REPORT

DATE: June 1, 2006

TO: Energy and Environment Committee

FROM: Solid Waste Task Force
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SUBJECT: Assembly Bill 2296 (Montanez)

EXECUTIVE DIRECTOR'S APPROVAL:

RECOMMENDED ACTION:
Recommend support

SUMMARY
While current law requires that owners of landfills be responsible for on-going maintenance of closed facilities, there are often no dedicated resources for this purpose. The State of California is potentially liable for substantial costs in maintaining closed facilities. This bill would require landfill owners to assure on-going financial responsibility.

BACKGROUND:
Solid Waste management and disposal continues to be a serious issue facing the Southern California region. SCAG has provided on-going planning and leadership in this area under the Solid Waste Task Force. Additionally, SCAG is preparing a Solid and Hazardous Waste Chapter as part of its Regional Comprehensive Plan.

Among the issues addressed by the Task Force is the on-going safety and potential environmental impact of facilities in the solid waste management system. This legislation addresses a current gap in that system by requiring financial responsibility of owners of landfills. The Solid Waste Task Force, at its April 25 meeting, recommended that the Energy and Environment Committee and the Regional Council support the bill.

FISCAL IMPACT:
There is no fiscal impact associated with the recommended action. SCAG's activities in solid waste planning are included in the Overall Work Program as part of the Regional Comprehensive Plan (06-035.scgs1)

Attachment:
Text of bill

AMENDED IN ASSEMBLY MAY 3, 2006

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: closure, postclosure maintenance, and corrective action.

(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 plans for the landfill.

This bill would 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

000032

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~~ *costs* 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: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 43500 of the Public Resources Code is
2 amended to read:
3 43500. (a) The Legislature hereby finds and declares that the
4 long-term protection of air, water, and land from pollution due to
5 the disposal of solid waste is best achieved by requiring financial
6 assurances of the costs of closure, postclosure maintenance, and
7 corrective action of solid waste landfills.

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

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

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

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

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

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

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

(ii) The board shall adopt regulations on or before January 1, 2008, that require closure, postclosure maintenance, and corrective action cost estimates to be based on costs the state may incur if the state would have to assume responsibility for the closure, postclosure maintenance, or corrective action due to the failure of the owner or operator. Cost estimates shall include, but not be limited to, prevailing wages as determined by the Director of Industrial Relations pursuant to the Labor Code, and the replacement and repair costs for longer lived items, including, but not limited to, repair of the environmental control systems. Cost estimates shall be detailed to identify the maintenance costs, repair costs, and replacement costs throughout the postclosure

maintenance and corrective action period of the solid waste landfill.

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

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

(2) Submit to the regional water board, the local enforcement agency, and the board a plan for the closure of the solid waste landfill, a plan for the postclosure maintenance of the solid waste landfill, and a plan for corrective action for the solid waste landfill.

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

(c) If not in conflict with federal law or regulations, a county or city may, with regard to a solid waste landfill owned or operated by the county or city, base its estimate of closure and postclosure maintenance costs on the costs of employing county or city employees or persons under contract with the county or city in performing closure and postclosure maintenance. However, even if, to meet federal requirements, the ~~costs~~ *cost* estimate is based on the most expensive costs of closure and postclosure maintenance performed by a third party, the county or city may, to effect cost savings, employ county or city employees or employ persons under contract to actually perform closure operations or postclosure maintenance operations.

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

43502. All documentation relating to the preparation of the closure, postclosure maintenance, and corrective action costs shall be retained by the owner or operator and shall be available

for inspection by the board or the enforcement agency at reasonable times.

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

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

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

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

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

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

43509. (a) The board, in consultation with the state water board and in compliance with Section 40055, shall adopt and amend regulations specifying closure plan, postclosure maintenance plan, and corrective action plan adoption procedures and uniform standards to implement Section 43601. Regulations adopted pursuant to this section shall not include standards and requirements contained in regulations adopted by the state water board pursuant to Division 7 (commencing with Section 13000) of the Water Code. The regulations shall also require solid waste landfill owners or operators to calculate, and periodically revise, cost estimates for closure, postclosure maintenance, and corrective action, for as long as the solid waste could have an adverse effect on the quality of the waters of the state, but not

000036

less than 30 years after closure unless all wastes are removed in accordance with federal and state law.

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

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

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

43510. The regulations adopted by the board pursuant to this article and Article 4 (commencing with Section 43600) shall not duplicate or conflict with the regulations imposing closure, postclosure maintenance, and corrective action requirements adopted by the state water board, that are found in Chapter 15 (commencing with Section 2510) of Division 3 of Title 23 of the California Code of Regulations.

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

43600. A person owning or operating a solid waste landfill on or after January 1, 1988, shall, with the closure plan, postclosure maintenance plan, and corrective action plan submitted pursuant to Section 43501, submit to the board evidence of financial ability to provide for closure, postclosure maintenance, and corrective action, in an amount that is equal to the estimated cost

of closure, a minimum of 30 years of postclosure maintenance, and corrective action, contained in the closure, postclosure maintenance, and corrective action plans submitted. Financial assurance requirements for postclosure maintenance and corrective action shall continue until the waste no longer poses a threat to public health and safety or the environment.

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

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

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

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

(d) The owner or operator may request disbursement for expenditures to conduct closure, postclosure maintenance, or corrective actions from the financial assurance mechanism established for that activity. Requests for disbursement shall be granted by the board only if sufficient funds are remaining in the financial assurance mechanism to cover the remaining approved

000038

1 total costs of closure, postclosure maintenance, or corrective
2 actions, as appropriate.
3 (e) If the evidence of financial ability for closure, postclosure,
4 or corrective action is demonstrated by use of insurance, the
5 board may approve the insurance mechanism if it is in
6 compliance with either paragraph (1) or (2) as follows:
7 (1) The issuer of the insurance policy is either:
8 (A) Licensed by the Department of Insurance to transact the
9 business of insurance in the State of California as an admitted
10 carrier.
11 (B) Eligible to provide insurance as an excess and surplus
12 lines insurer in California through a surplus lines broker currently
13 licensed under the regulations of the Department of Insurance
14 and upon the terms and conditions prescribed by the Department
15 of Insurance.
16 (2) If the insurance carrier is established by a solid waste
17 facility operator to meet the financial assurance obligations of
18 that operator, insurance may be approved by the board that meets
19 all of the following requirements:
20 (A) The insurance mechanism is in full compliance with the
21 requirements for insurance that are specified in subdivision (d) of
22 Section 258.74 of Title 40 of the Code of Federal Regulations.
23 (B) The insurance carrier is an insurer domiciled in the United
24 States and licensed in its state of domicile to write that insurance.
25 (C) The insurance carrier only provides financial assurance to
26 the operator that has established the insurance carrier as a form of
27 self-insurance and does not engage in the business of marketing,
28 brokering, or providing insurance coverage to other parties.
29 (D) The insurance carrier shall maintain a rating of A- or
30 better by A.M. Best, or other equivalent rating by any other
31 agency acceptable to the board.
32 (E) If requested by the board, an independent financial audit
33 report evaluating the assets and liabilities of the insurance carrier
34 and confirming compliance with the statutory and regulatory
35 requirements of the state of domicile and an independent
36 actuarial opinion on the independence and financial soundness of
37 the insurance carrier by an actuary in good standing with the
38 Casualty Actuarial Society or the American Academy of
39 Actuaries regarding the adequacy of the loss reserves maintained

by the insurance carrier shall be submitted to the board upon application and annually thereafter.

(f) A solid waste ~~facility~~ *landfill* operator using or proposing to use an insurance company to demonstrate financial assurance may be required by the board to pay a fee for the actual and necessary cost of reviewing information submitted by the operator pursuant to paragraph (2) of subdivision (e) up to an amount not to exceed ten thousand dollars ($10,000), unless a higher amount is mutually agreed to by the operator and the board.

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

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

43602. Evidence of financial ability required of an owner or operator of a solid waste landfill shall be adjusted to equal the estimated costs of closure, a minimum of 30 years of postclosure maintenance, and corrective action in the approved plans. Revisions in the plans shall be accompanied by corresponding revisions in cost estimates and financial assurances. Financial assurance requirements for postclosure maintenance and corrective action shall continue until the waste no longer poses a threat to public health and safety or the environment.

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

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

(b) Notwithstanding subdivision (a), nothing in this section prohibits an agreement between the owner and the operator regarding their respective obligations for closure, postclosure maintenance, and corrective action of a disposal site, and nothing in this section prohibits a cause of action that an owner or

000040

1 operator has or would have against the other party by reason of
2 that agreement.
3 SEC. 12. Section 43610.1 of the Public Resources Code is
4 amended to read:
5 43610.1. A disposal site owner or operator who meets the
6 requirements of this article and its implementing regulations shall
7 be deemed to have satisfactorily complied with all state
8 requirements for financial ability to provide for closure,
9 postclosure maintenance, and corrective action costs.
10 ~~SEC. 13. Section 43611 is added to the Public Resources~~
11 ~~Code, to read:~~
12 ~~43611. The Legislature intends to enact legislation to require~~
13 ~~an enforcement agency to provide a public notice and conduct a~~
14 ~~public hearing when a solid waste facility operator proposes to~~
15 ~~change the design or operation of an existing permitted facility~~
16 ~~that would require the operator to obtain a new solid waste~~
17 ~~facilities permit that is different from the permit that he or she~~
18 ~~holds.~~
19 ~~SEC. 14.~~
20 *SEC. 13.* No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 a local agency or school district has the authority to levy service
23 charges, fees, or assessments sufficient to pay for the program or
24 level of service mandated by this act, within the meaning of
25 Section 17556 of the Government Code.

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