

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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**MICHIGAN STATE LAW LIBRARY**

Senate Bill 74 (as enrolled)

**PUBLIC ACT 23 of 1990**

Sponsor: Senator Connie Binsfeld

Senate Committee: Health Policy

House Committee: Conservation, Recreation, and Environment

Date Completed: 2-13-91

**RATIONALE**

Incidents of hypodermic needles and other medical waste washing up on Lake Michigan shorelines several years ago has raised public concern about the management and disposal of medical debris. While solid waste landfills are the ultimate disposal sites for most medical waste, incineration and sterilization are common methods for treating medical waste prior to disposal. Regulation of the construction and operation of medical waste incinerators is the responsibility of the Department of Natural Resources' (DNR's) Air Quality Division. Prior to 1970, however, medical waste incinerators did not have to meet any air quality standards. Incinerators of all kinds, including those used to burn medical waste, became subject to standards in the early 1970s with the enactment of the National Ambient Air Quality Standards. Since 1987, the DNR also has required permit applicants for new or modified medical waste incinerators to meet emission limits for toxic chemicals. All incinerators, including those located at health facilities, currently must receive an operating permit under the Air Quality Control Act. These permits are issued one time only and do not have to be renewed. Review of a permit is initiated only when a modification in the incinerator or its operation is proposed, or when a complaint about the operation of an incinerator has been filed with the DNR. Because these permits, in effect, are issued for a lifetime and are reviewed infrequently, some people contend that some incinerators currently in operation are out-of-date and should be upgraded or phased out.

Furthermore, some people believe that the regulatory activities of the DNR need to be strengthened in order to keep up with the changing management and disposal practices for medical waste.

**CONTENT**

The bill would amend the Air Pollution Act to:

- Prohibit operation of a facility that incinerates medical waste unless the facility had been issued an operating permit by the Air Pollution Control Commission, beginning one year after the bill's effective date or upon the promulgation of rules, whichever was later.
- Require the Commission to promulgate rules to regulate facilities that incinerate medical waste or pathological waste and certain solid waste.
- Require the review of all operating permits in existence.
- Provide for the issuance of interim operating permits under certain circumstances.
- Permit the retrofitting or upgrading of existing facilities in order to comply with the Commission's rules.
- Permit a facility to receive pathological or medical waste generated off the facility's site and

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**require records to be kept on the source and volume of waste received.**

The bill is tie-barred to Senate Bill 69 (Public Act 21 of 1990), which amended the Public Health Code to prescribe procedures for the containment, storage, decontamination, and disposal of medical waste, and to House Bill 4136 (Public Act 18 of 1990), which amended the Code to create the Medical Waste Regulatory Act. Senate Bill 74 specifies that it would take effect 90 days after it was enacted.

**Operating Permit**

An application for an operating permit would have to be submitted in the form and contain the information required by the Commission. The Commission could issue an operating permit only if the facility were in compliance with the bill and rules promulgated under it.

A permit would be valid for five years, and could be renewed upon expiration.

A permit could allow a facility to receive pathological or medical waste that was generated off the site of the facility. The owner or operator of the facility would be required to keep monthly records of the source of the waste and the approximate volume of the waste received by the facility.

**Review of Permits**

Within two years after the effective date of the promulgated rules, the Commission would be required to review all operating permits for facilities that incinerated medical waste and that were issued permits prior to the promulgation of the rules. If the Commission determined, upon review, that a facility did not meet the requirements of the rules and could not be retrofitted to comply with the rules, the Commission would be required to issue an interim operating permit that would be valid for only two years. If a facility only needed retrofitting in order to comply with the rules, the facility would have to be granted an interim permit that would be valid for only one year. The bill specifies that in either case, the facility would have to comply with the bill and all other rules promulgated under it for the interim period. An interim operating permit would have

to provide that if the facility were located within 50 miles of another facility that was in compliance with the rules, the facility operating under the interim permit could receive only medical waste that was generated on that facility's site, at a facility owned and operated by that facility's owner and operator, or at the private practice office of a physician who had privileges to practice at that facility, if the facility were a hospital. The Commission would be required to renew a facility's operating permit only if the facility were in compliance with the bill and rules promulgated under it.

**Rules**

The Commission would be required to promulgate rules to do both of the following:

- Regulate facilities that incinerated medical waste. These rules would have to cover at least all of the following areas: incinerator design and operation, ash handling and operation, stack design, requirements for receiving medical waste from generators outside the facility, air pollution control requirements, performance monitoring and testing, record-keeping and reporting requirements, and, inspection and maintenance.
- Regulate the operation of facilities that incinerated pathological waste only and limited other permitted solid waste.

**Definitions**

The terms "medical waste" and "pathological waste" would mean the terms as defined in Public Act 21 of 1990.

Proposed MCL 336.5a

**FISCAL IMPACT**

The bill would result in an indeterminate increased cost to State government by expanding the permitting and inspection of waste incineration facilities.

According to the Department of Natural Resources (DNR), there are between 120 and 150 hospitals that incinerate their own waste. To comply with the bill, these facilities could need to upgrade their incineration operations to

include more complex technology. The DNR estimates that this would in turn require three additional FTEs to develop the rules, review permits, and complete inspections.

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## **ARGUMENTS**

### **Supporting Argument**

According to the Air Quality Division of the DNR, once an operating permit has been issued for an incinerator, it may be inspected by DNR officials every two to three years. If the DNR receives a complaint about an incinerator, inspectors will investigate to ensure that the facility meets present standards. Yet, current rules do not require that incinerators, regardless of the years they've been in operation, be inspected periodically and upgraded regularly to keep up with current disposal practices. Under the bill, the Air Quality Division, which provides staff for the Air Pollution Control Commission, would be required to conduct the needed reviews and periodic updates of these incinerators.

### **Supporting Argument**

Current rules have been characterized as being generic and not specific to medical waste incinerators in that they only require that these facilities "do not create an adverse impact on human health and environment". Since it is recognized by many in the field that incineration is the preferred treatment for certain types of medical waste, especially when there are concerns about the spread of infection or the need to render body parts or fluids unrecognizable, rules governing incinerators should set standards that specifically address medical waste disposal. Senate Bill 74 would do just that by requiring the Air Pollution Control Commission to promulgate rules to regulate facilities that incinerate medical or pathological wastes.

### **Opposing Argument**

The bill specifies that a medical waste incinerator could not operate without having been issued a permit, beginning one year after the bill's effective date or upon the promulgation of rules, whichever was later. Some people have expressed concern that this language could delay the bill's implementation, since the rule-making process often can be slow and cumbersome. The bill should specify an absolute deadline for implementation.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.