



**House
Legislative
Analysis
Section**

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FEDERAL WASTE STANDARDS

House Bill 4895

Sponsor: Rep. Jan Dolan

**Committee: Conservation, Recreation,
& Environment**

Complete to 10-1-91

A SUMMARY OF HOUSE BILL 4895 AS INTRODUCED 6-4-91

House Bill 4895 would amend the Hazardous Waste Management Act to require compliance with Title II of the federal Solid Waste Disposal Act. Certain activities would be prohibited, and certain corrective measures would be required, beginning on the effective date of the bill.

Prohibited Activities. Within 180 days of the date on which a waste became "regulated waste," as defined by administrative rule, the following would be prohibited:

-- The generation, disposal, storage, treatment, or transportation of regulated wastes that were not regulated prior to the effective date of the bill.

-- The production, burning, distribution, or marketing of fuel or other products containing hazardous waste or regulated wastes that were not regulated under the act prior to the effective date of the bill.

Corrective Action. The Department of Natural Resources (DNR) would be required to issue orders for corrective action for releases of hazardous waste or constituents from a solid waste management unit (defined under the bill to mean any discernible unit at which regulated waste had been placed, whether or not the unit was intended for managing regulated waste, and any area at any regulated facility at which wastes or waste constituents had been routinely and systematically released), regardless of when the waste was placed in the unit. Both initial and renewal permits and licenses would contain schedules of compliance for corrective action that could not be completed before the issuance of the permit or license, and assurances of financial responsibility for completing the action. Corrective action orders and administrative actions would contain schedules of compliance and assurances of financial responsibility that the corrective action would be completed.

In situations where a treatment, storage, or disposal facility was undergoing closure and had been placed on interim status, the corrective action order or administrative action would require that corrective action be taken beyond the facility boundary if it were necessary to protect human health and the environment, regardless of when the waste was placed at the facility. This provision would apply to all regulated units that received hazardous waste after July 26, 1982. The bill would also require that corrective action be taken beyond the facility's boundaries if the director of the department determined that hazardous waste or constituents from a hazardous waste management unit were being released into the environment, or that the action was necessary to protect human health and

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the environment, regardless of when the waste was placed there. This requirement would apply to a facility that held a license or permit, to a regulated solid waste management unit that received hazardous waste after July 26, 1982, and to a facility that held a post-closure permit. An order issued under this requirement could include a suspension or revocation of authorization to operate. In addition, the director could commence a civil action for appropriate relief, including a temporary or permanent injunction, against a facility that failed to comply. A violation of a corrective action order would also incur a civil fine of at least \$25,000 per day of noncompliance.

Bankruptcy. The bill would impose certain requirements on a guarantor (defined under the bill to mean a person who had produced evidence of financial responsibility for an owner or operator of a disposal, treatment, or storage facility) in situations where an owner or operator was in liquidation, reorganization, or other arrangement under Chapter 11 Bankruptcy, or in situations where jurisdiction in a state court or a federal court could not be obtained over an owner or operator likely to be solvent at the time of judgment. Under the bill, a claim arising from conduct for which evidence of financial responsibility was required could be asserted directly against the guarantor who had provided evidence of financial responsibility for the owner or operator. In such cases, a guarantor could also invoke all rights and defenses that would have been available to the owner or operator. The total liability of the guarantor would be limited to the aggregate amount that he or she had provided as evidence of financial responsibility to the owner or operator. The provisions of the bill would not limit a guarantor's state or federal statutory, contractual, or common law liability to an owner or operator, including, but not limited to, the liability of the guarantor for bad faith, either in negotiating or in failing to negotiate the settlement of a claim. Neither would the provisions of the bill diminish a person's liability under the Comprehensive Environmental Response, Compensation and Liability Act, the Environmental Response Act, or other applicable law.

Licensing Requirements. The bill would amend the licensing requirements of the act to permit any person who owned or operated a treatment, storage, or disposal facility that was subject to the licensing provisions of the act to continue to operate until a license application had been approved if, in addition to the current licensing requirements, a complete operating license application had been submitted within 120 days of the date requested, and the person qualified for interim status, as defined in Title II of the Solid Waste Disposal Act, and had not had that status terminated.

Confidential Information. Currently, under the act, the director of the department may release any information obtained under the requirements of the act, including a record, permit application, or other confidential information, to the U.S. Environmental Protection Agency (EPA). Under the bill, information could also be released to the U.S. Agency For Toxic Substance Disease Registry, or to an agency authorized to receive information under Title II of the Solid Waste Disposal Act.

Bonding Requirements. Currently, under the act, an owner or operator of a treatment, storage, or disposal facility is required to file a surety bond to cover the cost of closing, and monitoring a facility after its capacity is reached. The bill would amend this provision of the act to permit the director of the department to specify policies or other

contractual terms, conditions, or defenses that were considered necessary or were unnecessary or unacceptable in establishing evidence of financial responsibility.

Definitions. Under the act, an area that can be defined as a land treatment facility, surface impoundment, or injection well is excluded from the act's definition of disposal facility. Under the bill, a salt dome formation, a salt bed formation, and an underground mine or cave would also be excluded from the definition. In addition, a "solid waste management unit" would be defined to mean any discernible unit at which regulated waste had been placed at any time, irrespective of whether the unit was intended for managing regulated waste, and any area at any regulated facility at which wastes or waste constituents had been routinely and systematically released.

MCL 199.503 et al.