

Metropolitan Landfill Contingency Action Trust (MLCAT) Account

FY2012 Annual Report on Use of the MLCAT Account



Minnesota Pollution Control Agency

December 2012

Legislative Charge, Minn. Stat. sec. 473.846

The agency shall submit to the senate and house of representatives committees having jurisdiction over environment and natural resources separate reports describing the activities for which money for landfill abatement has been spent under sections 473.844 and 473.845 By December 31 of each year, the commissioner shall submit the report for section 473.845 on contingency action trust fund activities.

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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 December 31, 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In 1999, the Minnesota Legislature repealed Minn. Stat. § 473.845, subd. 2, with the intention of improving MLCAT's fiscal strength. The change shifted expenses of the Minnesota Pollution Control Agency (MPCA) and Minnesota Department of Health (MDH) for administrative and monitoring work from MLCAT to the Solid Waste Fund. This change took effect in FY 2000.

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.

In FY 2012, 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 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). This took effect after owners of eligible, closed MMSW landfills 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 postclosure-care expenditures, a closed, state-permitted MMSW landfill must be located within the seven-county metropolitan area and have been maintained for at least 30 years. As to landfills closed for less than 30 years, MLCAT would not pay for response actions unless the landfill owner/operator had failed to act, and those expense costs would be recoverable from the owner-operator.

Fiscal Status, FY 2012

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

	FY 2012 (actual)	FY 2013 (estimated)	FY 2014 (estimated)	FY 2015 (estimated)
Balance forward , including reserves	4,867	5,673	6,479	7,285
Prior year adjustment	0	0	0	0
Adjusted balance forward	4,867	5,673	6,479	7,285
Revenue				
Metro Landfill Contingency Fee income	780	780	780	780
Other revenue – penalties	1	1	1	1
Investment	25	25	25	25
Total Resources available	5,673	6,479	7,285	8,091
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	5,673	6,479	7,285	8,091
Reserves	5,673	6,479	7,285	8,091
Available account balance , after reserves	0	0	0	0

Source: Information Access Data Warehouse, November 2012

MLCAT-Related Activities in FY 2012

Six state-permitted landfills were MLCAT-eligible in FY 2012. These are:

- Four demolition landfills, now closed, that accepted small quantities of mixed municipal waste prior to being permitted as demolition landfills and thus are eligible under the statute 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).

One additional landfill benefited from a one-time, state-funded construction project that has been completed: 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.

A summary of site status appears in Table 2. Fiscal Year 2012 tasks included: (1) conducting inspections of the MLCAT-eligible sites to determine whether any actions are needed; (2) reviewing closure plans from the two operating, MLCAT-eligible landfills for compliance with closure and postclosure care requirements; and (3) preparing the annual report.

Table 2. FY 2012 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	See Long-Term Maintenance and Monitoring Plan (2006)	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, 2012

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 originally 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	Three Rivers Regional Park has been developed around the old gravel pit/site	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 agriculture use. Need to reconcile exact location of old DLF with current conditions	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, 2012

Pig's Eye Landfill and Dump

The Pig's Eye Landfill site is a closed dump located in the floodplain of the Mississippi River across the river from the St. Paul downtown airport. The triangular-shaped, heavily vegetated site is bounded by a railroad switching yard to the northeast, various industrial properties to the west and Pig's Eye Lake to the south. The final reach of Battle Creek flows through the site and discharges to Pig's Eye Lake. The Mississippi River is located approximately 800 feet west of the site. Pig's Eye Landfill is approximately 230 acres in size and was the largest unpermitted garbage dump in Minnesota. From 1977 to 1985, the Metropolitan Council Environmental Services' predecessor agency was permitted to dispose of sewage-sludge ash on 31 acres of the landfill. The ash was disposed of on top of existing waste and covered with two feet of soil. Various phases of investigation at Pig's Eye revealed contaminants in groundwater, surface water, and sediments at the site, including volatile organic compounds, semivolatile organic compounds, metals, perfluorochemicals, and polychlorinated biphenyls (PCBs).

In the first two years of work, FY 2002 and FY 2003, contractors hired by the MPCA and the City of St. Paul completed Phase 1 of remediation work at Pig's Eye Landfill. Phase 1 included pulling waste back from Battle Creek; installation of a filtration layer between the solid waste and the creek and re-sloping remaining solid waste to the top of the select fill; chemical stabilization of a lead-contaminated battery disposal area one acre in size; filling a two-acre pond that contained contaminated sediments; and adding cover material to the pre-existing but partial soil cover. In FY 2004, Phase 2 work included construction of soil cover for an additional 80 acres, slope correction and erosion-prevention work along Battle Creek; installation of monitoring wells; relocation of waste as part of slope grading and relocation and consolidation of waste found on neighboring property that was part of the original dump footprint; filling in a second pond that held contaminated sediments; installation of a permanent creek crossing; and removal and proper disposal of drums containing hazardous wastes, and tires. During FY 2005, seeding of the sloped areas along the creek was completed and the city's consultant prepared a first draft of the Operations and Maintenance (O&M) plan that will guide the city's perpetual care of the site.

Construction was completed at a total cost to the state less than \$6 million. The site has now entered the long-term maintenance and monitoring phase as detailed in the July 2006 *Long-Term Maintenance and Monitoring Plan*. The City of St. Paul inspects and maintains the cover, slopes, erosion controls, monitoring wells and provides funding for monitoring and reporting. The MPCA is conducting surface water and groundwater monitoring with reimbursement of costs by the city. MPCA also carries out well inspections and prepares annual reports. In 2008, semivolatile and PCB sampling was suspended because these compounds were no longer detected in the monitoring system. Water monitoring of perfluorochemicals is ongoing after they were first detected in 2005. The source of the perfluorochemicals is unclear at this point.

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 the landfills' size, complexity, and the large disposal volumes 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 calendar year 2005, BSL landfilled approximately 265,000 tons of MMSW and 99,000 tons of industrial solid waste in the MMSW cells. 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. BSL landfilled 271,000 tons of MMSW in 2011, and 87,000 tons of industrial and demolition debris. Current capacity is projected to be sufficient through 2020 at current volumes.

BSL continued with MMSW cell construction and closure to implement the 2007 permit modification. BSL 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.

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 down-gradient 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. MPCA approved the next cell, Phase 5, in FY 2006. At current fill rates and given existing permitted capacity, the entire facility is expected to close in 2022.

In May 2009, the MPCA reissued the permit for a permitted (and also ultimate) capacity of 29,800,000 cubic yards of waste. PBSL landfilled 274,000 tons of MMSW in 2011, and 26,000 tons of industrial debris. Current capacity is projected to be sufficient through 2022, at current waste volumes.

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 down-gradient 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 down-gradient of the landfill.

Conclusion

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

- The costs of postclosure care at eligible sites;
- The closure dates of Pine Bend and Burnsville Landfills. 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, no more landfill fee revenue will be deposited into the MLCAT Account after Pine Bend and Burnsville landfills close; and
- 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.

Appendix:

Statutes Pertinent to the MLCAT Account

(Source: Minnesota Statutes 2011, and 2012 Minn. Session Laws Chap. 272)

473.843 METROPOLITAN SOLID WASTE LANDFILL FEE

Subdivision 1. Amount of fee; application.

The operator of a mixed municipal solid waste 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 per cubic yard of waste accepted at the entrance of the facility. This fee and the 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 from 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. Disposition of proceeds.

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.

Subd. 3. Payment of fee.

On or before the 20th day of each month each operator shall pay the fee due under this section for the previous month, using a form provided by the commissioner of revenue.

An operator having a fee of \$10,000 or more during a fiscal year ending June 30 must pay all fees in the subsequent calendar year by electronic means.

Subd. 4. Exchange of information.

Notwithstanding the provisions of section 116.075, the agency may provide the commissioner of revenue with the information necessary for the enforcement of this section. Information disclosed in a return filed under this section is public information. Information exchanged between the commissioner and the agency is public unless the information is of the type determined to be for the confidential use of the agency under section 116.075 or is trade secret information classified under section 13.37. Information obtained in the course of an audit by the Department of Revenue is private or nonpublic data to the extent that it would not be directly divulged in a return.

Subd. 5. Penalties; enforcement.

The audit, penalty, and enforcement provisions applicable to corporate franchise taxes imposed under chapter 290 apply to the fees imposed under this section. The commissioner of revenue shall administer the provisions.

Subd. 6. Rules.

The commissioner of revenue may adopt rules necessary to implement this section.

Subd. 7. [Repealed, 1985 c 274 s 47]

473.845 METROPOLITAN LANDFILL CONTINGENCY ACTION ACCOUNT

Subdivision 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, subdivision 2, clause (2); amounts recovered under subdivision 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 is 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 solid 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 response actions and postclosure care actions at a mixed municipal solid 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. [Repealed, 2003 c 128 art 2 s 56]

Subd. 5. Duty to provide information.

The operator or owner of a mixed municipal solid waste 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 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 sections 115.071 and 116.072 apply to any person in violation of this section.

473.846 REPORT TO THE LEGISLATURE

(as amended in 2012 Minn. Session Laws Chap 272)

The agency shall submit to the senate and house of representatives committees having jurisdiction over environment and natural resources separate reports describing the activities for which money for landfill abatement has been spent under sections 473.844 and 473.845. The report for section 473.844 expenditures

shall be included in the report required by section 115A.411, and shall include recommendations on the future management and use of the metropolitan landfill abatement account. By December 31 of each year, the commissioner shall submit the report for section 473.845 on contingency action trust fund activities.