

Date of Hearing: April 5, 2022

**ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS**

**Bill Quirk, Chair**

**AB 2601 (Eduardo Garcia) – As Amended March 24, 2022**

**SUBJECT:** Waste discharge permits: landfills: Mexico border

**SUMMARY:** Prohibits a Regional Water Quality Control Board (Regional Water Board) from issuing a waste discharge permit for a new landfill, or a lateral expansion of an existing landfill, that is used for the disposal of nonhazardous solid waste if the land is located within three miles of the United States border with Mexico. Additionally, prohibits a Regional Water Board from granting a variance for a new landfill or lateral expansion of an existing landfill located within three miles of the United States border with Mexico.

**EXISTING LAW:**

- 1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States and to regulate quality standards for surface waters. (33 United States Code (USC) §1251 et seq.)
- 2) Establishes the National Pollutant Discharge Elimination System (NPDES) permit program requiring the State Water Resources Control Board (State Water Board) and the nine Regional Water Boards to prescribe waste discharge requirements which, among other things, regulate the discharge of pollutants in stormwater, including municipal stormwater systems. (33 USC § 1342)
- 3) Prohibits a Regional Water Board from issuing a waste discharge permit for a new landfill, or a lateral expansion of an existing landfill, that is used for the disposal of nonhazardous solid waste if the land has been primarily used at any time for the mining or excavation of gravel or sand. (Public Resources Code § 40060 (a))
- 4) Prohibits, pursuant to the Porter-Cologne Water Quality Control Act, the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board. (Water Code (WC) § 13000, et seq.)
- 5) Delegates to California's Regional Water Boards the ability to adopt water quality standards within their region of jurisdiction. (WC § 13240)
- 6) Requires a Regional Water Board to prescribe requirements for any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area upon or receiving waters into which the discharge is made or proposed. Specifies that requirements that implement any relevant water quality control plans have been adopted, and take into consideration, the beneficial uses to be protected, water quality objectives, other waste discharges and the need to prevent nuisance. (WC § 13269 et seq.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

*Need for the bill:* According to the author, "AB 2601 is a necessary environmental justice bill to protect public health and border communities who already suffer from increased emissions from Mexico and other air quality impacts as well as contaminated waterways. The bill will ensure that there will be no new landfill or lateral expansion of an existing landfill and this will ensure we are not exasperating impacts to our constituents health within already vulnerable communities."

*Federal Clean Water Act (CWA):* The Federal Water Pollution Control Act of 1948 was the first major U.S. law to address water pollution. The law was amended in 1972 and became commonly known as the Clean Water Act (CWA). The federal CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, the United States Environmental Protection Agency (US EPA) has implemented pollution control programs, including setting wastewater standards for industrial facilities, as well as setting water quality standards for all contaminants in surface waters. The CWA made it unlawful to discharge any pollutant from a point source into navigable waters without a permit. Industrial, municipal, and other facilities must obtain a permit under the National Pollutant Discharge Elimination System in order to discharge into surface water.

*National Pollution Discharge Elimination System (NPDES):* As authorized by the CWA, the NPDES Permit Program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches. Examples of pollutants include, but are not limited to, rock, sand, dirt, and agricultural, industrial, and municipal waste discharged into waters of the United States. The NPDES Program is a federal program which has been delegated to the State of California for implementation through the State Water Board and the Regional Water Boards.

*State Water Board:* Created by the State Legislature in 1967, the five-member Board allocates water rights, adjudicates water right disputes, develops statewide water protection plans, establishes water quality standards, and guides the nine Regional Water Boards located in the major watersheds of the state

*Regional Water Boards:* There are nine regional water quality control boards statewide. Regional boundaries are based on watersheds and water quality requirements are based on the unique differences in climate, topography, geology, and hydrology for each watershed. Each Regional Water Board makes critical water quality decisions for its region, including setting standards, issuing waste discharge requirements, determining compliance with those requirements, and taking appropriate enforcement actions.

*The East Otay Mesa Recycling Collection Center and Landfill:* In 2011, there was a proposal submitted for a class III solid waste landfill occupying approximately 340 acres. The proposed project would be located in the unincorporated area of south San Diego County, approximately two miles east of the Siempre Viva Road exit from Interstate 905, one-quarter mile from Loop Road/Paseo De La Fuente and east of planned State Route 11. The proposed project site would be located approximately one and one-half miles from the City of San Diego, two and one-half miles from the City of Chula Vista, and one-quarter mile from the United States/Mexico border. On June 8, 2010, a county-wide initiative, Proposition A, amended the county's general plan to

allow for the construction and operation of this landfill on this site. According to the website of the County of San Diego Department of Health and Quality, there were two environmental documents submitted (an Initial Study and a Notice of Preparation) on September 12, 2011. Additionally, there are no additional environmental documents posted since 2011. If this bill passes, then this proposed landfill in Otay Mesa would not be able to receive a waste discharge permit from the Regional Water Board.

*CalEnviroScreen:* In order to address the cumulative effects of both pollution burden and these additional factors, and to identify which communities might be in need of particular policy, investment, or programmatic interventions, the Office of Environmental Health Hazard Assessment (OEHHA) developed and now maintains and updates the CalEnviroScreen tool on behalf of CalEPA. The tool applies a framework, developed by OEHHA in 2010, for assessing cumulative impacts. According to OEHHA cumulative impacts refer to exposures and public health or environmental effects from all sources of pollution in a geographic area. Cumulative impacts also take into account groups of people that are especially sensitive to the effects of pollution and socioeconomic factors. The CalEnviroScreen tool's framework is based in large part on input from a statewide working group on environmental justice that pointed out the unmet need to assess cumulative burdens and vulnerabilities affecting California communities. The tool uses thirteen pollution burden indicator and eight population characteristics in order to calculate a score. According to CalEnviroScreen 4.0, Otay Mesa, the site of the proposed landfill, has a score in the 90-100% (which is the most polluted percentile). Therefore, citing a solid waste landfill in this area could increase the pollution burden this community already is faced with.

*This bill:* Seeks to protect the residents in south San Diego County (especially those living near the U.S. - Mexico border) by not adding to the overwhelming pollution burden they face. It does this by prohibiting the Regional Water Board from issuing a waste discharge permit for the proposed landfill in Otay Mesa.

*Double-referral:* Should this bill pass this Committee it will be re-referred to the Assembly Natural Resources Committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

None on file.

### **Opposition**

None on file.

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