as a result of Assembly Bill 2448 of the 1987–88
28 Regular Session, and is required to have financial assurances
29 pursuant to Article 4 (commencing with Section 43600) of Chapter
30 2 of Part 4.

31 (4) The board has first used and exhausted all immediately
32 available financial assurance mechanisms provided by the ~~public~~
33 operator.

34 (5) The solid waste landfill owner and operator are otherwise
35 unable or unwilling to pay, in a timely manner, for the required
36 corrective action or postclosure maintenance activities or both that
37 action and those activities.

38 (c) The board may adopt regulations, if necessary, setting forth
39 additional criteria for making expenditures from the State Solid
40 Waste Postclosure and Corrective Action Trust Fund.

1 (d) Notwithstanding Section 10295 of the Public Contract Code,
2 a contract entered into by the board for the purposes of this article
3 is not subject to approval by the Department of General Services.

4 (e) No liability or obligation is imposed on the state under this
5 article, and the board shall not incur any obligation beyond the
6 extent to which money is expended from the State Solid Waste
7 Postclosure and Corrective Action Trust Fund pursuant to this
8 article.

9 (f) The board shall, to the maximum extent feasible, recover
10 from the landfill owner or operator the amount of money expended
11 from the State Solid Waste Postclosure and Corrective Action
12 Trust Fund, including a reasonable amount for any board contract
13 administration costs and an amount equal to the interest that would
14 have been earned on the expended funds. The board shall deposit
15 all funds recovered pursuant to an action authorized by this section
16 into the State Solid Waste Postclosure and Corrective Action Trust
17 Fund.

18 (g) The amount of any cost incurred by the board pursuant to
19 this section is recoverable from the landfill owner or operator in
20 a civil action brought by the Attorney General pursuant to Section
21 40432.

22 (h) The board may, consistent with Section 48023.5, impose a
23 lien on the owner's or operator's assets or real property as an
24 additional remedy to recover funds from the operator for
25 expenditures from the State Solid Waste Postclosure and Corrective
26 Action Trust Fund.

27 48012. After January 1, 2015, as part of the annual report
28 required pursuant to Section 40507, the board shall report on
29 expenditures from the State Solid Waste Postclosure and Corrective
30 Action Trust Fund, the status of cost recovery actions, and any
31 recommended statutory changes that are necessary to ensure
32 adequate resources are available to carry out the purposes of the
33 State Solid Waste Postclosure and Corrective Action Trust Fund.

34 48013. An operator of multiple landfills who is required to
35 maintain evidence of financial ability pursuant to Article 4
36 (commencing with Section 43600) of Chapter 2 of Part 4 and
37 whose landfills are operating on July 1, ~~2010~~ 2011, shall include
38 all other landfills in which that operator has in common ownership
39 in the letter of participation.

SEC. 5. Section 45901 of the Revenue and Taxation Code is amended to read:

45901. All fees, interest, and penalties imposed and all amounts of fee required to be paid to the state pursuant to Section 45051 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments in the following manner:

(a) The payments from the fees paid pursuant to paragraph (1) of subdivision (b) of Section 48000 of the Public Resources Code and related interest and penalties shall be transmitted to the Treasurer for deposit in the Integrated Waste Management Account in the Integrated Waste Management Fund.

(b) The payments from the fees paid pursuant to paragraph (2) of subdivision (b) of Section 48000 of the Public Resources Code and related interest and penalties shall be transmitted to the State Solid Waste Postclosure and Corrective Action Trust Fund.

CORRECTIONS:

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