

John A. Sandor, Commissioner
Dep't of Environmental
Conservation

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Use of State-Funded
Clean Water Account to
meet municipal landfill
financial assurance
requirements

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You have asked whether the State-Funded Clean Water Account, established in AS 46.03.032(n), can be used to meet federal financial assurance requirements for municipal landfill closure, post-closure, and corrective action needs. The State-Funded Clean Water Account may be used for "guaranteeing or purchasing insurance for public agency obligations related to solid waste management" AS 46.03.032(d)(4). The word "obligations" in this statute does not mean "requirements" in the general sense, but rather refers to municipal indebtedness. AS 46.03.032(d)(4) only allows use of the account to guarantee municipal debt obligations and to purchase bond insurance. The State-Funded Clean Water Account, therefore, may not be used to meet municipal landfill financial assurance requirements.

DISCUSSION

Pursuant to the Resource Conservation and Recovery Act, 42 U.S.C.S. •• 6907, 6944 (1982), and the Clean Water Act, 33 U.S.C.S. • 1345 (Supp. 1992), the U.S. Environmental Protection Agency (EPA) adopted regulations setting minimum national criteria for all municipal solid waste landfill units. See 40 C.F.R. Pt. 258 (1992). The regulations require the owners and operators of municipal landfill units to demonstrate financial assurance for the unit's closure and post-closure care and for corrective action for groundwater contamination.¹ Id., Pt. 258, Subpt. G. The financial assurance requirements take effect April 9, 1994. Id., • 258.70(b). The regulations allow a variety of mechanisms to meet these requirements, including establishing a trust fund; obtaining a surety bond, letter of credit, or

¹ The financial assurance requirements do not apply to state or federal government owners or operators whose debts and liabilities are the debts and liabilities of a state or the United States. 40 C.F.R. • 258.70(a). Exemptions are also available for landfills that stop receiving waste before October 9, 1993. Id., • 258.1(c), (d).

insurance; and state assumption of the owner or operator's legal responsibility for closure, post-closure care, and corrective actions. Id., • 258.74.

The Alaska Department of Environmental Conservation (department) anticipates that many of Alaska's municipal landfill owners and operators will find it difficult, if not impossible, to comply with the financial assurance requirements. The department therefore asked about the possibility of using the State-Funded Clean Water Account to meet these requirements.

AS 46.03.032 establishes the Alaska Clean Water Fund, two separate accounts administered by the department: the State Water Pollution Control Revolving Fund, which is partially federally-funded, and the State-Funded Clean Water Account. The state revolving fund provides financial assistance to municipalities for the construction of publicly owned wastewater treatment systems. The state-funded account may be used in addition for water supply and solid waste management projects.

The legislature established the Alaska Clean Water Fund in 1987 to implement the "state revolving fund" program authorized by the 1987 amendments to the Clean Water Act. See 1992 Inf. Op. Att'y Gen. 1-6 (Jan. 30; 663-92-0238). Thus, to interpret AS 46.03.032, it is appropriate to refer to the circumstances of its enactment, including the Clean Water Act and related federal guidance and regulations. See Lake v. Constr. Machinery, Inc., 787 P.2d 1027, 1030 (Alaska 1990); State v. Green, 586 P.2d 595, 603 n.24 (Alaska 1978).

AS 46.03.032(d)(4) is patterned after section 603(d)(3) of the Clean Water Act, which provides that a state revolving fund may be used "to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates." 33 U.S.C.S. • 1383(d)(3) (Supp. 1992). The legislative and administrative record indicate that the word "obligations" in section 603(d)(3) of the Clean Water Act refers to municipal debt obligations. For example, the Conference Committee explained that:

A state may use amounts in the Revolving Fund only to make loans, loan guarantees, payments to reduce interest on loans and loan guarantees, bond interest subsidies, and bond guarantees to municipalities and intermunicipal and interstate agencies, or purchase of insurance for obligations. A state may also use the fund as

security for revenue bonds issued to finance construction of treatment works.

H.R. Conf. Rep. No. 1004, 99th Cong., 2d Sess. 107 (1986).

EPA guidance provides further clarification of the insurance provision:

3. Guarantee or Purchase Insurance for Local Debt Obligations

Section 603(d)(3) authorizes an SRF [State Revolving Fund] to guarantee local debt obligations where such action would improve credit market access or reduce interest rates. . . .

. . . .

The SRF can also be used to purchase or provide bond insurance to guarantee debt service payment. Bond insurance is available from a number of insurance companies.

EPA, Initial Guidance for State Revolving Funds 6 (1988). EPA regulations likewise provide that the state revolving fund may be used to:

(c) Guarantee or purchase insurance for local debt obligations. The SRF may guarantee local debt obligations where such action would improve credit market access or reduce interest rates. The SRF may also purchase or provide bond insurance to guarantee debt service payment.

40 C.F.R. • 35.3120(c) (1992). The word "obligations" in section 603(d)(3) of the Clean Water Act, then, refers to local debt obligations.

During hearings on Senate Bill 167 to establish the Alaska Clean Water Fund, the House Resources Committee heard extensive testimony on the meaning of the word "obligations" in AS 46.03.032(d)(4). Dennis Kelso, then-Commissioner of Environmental Conservation, explained that the Alaska Clean Water Fund may be used to guarantee or buy insurance for local debt obligations where such action would improve credit market access or reduce interest rates for municipalities. When asked about the use of the fund to pay operating costs, specifically

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insurance costs, Kelso explained that the fund could not be used to buy insurance for operational purposes, but only for project financing. Hearings on SB 167 Before the House Resources Comm. (Apr. 27, 1987).

In 1990, the legislature amended AS 46.03.032(d)(4) to allow use of the state-funded account to guarantee or purchase insurance for public agency obligations related to solid waste management. Ch. 174, SLA 1990. No other changes were made in AS 46.03.032(d)(4). There is no indication in the 1990 amendments or their legislative history that the word "obligations" should be interpreted in any manner other than to refer to local debt obligations. See, e.g., Hearings on HB 480 Before the House Community and Regional Affairs Comm. (Feb. 15, 1990).

AS 46.03.032(d)(4) therefore should be interpreted to mean that the State-Funded Clean Water Account may be used to guarantee or purchase bond insurance for public agency debt obligations related to solid waste management and wastewater treatment works construction.

CONCLUSION

Based on the above, we conclude that the State-Funded Clean Water Account may not be used to meet the municipal landfill financial assurance requirements. If the department wishes to use the account in this manner, it will be necessary to amend AS 46.03.032, as well as the department's related regulations, 18 AAC 77.

The department may wish to explore other means of providing financial assistance to enable municipal landfills to meet environmental and public health requirements. Please do not hesitate to contact us if we can be of further assistance with respect to this matter.

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