House
Legislative
Analysis
Section

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GROUNDWATER DISCHARGE PERMIT FEES

Senate Bill 560 (Substitute H-5)
First Analysis (10-7-03)

Sponsor: Sen. Burton Leland
House Committee: Government Operations
Senate Committee: Appropriations

THE APPARENT PROBLEM:

The Department of Environmental Quality regulates the discharge of waste and wastewater to the ground and groundwater in the state, under the authority of Part 31 of the Natural Resources and Environmental Protection Act and Part 22 rules (R 323.2201 et al.). The enacted 2004 fiscal year budget of the Department of Environmental Quality anticipates $1.76 million in new groundwater discharge permit fees to support the DEQ's groundwater discharge program. Enabling legislation is required.

THE CONTENT OF THE BILL:

The bill would amend Part 31 of the Natural Resources and Environmental Protection Act (NREPA) to institute an annual groundwater discharge application fee and permit fee for facilities that discharge waste or wastewater into the ground or groundwater. Currently, the Department of Environmental Quality issues groundwater discharge permits to municipalities, housing developments, industrial facilities, and farming operations. In all, there are about 950 permitted dischargers in the state, and another 200 or so applications that have been received by the DEQ but are awaiting a final determination.

Application

The bill would require an application for a groundwater discharge permit be filed with the DEQ. The DEQ would have to determine within 30 days of receiving the application whether that application is "administratively complete." If the DEQ determines that the application is not complete, the DEQ would notify the applicant in writing within that 30-day period. Beginning July 1, 2005, if the DEQ fails to make a determination within the required time, the application would automatically be considered to be complete.

The bill would also require that the application be accompanied by an application fee, as follows:

- Group 1 facility - $500
- Group 2 facility - $300
- Group 3 facility - $50

The three groups are a grouping of the discharging facilities, based on the appropriate rule authorization and taking into consideration their environmental threat, total volume discharged, and staff time necessary to review applications and follow up with the necessary compliance and inspection requirements. "Group 1" facilities consist of those facilities that are authorized under Rule 2218, and number approximately 300 facilities. "Groups 2" facilities consist of those facilities that are authorized under Rules 2210(y), 2215, and 2216, and number approximately 150 facilities. "Group 3" facilities consist of those facilities that are authorized under Rules 2211 and 2213, and number approximately 150 facilities. The revenue collected from the application fees would be forwarded by the DEQ to the state treasurer for deposit into the Groundwater Discharge Permit Fund.

The DEQ would be required to make a determination on a permit application within 180 days of receiving a complete application, unless the applicant and the DEQ agree to extend that 180-day requirement. Renewals of permits in which there is no discharge change requested, and where DEQ determines that there are no compliance violations or reporting abnormalities during the term of the current permit, would be automatically renewed for the same term as under the current permit. If the DEQ fails to make a determination on an application within the time required, the DEQ would discount the applicant's application fee by 15 percent.

Permit Fee

The DEQ would be permitted to levy and collect an annual groundwater discharge permit fee until October 1, 2005. The fee would be as follows:

- Group 1 facility - $3,650
- Group 2 facility - $1,500
- Group 3 facility - $200

If the person who pays the application fee or the permit fee is a municipality, that municipality would be permitted to pass on the fee to each user of the municipal facility. Within 30 days of the bill's effective date, the DEQ and the governor would notify each permit holder of the requirements to provide an application fee and permit fee.

The DEQ would be required to send invoices for the permit fee to all permit holders by January 15 of each year. Fees would be charged for all facilities that are authorized as of December 15 of each calendar year. The payment of the fee would have to be postmarked by March 1. Money collected from the permit fees would be forwarded by the DEQ to the state treasurer for deposit into the Groundwater Discharge Permit Fund.

Late payment of the required permit fee would subject the permit holder to a penalty equal to 0.75 percent of the payment due for each month (or portion thereof). A failure to pay the permit fee would be considered to be a violation of Part 31, would be grounds for revocation of the permit, and could subject the permit holder to further penalties as provided in Part 31. Finally, the attorney general could bring an action for the collection of a delinquent permit fee.

Groundwater Discharge Permit Fund

The bill would create the Groundwater Discharge Permit Fund. Like similarly created funds, the state treasurer could receive money and assets from any source for deposit into the fund, would be responsible for investment of the fund, and would credit fund interest and earnings into the fund. Money in the fund at the close of the fiscal year would remain in the fund and not lapse into the general fund.

Money in the fund would be expended, upon appropriation, to implement the DEQ's groundwater discharge program. However, the DEQ would be prohibited from expending more than $1.7 million from the fund during any state fiscal year. Ninety percent of the money remaining in the fund at the close of the fiscal year would be expended by the DEQ as a credit to offset the cost of each application fee and permit fee.

Report

The DEQ would be required to report to the governor and the legislature (including the appropriate standing committees and appropriations subcommittees) on the DEQ activities related to its groundwater discharge program. The report would include information on staffing, permit applications, permits issued, and the status of the Groundwater Discharge Permit Fund.

HOUSE COMMITTEE ACTION:

The House Committee on Government Operations adopted a Substitute H-5 to Senate Bill 560. The House substitute made the following changes to the Senate-passed version of the bill:

- Added language pertaining to the application review process and fee.
- Changed the sunset date of the permit fee provisions from October 1, 2007 to October 1, 2008.
- Added the effective date of July 1, 2005 for when the DEQ would be required to discount untimely approvals (or disapprovals) of applications.
- Required the DEQ and governor to notify permit holders of the new permit fee.
- Required limiting the DEQ from expending more than $1.7 million from the Groundwater Discharge Permit Fee Fund.
- Required requiring that of the money remaining in the Groundwater Discharge Permit Fee Fund at the close of the fiscal year, 90 percent must be used to as a credit of offset the application fee and permit fee.

BACKGROUND INFORMATION:

The DEQ's groundwater discharge rules, promulgated pursuant to Part 31 of NREPA, are found at R 323.2201 through 323.2241 of the Michigan Administrative Code, and are often referred to as the "Part 22 rules." The rules are prospective and preventive in nature, in that they set out to prevent contamination of groundwater from

occurring. The rules contain six categories of authorizations. The authorizations contained in these rules form the base of the three groupings contained in the bill for purposes of calculating the application and permit fees.

Group 1 is based on the authorization ensconced in rule 2218. This rule generally pertains to discharges that have the highest potential adverse risk to the environment and public health, and discharges that are not described in rules 2210 through 2216 can only be authorized per 2218. An application for a permit under rule 2218 includes (1) a description of the wastewater to be discharged, including the contaminants that will be in the discharge, (2) a description of the treatment design to be used, (3) a review of the alternatives to the discharge itself and the treatment design proposed, (4) a hydrogeologic report describing the groundwater that will be affected by the discharge, and (5) a proposal for how the discharge will be monitored to ensure impacts are acceptable.

Group 2 is based on rules 2210(y), 2215, and 2216. Under rule 2210(y), a person is permitted to discharge without first obtaining a permit that would otherwise be required if the discharge poses "an insignificant potential to be injurious based on the volume and constituents." Under rule 2215, the DEQ is authorized to issue "general permits", which cover discharges involving the same or substantially similar types of operations, involving the same type of wastes, and require the same types of controls. The general permit, alone, does not permit a discharger to discharge at a specific location. Rather, a discharger is required to first obtain a "certificate of coverage" from the DEQ. Finally, rule 2216 authorizes discharges that, if uncontrolled, potentially pose a noteworthy environmental or public health risk based on the volume of the discharge and the nature of the contaminants in the discharge. These discharges are relatively common, and include discharges such as sanitary sewage of less than 50,000 gallons per day. This permit requires annual monitoring of the discharge to check the pH level and amounts of cadmium, nickel, zinc, chloride, potassium, and other substances.

Group 3 is based on rules 2211 and 2213. Rule 2211 authorizes relatively minor discharges under a permit-by-rule, as long as the discharger notifies the DEQ. Under rule 2211, a person is authorized to discharge, within certain restrictions and meeting other requirements provided by rule, sanitary sewage, wastewater from a laundromat, noncontact cooling water, fruit and vegetable washwater, and wastewater from an animal care facility, among others. Rule 2213 also authorizes a permit holder to discharge substances that potentially pose a minor risk if the discharge occurs in a specified manner. In order to discharge, a person must first notify the DEQ and the DEQ must certify that the discharge meets the specific requirements provided in the rules. For instance, a person may discharge less than 10,000 gallons per day of noncontact cooling water that contains an additive, if the DEQ is notified and the discharge does not cause the groundwater to exceed the standard limitations for that additive.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the proposed permit fees would generate approximately $1,338,200 for the 2004 fiscal year. This additional money would replace money from the General Fund that supports the groundwater discharge program, and is already appropriated in the recently enacted budget for the DEQ. (HFA floor analysis dated 10-6-03)

ARGUMENTS:

For:

The additional revenue generated by the application fee and permit fee would greatly help the DEQ's implementation of its groundwater discharge program and, in doing so, protects the environment as well as the health, safety, and well-being of state residents. The program is extremely import given that the state has more household wells and public groundwater wells that any other state, and just under half of state residents rely on groundwater for their water supply.

Given the importance of the groundwater discharge program in maintaining the environmental integrity of the state's groundwater supplies, the program has received inadequate support in recent years, particularly as a result of the "early out" programs and budget cutbacks. In 1990, program staff totaled 23 positions, consisting of eight geologists, six soil scientists, six permit writers, and three toxicologists. Today, the program staff totals seven - two geologists, two soil scientists, three permit writers, and zero toxicologists. (Staffing levels are current as of April 2003.) Further, the DEQ and its groundwater discharge program have been subject, much like the rest of state government, to budget cuts.

During the same period that the DEQ has been forced to keep groundwater discharge program staff vacancies open and deal with budget cuts, the program has also seen an increase in the number of

permit applications and the number of permits authorized. The confluence of these three factors - budget cuts, staff reductions, and increased demand for services - has created problems for the DEQ. Currently, there is a backlog of at least 200 applications that are pending review. Of those 200 applications, 150 are for discharges with the high potential risk to the environment and public health. In addition, the DEQ has had particular trouble with monitoring compliance with the program. Less than 30 percent of the required inspections are actually conducted, and permit reauthorizations often do not occur, meaning there are facilities in the state where the DEQ does not know with any significant degree of certainty the extent to which those facilities are complying with the appropriate discharge standards and guidelines. In what little compliance checks the DEQ can actually do, they are generally limited to reviewing the periodic reports that are completed by the discharger; as on-site compliance inspections are quite difficult to do with such few resources.

The new fees, then, will generate much needed revenue that will permit the DEQ to hire approximately five additional staff members, which represents an increase of 71 percent from current staffing levels. The additional staff and resources will better enable the DEQ to reduce its backlog and take a more active approach to ensure compliance.

Response:

The current financial state of the state presents the DEQ with a unique and important opportunity to review its groundwater program, including the application process and the monitoring/compliance process. Some have suggested that the DEQ form a task force - perhaps consisting of senior staff and program staff, as well as other interested parties - to review the groundwater discharge program for ways the DEQ can improve the efficiency and effectiveness of the program. Given the fiscal realities facing the program (and, perhaps considering the overall regulatory environment), it is quite apparent that the program cannot continue to operate as it did a decade ago. Simply throwing money at an ineffective program will not, in the long run, improve its operations or effectiveness.

For:

Like Senate Bill 252, the bill also contains a number of provisions that are designed to improve the timeliness of the application process. These provisions include a requirement that the DEQ review an application for completeness within 30 days and make a determination to approve or deny a permit within 180 days. The bill also includes a provision that discounts the permit fee 15 percent if the DEQ does not make a determination to approve or deny a permit within the required time.

These changes are necessary due to the new fees imposed on applicants and permit holders and the state of the state's economy. While most businesses are not terribly excited about the proposition of paying higher fees for the program, improved timeliness of the application process should make the new fees a bit more palatable. If businesses are expected to pay more for the program, they should receive some benefit. Further, in testimony to the House Committee on Government Operations, the DEQ noted the importance of clean groundwater in attracting businesses. The streamlined process and the discount provision are simply extensions of that interest in business competitiveness. It's unlikely that a business would want to relocate to the state if it cannot obtain the required permits within a timely manner.

Response:

There are some differences between the timeline provisions contained in this bill and those contained in SB 252. In particular, SB 252 contained a provision that varied the time by which the DEQ is required to review an application's completeness. That bill requires the DEQ to check for completeness on an application for a new or increased use within 30 days, but within 90 days for a reissuance. Senate Bill 560 should adopt a similar time sequence. Also SB 252 set a different time by which the DEQ was required to make a determination to approve or deny an application. Decisions on applications for a new or increased use would have to be made within 180 days of receiving a complete application, while decisions on applications for a reissuance would have to be made by September 30 of the year following submission of an administratively complete application. Again, this bill should adopt a similar time sequence. These changes are necessary given the current backlog of applications and the current (and potential) level of staffing for the program.

Against:

Considering the current backlog of applications and the level of program staff, these time requirements could effectively be counterproductive, especially when taken in conjunction with the provision to discount permit fees by 15 percent if a determination to approve or deny a permit is not made within the required time. While the DEQ makes every effort to process applications in a timely manner, it is simply unable to keep up with increasing demand. Adding time requirements and a potential sanction to the

application process could further erode the ability of DEQ staff to effectively administer the groundwater discharge program. If the staff is required to act on applications within a short period of time, the DEQ's efforts in other related matters - such as compliance and inspection checks - will, invariably suffer. At the very least the discount provision, both in SB 252 and this bill, should be eliminated.

Against:

There remains some concern about the cost of the fees (especially when taken in conjunction with the increased fees from SB 252) on businesses, particularly agriculture. Agricultural businesses, and all businesses for that matter, already spend a great deal of money to remain in compliance with their discharge permits. These costs include taking samples of the discharge and providing for the necessary equipment, among other related activities. In addition, agricultural businesses run the distinct risk of making no money in any given year, particularly if the weather conditions are not right. For instance, last year's cherry crop was virtually nonexistent, and the impositions of hefty fees would not have helped already beleaguered cherry farmers and cooperatives. The imposition of the new fees, then, can be a tremendous burden on agricultural businesses, which already operate with only a slight profit margin. The new groundwater fees for agricultural businesses ranges from $600 to more than $12,000 and, in most cases, is more than $2,000. Saddling these businesses has the potential to accelerate the loss of farmland on the state, a particularly significant implication given the importance many have placed in preserving farmland, protecting open land, and curbing urban sprawl. To that end, in calculating the fees, there should be at least some consideration of a discharger's ability to pay.

POSITIONS:

The Department of Environmental Quality is supportive of the bill, with amendments. (10-3-03)

The Michigan Chamber of Commerce supports the bill. (10-6-03)

The Michigan Farm Bureau opposes the bill. (10-3-03)

The Michigan Milk Producers Association indicated its opposition to the bill. (10-2-03)

Analyst: M. Wolf

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.