

Metropolitan Landfill Contingency Action Trust (MLCAT) Account

FY2011 Annual Report on Use of the MLCAT Account



Minnesota Pollution Control Agency

November 2011

Legislative Charge

Minn. Statutes § 473.846 Report to Legislature

The agency shall submit to the senate Finance Committee, the house of representatives Ways and Means Committee, and the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance separate reports describing the activities for which money for landfill abatement has been spent under sections 473.844 and 473.845. The agency shall report by November 1 of each year on expenditures during its previous fiscal year. The commissioner shall report on expenditures during the previous calendar year and must incorporate its report in the report required by section 115A.411, due July 1 of each odd-numbered year. The commissioner shall make recommendations to the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance on the future management and use of the metropolitan landfill abatement account.

History

1984 c 644 s 76; 1987 c 348 s 47; 1993 c 4 s 33; 1993 c 249 s 42; 1994 c 585 s 48; 1995 c 247 art 1 s 57; 1996 c 470 s 27; 2003 c 128 art 2 s 52; 1Sp2005 c 1 art 2 s 161

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Minnesota Pollution Control Agency

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Summary

The Minnesota Legislature established the MLCAT Fund under the 1984 Metropolitan Landfill Abatement Act, codified in Minn. Stat. § 473.845. This report is prepared in compliance with Minn. Stat. § 473.846, which requires that the MPCA submit an annual report to the Minnesota Legislature each November 1, describing the actions taken under MLCAT during the previous fiscal year. The report will briefly summarize the purpose and requirements of MLCAT, describe the current fiscal status, and list MPCA actions taken and legislative changes that took effect during Fiscal Year 2007. The relevant statutes, as amended, are contained in the appendix.

Minn. Stat. § 473.845, subd. 3, sets forth the activities that qualify for spending under the Metropolitan Landfill Contingency Action Trust (MLCAT) Account. Historically, the account has been dedicated for the care of certain closed disposal sites for mixed municipal solid waste in the seven-county Twin Cities metropolitan area. It is funded chiefly by revenue from a 25 percent share of a fee on mixed municipal solid waste buried at metro-area landfills, amounting to \$.50 per cubic yard.

Recent history of MLCAT

In 2001, the Minnesota Legislature authorized up to \$7.1 million to pay for environmental remediation work at a garbage dump in the metropolitan area that had once been permitted by the MPCA to dispose of sewage sludge incinerator ash. Only one site in the seven-county metro area matched that description, Pig's Eye Landfill on the Mississippi River in St. Paul. That same year, and also as a one-time appropriation, the Legislature authorized spending \$1 million from MLCAT to offset the costs of cleanup of the Empire Builder property in St. Paul.

The MLCAT Fund was originally a separate fund for the purposes of Minnesota Department of Finance accounting. In FY 2004, it became the Metropolitan Landfill Contingency Action Trust Account within the Remediation Fund. On June 30, 2004, \$9,905,000—essentially the entire available balance of MLCAT—was transferred to the state's General Fund as part of a budget-balancing initiative. As part of the transfer authorization, the Legislature expressed the intent to restore an equivalent amount to MLCAT at a later date, as revenue becomes available, so that the account could meet the needs of long-term care at MLCAT-eligible landfills.

During FY 2005 (First Special Session 2005, Chapter 1, Art. 3, Sec. 17), the Legislature authorized the transfer of an additional \$4 million from the MLCAT Account to the renewable development account, to occur in FY 2007.

As it does each year, in FY 2011 MPCA staff carried out inspections at the four closed MLCAT-eligible sites, and performed inspection, permitting, and technical tasks at the two remaining open landfills.

Introduction and Background

The original purpose of MLCAT was to ensure that necessary and reasonable care would be adequately funded at mixed municipal solid waste (MMSW) disposal facilities within the seven-county Twin Cities metropolitan area (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties). Money would be available on an emergency basis to address immediate threats that older landfills might pose where the owners or operators proved unable to meet their obligations. In addition, the fund would help pay the cost of long-term care at sites that had been closed properly for three decades. Money deposited in MLCAT has come from three sources:

- 1) 25 percent of the \$2/cubic yard, or 25 percent of the \$6.66/ton, Metropolitan Solid Waste Landfill fee on MMSW disposed in Twin Cities metro-area landfills;
- 2) Interest earned from investment of money in MLCAT; and
- 3) Any money recovered by the MPCA for reimbursement of costs incurred.

With the passage of the Landfill Cleanup Act by the Minnesota Legislature in 1994, reliance on MLCAT for such actions at metro-area landfills was significantly reduced. This reduction occurred because the majority of closed metro-area landfills that had been eligible for spending under MLCAT became qualified for cleanup and long-term care under the state's Closed Landfill Program (CLP), after owners earned a notice of compliance under the CLP statutes. Even so, the creation of the CLP left six landfill sites reliant on the earlier MLCAT law, because those landfills did not qualify for participation in the CLP. These sites are discussed individually in the report.

To be eligible for MLCAT expenditures, a closed, state-permitted MMSW landfill must be within the seven-county metropolitan area and maintained for at least 30 years. As to landfills closed for less than 30 years, MLCAT would not pay the cost of response actions unless the landfill owner/operator had failed to act.

Fiscal Status, FY 2011

Table 1. Revenue and expenditures, MLCAT account (\$000)

	FY 2011 (actual)	FY 2012 (estimated)	FY 2013 (estimated)	FY 2014 (estimated)
Balance forward, including reserves	3,938	4,867	5,638	6,409
Prior year adjustment	0	0	0	0
Adjusted balance forward	3,938	4,867	5,638	6,409
Revenue				
Metro Landfill Contingency Fee income	904	746	745	746
Other revenue – penalties	0	1	1	1
Investment	25	25	25	25
Total Resources available	4,867	5,638	6,409	7,180
Expenditures				
Site closure/Postclosure design and engineering	0	0	0	0
Construction, operation, and maintenance	0	0	0	0
Remediation of Pig's Eye Dump	0	0	0	0
Renewable Development Account	0	0	0	0
Total Expenditures	0	0	0	0
Balance forward, before reserves for perpetual care	4,867	5,638	6,409	7,180
Reserves	4,867	5,638	6,409	7,180
Available account balance, after reserves	0	0	0	0

Source: Information Access Data Warehouse, November 2011

MLCAT-Related Activities in FY 2011

Six state-permitted landfills were MLCAT-eligible in FY 2011. One additional landfill benefited from a one-time, state-funded construction project that has been completed. A summary of site status appears in Table 2.

The seven landfills are:

- Four demolition landfills that accepted small quantities of mixed municipal waste prior to being permitted as demolition landfills and are, therefore, eligible for MLCAT expenditures when and if necessary. They are Vadnais Heights Demolition Landfill (Ramsey County), Rosemount Demolition Landfill (Dakota County), Herbst and Sons Demolition Landfill (Hennepin County), and Begin Demolition Landfill (Hennepin County).
- Two open sanitary landfills: Burnsville Sanitary Landfill (Dakota County) and Pine Bend Sanitary Landfill (Dakota County).
- Pig's Eye Landfill (Ramsey County), a large site including a large city dump that operated without a state permit until closure in 1972, which is co-located with a state-permitted sewage-sludge ash landfill that operated from 1977 to 1985. MLCAT expenditures ended as of July 1, 2007.

Fiscal year 2011 tasks included: (1) conducting inspections of sites to determine whether any actions are needed; (2) reviewing closure plans from MLCAT-eligible landfills for compliance with closure and postclosure care requirements; and (3) preparing the annual report.

Table 2. FY 2011 Status of MLCAT-eligible Landfills in the Metropolitan Area

Landfill	County	Accepting waste?	Closure date (1)	Incurring MLCAT costs now?	Date postclosure assistance could begin	Notes
Begin DLF (SW-134)	Hennepin	No	1979	No	2009	3,4
Burnsville SLF (SW-56)	Dakota	Yes	Estimated 2020	No	30 years following closure date	1,2,4
Herbst & Sons DLF (SW-136)	Ramsey	No	1983	No	2013	3,4
Pig's Eye Landfill & Dump	Ramsey	No	1972	No	<i>See Long-Term Maintenance and Monitoring Plan (2006)</i>	5
Pine Bend SLF (SW-45)	Dakota	Yes	Estimated 2022	No	30 years following closure date	1,2,4
Rosemount DLF (SW-118)	Dakota	No	1981	No	2011	3,4
Vadnais Heights DLF (SW-27)	Ramsey	No	1981	No	2011	3,4

Source: MPCA, 2011

Abbreviations: DLF = Demolition landfill containing mixed municipal solid waste (disposed of during previous operations)

SLF = Sanitary landfill

Notes:

1. Future closure dates for the two operating landfills are estimates, based upon current remaining permitted capacity and historical disposal volume rates at the landfill.
2. Any current on-site work, including closure and/or postclosure, is being conducted by the permittee.
3. No work is currently in progress.
4. Site is currently in compliance.
5. Local parties operate and maintain the remedies constructed by MPCA.

The most recent inspections conducted at these sites assessed the effects of decomposition gases, leachate production and seepage, surface water drainage and control, the degree of stress on area vegetation, erosion and overall integrity of the final cover, the means by which access to the filled area is restricted, facility maintenance, and current land use. The observations are summarized in Table 3.

Table 3. Inspection of MLCAT-eligible closed landfills

Site	Access control	Erosion visible	Cover	Current land use	Landfill gas
Begin DLF	None	No	Paving, grass	Parking lot and small strip mall	None detected
Herbst & Sons DLF	Yes	No	Vegetation, gravel lot	Open area used for concrete recycling operation and parking area for equipment	None detected
Pig's Eye Landfill & Dump	Partial	None	Vegetation for habitat	Wildlife habitat and wood-chipping facility for District Energy, St. Paul	Not an issue at this site
Rosemount DLF	Partial	No	Vegetation, gravel lot	Gravel and equipment storage for city; possible redevelopment to office park may occur in future	None detected
Vadnais Heights DLF	None	No	Vegetation established as part of recreational use, some structures	City park with ball field, picnic grounds, ice rink	None detected

Source: MPCA, 2011

Status of operating MMSW landfills

The two MLCAT-eligible landfills still accepting waste for disposal are Pine Bend Sanitary Landfill and Burnsville Sanitary Landfill. Both are located in Dakota County. Due to their size, complexity, and the high level of disposal activity at each of these sites, staff from both the MPCA and Dakota County perform inspections and monitoring. Both landfills have approved financial assurance programs monitored by the MPCA, and these should be sufficient to pay for site care over a period of 30 years following closure. The activities at each facility are described below.

Burnsville Sanitary Landfill

Burnsville Sanitary Landfill, Inc. owns and operates the Burnsville Sanitary Landfill (BSL) in the City of Burnsville. BSL is a wholly-owned subsidiary of Waste Management, Inc. In January 1997, the MPCA modified and reissued the permit for the facility. The permit authorized construction of three demolition and construction debris cells, with the remaining landfill cells dedicated to the disposal of MMSW.

In 2002, the MPCA permitted BSL to expand the MMSW landfill capacity within Phases 24 and 25. In FY 2006, the MPCA certified the Phase 20 slope liner, the Stage IV final cover, and a modification of the leachate force main. In FY 2007, the MPCA approved a permit for horizontal expansion.

In 2010, BSL continued with MSW cell construction and closure to implement the 2007 permit modification. BSL has submitted an application to the MPCA to reclassify certain permitted, but as yet unconstructed, demolition cells. The MPCA reviewed that application and issued the modified permit in April 2011. The permit approved changing the proposed lined cells in the north development area from demo to industrial waste cells.

In calendar year 2010, BSL landfilled approximately 263,000 tons of MMSW and 5,000 tons of industrial solid waste in the MMSW cells. According to the 2010 annual report the facility has roughly 4,100,000 cubic yards of remaining capacity. If current waste volumes continue, the landfill has approximately 10 years of operating life remaining.

BSL has a 4.2-megawatt landfill gas-to-energy system consisting of gas extraction wells and a piping network that draws gas by a blower-created vacuum to a central building for cleaning, after which the gas is burned for electrical generation. The electricity is fed into Xcel Energy's electrical lines.

The groundwater monitoring system at Burnsville Landfill monitors water quality from both the lined and unlined portion of the facility. The groundwater monitoring network has been expanded as a result of the permitting of additional MMSW cells. The water quality monitoring system at the landfill consists of 21 monitoring wells and one surface water monitoring station. Each of the 21 groundwater monitoring wells is used to collect water elevation data, while 10 of the wells are used to collect water quality data. Water quality monitoring indicates that neither the lined nor the unlined portions have adversely impacted the groundwater downgradient of the facility. A high-volume dewatering system operating at the Edward Kraemer & Sons quarry nearby is currently preventing subsurface migration of contaminants from BSL. The groundwater monitoring system will be upgraded, if either the demolition or MMSW portions of the landfill are expanded.

Pine Bend Sanitary Landfill

Allied Waste Industries, Inc. operates Pine Bend Sanitary Landfill (PBSL) in Inver Grove Heights. It is the largest MMSW landfill in the state. The permitted fill area encompasses 220 acres, 52 acres of which are lined. No fill area received final cover until 1993, when 25 acres (Phase 1) were capped. The remaining unlined portion of the fill area received final cover during the 1995 and 1996 construction seasons. Current capacity is projected as sufficient for operations through 2022.

Acceptable materials for disposal in the lined landfill include industrial, MMSW, asbestos, and construction and demolition debris waste. Vacuum pumps and a network of pipes extract landfill gas from the waste, and extensive groundwater and methane monitoring systems surround the fill areas.

In April 1996, PBSL completed the replacement of its landfill gas collection network. The new system included gas collection piping and wells, a landfill gas-to-energy system rated at 12 megawatts, and additional methane gas probes to monitor the western facility boundary. PBSL expanded the gas collection system in 2000 and 2001.

In April 2002, PBSL requested an expansion in capacity of 5.8 million cubic yards. The capacity was ultimately granted by an MPCA permit issued January 12, 2004. FY 2006 also saw the MPCA's approval of the next cell, Phase 5. At current fill rates and given existing permitted capacity, the entire facility is expected to close in 2022. Before PBSL received its new permit, its plans for decontaminating the groundwater beneath the landfill had to pass MPCA staff review. PBSL filed plans to take the necessary corrective actions. In May 2009, the MPCA reissued the permit for a permitted (and also ultimate) capacity of 29,800,000 cubic yards of waste.

In calendar year 2010, PBSL disposed of approximately 297,000 tons of MMSW and 37,000 tons of non-MMSW. According to the 2010 annual report the facility has roughly 4,600,000 cubic yards of remaining capacity. If current waste volumes continue, the landfill has approximately 11 years of operating life remaining.

The groundwater monitoring system at Pine Bend Landfill monitors water quality from both the lined and unlined portion of the facility. The lined area is also monitored for leakage by a leak detection system. This system indicates that the lined area has not released contaminants to the subsurface. Water quality monitoring indicates that the unlined portion of the landfill has adversely impacted the groundwater downgradient of the facility. A number of corrective action measures have been implemented to limit these impacts. These measures include maintaining the impervious landfill cover; provision of municipal water connections for nearby residents; continued maintenance and operation of the active gas extraction system; and installation and operation of pumps that remove leachate from the buried waste via the gas extraction wells. These measures limit the

generation of leachate, and assist in removing leachate, along with its associated contaminants, from the landfill mass. Over time, this should improve the groundwater quality downgradient of the landfill.

Conclusion

The MLCAT Account's ability to bear the costs of long-term postclosure care at the two largest eligible landfills (Pine Bend and Burnsville), which will begin 30 years after they close, depends on several factors:

- Exactly when Pine Bend and Burnsville close. This is important because the landfill operators are to bear the first 30 years of care and response costs after the date of closing, but MLCAT is to pay those "perpetual care" expenses afterward;
- The future of metropolitan landfill fees. Unless a new MMSW landfill is opened in the metropolitan area, there will be no more landfill fee revenue deposited into MLCAT after Pine Bend and Burnsville landfills close;
- Whether the Legislature will restore the amounts transferred out of MLCAT for the benefit of other accounts: a total of \$13,905,000 to date; and
- Whether postclosure spending will be necessary at the four smaller, older MLCAT-eligible landfills.

Appendix: Selected Statutes and Laws Pertinent to MLCAT

(Source: Minnesota Statutes 2010)

473.843 Metropolitan solid waste landfill fee

Subd. 1. Amount of fee; application. The operator of a MMSW disposal facility in the metropolitan area shall pay a fee on solid waste accepted and disposed at the facility as follows: (a) A facility that weighs the waste that it accepts must pay a fee of \$6.66 per ton of waste accepted at the entrance of the facility. (b) A facility that does not weigh the waste but that measures the volume of the waste that it accepts must pay a fee of \$2.00 per cubic yard of waste accepted at the entrance of the facility. The fee and tipping fee must be calculated on the same basis. (c) Waste residue from recycling facilities at which recyclable materials are separated or processed for the purposes of recycling, or energy and resource recovery facilities at which solid waste is processed for the purpose of extracting, reducing, converting to energy, or otherwise separating and preparing solid waste for reuse, is exempt from the fee imposed by this subdivision if there is at least an 85 percent weight reduction in the solid waste processed. To qualify for exemption under this clause, waste residue must be brought to a disposal facility separately. The Commissioner of Revenue, with the advice and assistance of the agency, shall prescribe procedures for determining the amount of waste residue qualifying for exemption.

Subd. 2. The proceeds of the fees imposed under this section, including interest and penalties, must be deposited as follows: (1) three-fourths of the proceeds must be deposited in the environmental fund for metropolitan landfill abatement for the purposes described in section 473.844; and (2) one-fourth of the proceeds must be deposited in the metropolitan landfill contingency action trust account in the remediation fund established in sections 116.155 and 473.845.

473.845 Metropolitan Landfill Contingency Action Trust Fund

Subd. 1. Establishment. The Metropolitan Landfill Contingency Action Trust account is an expendable trust account in the remediation fund. The account consists of revenue deposited in the account under section 473.843, subd. 2, clause (2); amounts recovered under subd. 7; and interest earned on investment of money in the account.

Subd. 2. Repealed, 1999 c 231 s 207

Subd. 3. Contingency actions and reimbursement. Money in the account may only be appropriated to the agency for expenditure for any of the following: (1) to take reasonable and necessary actions for closure and postclosure care of a mixed municipal waste disposal facility in the metropolitan area for a 30-year period after closure, if the agency determines that the operator or owner will not take the necessary actions requested by the agency for closure and postclosure in the manner and within the time requested; (2) to take reasonable and necessary actions and postclosure care actions at a mixed municipal waste disposal facility in the metropolitan area that has been closed for 30 years in compliance with the closure and postclosure rules of the agency; (3) to reimburse a local government unit for costs incurred over \$400,000 under a work plan approved by the Commissioner of the Agency to remediate methane at a closed disposal facility owned by the local government unit; or (4) reasonable and necessary response costs at an unpermitted facility for mixed municipal solid waste disposal in the metropolitan area that was permitted by the agency for disposal of sludge ash from a wastewater treatment facility.

Subd. 4. Expenditure notification. The Commissioner shall notify the chair and the director of the legislative commission on waste management before making expenditures from the fund.

Subd. 5. Duty to provide information. The operator or owner of a MMSW disposal facility or a solid waste disposal facility shall provide the necessary information to the agency required by sections 473.842 to 473.847 or by agency rules.

Subd. 6. Access to information and property. The agency or any member, employee, or agent thereof authorized by the agency, upon presentation of credentials, may: (1) examine and copy any books, papers, records, memoranda, or data of any person who has a duty to provide information to the agency under sections 473.842 to 473.847; and (2) enter upon any property, public or private, for the purpose of taking any action authorized by this section including obtaining information from any person who has a duty to provide the information, conducting surveys or in investigations, and taking response action.

Subd. 7. Recovery of expenses. When the agency incurs expenses for response actions at a facility, the agency is subrogated to any right of action which the operator or owner of the facility may have against any other person for the recovery of the expenses. The attorney general may bring an action to recover amounts spent by the agency under this section from persons who may be liable for them. Amounts recovered, including money paid under any Agreement, Stipulation, or Settlement must be deposited in the Metropolitan Landfill Contingency Action account in the remediation fund created under section 116.155.

Subd. 8. Civil penalties. The civil penalties of section 115.071 and 116.072 apply to any person in violation of this section.

473.846 Report to the Legislature

The agency shall submit to the senate Finance Committee, the house of representatives Ways and Means Committee, and the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance separate reports describing the activities for which money for landfill abatement has been spent under sections 473.844 and 473.845. The agency shall report by November 1 of each year on expenditures during its previous fiscal year. The commissioner shall report on expenditures during the previous calendar year and must incorporate its report in the report required by section 115A.411, due July 1 of each odd-numbered year. The commissioner shall make recommendations to the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance on the future management and use of the metropolitan landfill abatement account.

2003 Minnesota Laws Chapter 128, Article 2: one-time MLCAT fund transfers

Sec. 10, Subd. (e) By June 30, 2004, the commissioner of the pollution control agency shall transfer \$9,905,000 from the metropolitan landfill contingency action trust fund to the commissioner of finance for cancellation to the general fund. This is a onetime transfer from the metropolitan landfill contingency action trust fund to the general fund. It is the intent of the legislature to restore these funds to the metropolitan landfill contingency action trust fund as revenues become available in the future to ensure the state meets future financial obligations under Minnesota Statutes, section 473.845.

Sec. 55, Subd. 4. All amounts remaining in the metropolitan landfill contingency action fund are transferred to the metropolitan landfill contingency action trust account in the remediation fund created under Minnesota Statutes, sections 116.155 and 473.845.

2005 Minnesota First Special Session Laws Chapter 1, Article 3: one-time MLCAT fund transfers

Sec. 17. By June 30, 2007, the commissioner of the Pollution Control Agency shall transfer \$4,000,000 from the metropolitan landfill contingency action trust account within the remediation fund to the commissioner of finance for transfer to the renewable development account, under Minnesota Statutes, section 116C.779. This is a onetime transfer from the metropolitan landfill contingency action trust account to the renewable development account. It is the intent of the legislature to restore these funds to the metropolitan landfill contingency action trust account as revenues become available in the future to ensure the state meets future financial obligations under Minnesota Statutes, section 473.845. The funds provided for in this transfer may only be used to make the incentive payments for wind energy conversion systems authorized under Minnesota Statutes, section 116C.779, subdivision 2.