

OPERATING LICENSES FOR HAZARDOUS WASTE FACILITIES

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 1564 (Substitute S-1, as amended on Senate Floor)

Sponsor: Sen. Patricia L. Birkholz

House Committee: Great Lakes and Environment

Senate Committee: Natural Resources and Environmental Affairs

Complete to 12-1-10

A SUMMARY OF SENATE BILL 1564 AS PASSED BY THE SENATE 11-10-10

Generally speaking, under Part 111 (Hazardous Waste Management) of the Natural Resources and Environmental Protection Act, a person must have a *construction permit* to construct, enlarge, or alter a treatment, storage, or disposal facility for hazardous waste and an *operating license* to operate one. The process for obtaining a construction permit currently includes a recommendation by a Site Review Board as described in the act. This board was abolished by EO 2009-45 (ERO 2009-31), compiled at MCL 324.99919, and its functions were transferred to the Department of Natural Resources and the Environment.

Senate Bill 1564 would amend Part 111 to delete provisions that pertain to the Site Review Board and to construction permits. Under the bill, a person would need an operating license and "final authorization to manage, maintain, and operate the treatment, storage, or disposal" (rather than a construction permit and an operating license) to construct or expand a treatment, storage, or disposal facility for hazardous waste. The operating license would now be required before the facility was built, expanded, or altered, and many of the requirements that currently apply to applications for construction permits would apply instead to applications for operating licenses. The bill would also require operating license application fees to be deposited in the Environmental Pollution Prevention Fund, rather than the General Fund, and would make other changes to Part 111, including requiring applicants for licenses to operate new multisource commercial hazardous waste disposal wells to submit business plans for the well operations to the DNRE.

FISCAL IMPACT:

Senate Bill 1564 would consolidate the construction permit and operating license processes for hazardous waste disposal facilities into one single process and one single permit. By streamlining the permitting process and eliminating redundancies such as dual public notices, hearings, and administrative costs, it is anticipated that the Department may realize a reduction in costs for the administration of the program.

The bill also makes changes to the permitting program fee structure. Under current law, an operating license must be obtained from the DNRE in order to manage or operate a hazardous waste treatment, storage, or disposal facility. An applicant must pay a \$500 application fee for this operating license which is deposited into the State's General Fund account. The bill's provisions require that these application fees be deposited into the Environmental Pollution Prevention Fund (EPPF) instead of the General Fund.

In addition, under current law (MCL 324.11118), an applicant must pay a site construction permit application fee of \$25,000 with additional amounts for certain types of facilities when the application is referred to a site review board. The fee is to be placed in a revolving fund. The bill provides that these application fees would be deposited into the EPPF. The amount of additional funding to the EPPF is dependent upon how many applications the DNRE receives. Funding in the EPPF may be used for hazardous waste emergency response and cleanup activities as well as other specific hazardous waste purposes.

Under the provisions of the bill, the Department may experience a small reduction in revenue through the elimination of certain permitting fees. By repealing the provisions of Section 11118, the bill would eliminate the authorization for the Department to collect construction permit fees based upon the site size of a landfill, surface impoundment, land treatment or waste pile facility, the daily waste volume of a facility, or its hydrogeological characteristics. These fees range from \$40 to \$320.

DETAILED SUMMARY:

The bill would do the following things:

- Require an application for a license to operate a treatment and storage facility *with a multisource commercial hazardous waste disposal well* to include a business plan for the well operation; and specify the required contents of the business plan. (As amended on the Senate Floor, the bill would only require business plans for applications submitted after the bill's effective date and would not require business plans in connection with applications for renewal licenses.)
- Require an operating license to *establish* or to *construct* a treatment, storage, or disposal facility in Michigan, not just to conduct, manage, maintain, or operate one, as in current law.
- Prescribe the contents and form for an application for an operating license relating to a proposed treatment, storage, or disposal facility or to an expansion, enlargement, or alteration of one beyond its original design or beyond the area specified in an existing operating license, original construction permit, or other authorization.
- Require an application for an operating license for a proposed or expanded facility to include (1) the name and residence of the applicant; (2) the location of the proposed project; (3) a copy of an actual newspaper notice that the applicant published at least 30 days before submitting the application satisfying specified requirements; (4) a written summary of the comments received at a preapplication

meeting required by rule, and the applicant's response to the comments; (5) a determination of existing hydrogeological characteristics that are specified in a report and a monitoring program consistent with rules; (6) an environmental assessment satisfying specified requirements; (7) closure and postclosure monitoring procedures; (8) an engineering plan; (9) other information specified by rule or by a federal regulation; (10) the application fee, as described below, to be deposited in the Environmental Pollution Prevention Fund; (11) a disclosure statement containing specified information, as described below; (12) a demonstration that the applicant had considered specified factors, including certain predictable adverse effects, as described below; (13) a summary of the measures the applicant evaluated to mitigate identified impacts, and a detailed description of the measures the applicant will implement; and (14) a schedule for submitting specified postconstruction documentation, as described below.

- Establish an application fee of \$25,000, under procedures established by rule, plus any of the following fees, as applicable:
 - For a landfill, surface impoundment, or waste pile facility—\$9,000.
 - For an incinerator or treatment facility other than a landfill, surface impoundment, or waste pile facility—\$7,200.
 - For a storage facility other than storage associated with treatment or disposal activities that may be regulated under a single license—\$500.
- Require the required disclosure statement to include all of the following information: (1) the full name and business address of the following persons—the applicant; the five persons holding the largest shares of the facility's equity or debt liability (the DNRE could waive the listing of these persons if the applicant is a publicly-traded corporation); the operator (if the DNRE waived the listing of the five largest share or debt holders, detailed information about the operator would have to be included); the three employees with the most responsibility for day-to-day operations, if known, and their previous experience with hazardous waste facilities; and any legal entity in which any person required to be listed has ever held at least 25 percent of the equity or debt liability (the DNRE could also waive this requirement if the applicant is a publicly-traded corporation); (2) a list of all convictions for criminal violations of any environmental statute enacted by a federal, state, Canadian, or Canadian provincial agency by a person required to be listed in the disclosure statement; (3) unless the applicant's debt liability is held by a chartered lending institution, a list of all environmental permits or licenses issued by a federal, state, local, Canadian, or Canadian provincial agency held by each person required to be listed that were permanently revoked because of noncompliance; (4) unless the applicant's debt liability is held by a chartered lending institution, a list of all activities at a property owned or operated by each person required to be listed in the disclosure statement that resulted in a threat or potential threat to the environment and for which public funds were used to finance the mitigation of the threat or potential threat, unless the public funds were voluntarily and expeditiously recovered from the applicant or other listed person without litigation.
- Require, as part of an application for a proposed or expanded facility, an applicant to demonstrate consideration of each of the following:

- The risk and impact of accidents during the transportation of hazardous waste to the facility.
- The risk and impact of fires or explosions from improper treatment, storage, and disposal methods at the facility.
- The impact on the municipality where the proposed facility is to be located in terms of health, safety, and cost.
- The facility's consistency with local planning and existing development, including proximity to housing, schools, and public facilities.
- The nature of the probable environmental impact, including the predictable adverse effects on each of the following (1) the natural environment and ecology; (2) public health and safety; (3) scenic, historic, cultural, and recreational values; and (4) water and air quality and wildlife.
- Require the submission of a schedule for postconstruction documentation after completion of the facility that (1) describes any changes in, or additions to, previously submitted disclosure information, or a certifies that the previous disclosures remain correct; (2) contains a certification under the seal of a licensed professional engineer that the construction proceeded according to the DNRE-approved plan, and if applicable, the approved construction permit, including as-built plans; (3) contains a certification of the facility's capability to treat, store, or dispose of hazardous waste in compliance with Part 111, and (4) contains proof of financial assurance as required by rule.
- Require the applicant or licensee to provide an updated disclosure statement to the DNRE if information required in the disclosure statement changes or is supplemented after the filing of the statement.
- Allow the DNRE to deny an application for an operating license, notwithstanding any other provision of law, if the applicant's original or supplemental disclosure statement shows any convictions for environmental crimes, permanent revocations of environmental permits for noncompliance (unless a chartered lending institution holds the applicant's debt liability), or any activities on properties owned or operated by a required-to-be-listed person that resulted in a threat or potential threat to the environment that had to be mitigated with public funds (unless a chartered lending institution holds the applicant's debt liability or unless the public funds were promptly and voluntarily repaid).
- Repeal the requirements for an application for a limited storage facility operating license currently contained in Section 11122 of the act, but insert requirements for proposed limited storage facilities into in Section 11123(5) of the bill, requiring the \$500 application fee to be deposited in the Environmental Pollution Prevention Fund.
- Specify the required contents and form of an application for a license to operate a treatment, storage, or disposal facility "other than one identified in subsection (2) [proposed treatment, storage, or disposal facility or the expansion, enlargement, or alternation of one] or (5) [proposed limited storage facility]," and require the applicable \$500 application fee to be deposited in the Environmental Pollution Prevention Fund, rather than the General Fund.
- Allow a person to request to be placed on a department-organized mailing list to be kept informed of any rules, plans, operating license applications, contested

case hearings, public hearings, or other information or procedures relating to the administration of Part 111, and allow the department to charge a fee to cover the cost of the materials.

- Require the department to inspect a newly built, expanded, enlarged, or altered treatment, storage, or disposal facility after the department has received required postconstruction documentation but before it issues its "final authorization to manage, maintain, and operate the treatment, storage, or disposal facility."
- Require the department to inspect a treatment, storage, or disposal "meeting the requirements of Section 11123(6)"—that is, one that meets the requirements of that subsection that applies to facilities other than those identified in subsection (2) [proposed or expanded treatment, storage, or disposal facility] or (5) [proposed limited storage facility]—and determine if it complies with Part 111 and its rules; require the department to file a written inspection before issuing an operating license in this situation.
- Require the DNRE, upon receipt of an application to construct a proposed facility or to expand or alter an existing one that met the bill's requirements, to do the following things:
 - Notify the municipality and the county in which a facility is located or proposed to be located; a local soil erosion control agency; each division within the department with responsibility in land, air, or water management; a regional planning agency; and other appropriate agencies; and describe the procedures by which the license could be approved or denied.
 - Conduct a plan review of the facility within the department, as described in the bill, before issuing or denying an operating license to the applicant, and require a written and signed review by each person within the department who reviews the application and plans, and require the written reviews to be filed in the department's license application records before an operating license is issued or denied.
 - Integrate the relevant provisions of all permits that the applicant is required to obtain from the department to construct the proposed facility into the operating license required by Part 111.
 - Consider the mitigation measures that the applicant has identified and proposes to implement.
 - Hold a public hearing not more than 60 days after receipt of the application.

[Note: These requirements are similar, but not identical, to what current Section 1119, to be repealed by the bill, currently requires the DNRE to do after receiving an application but before referring an application to the Site Review Board.]

- Authorize the DNRE to establish operating license conditions specifically applicable to the treatment, storage, or disposal facility and operation at that site to mitigate adverse impacts.

Repealers. The bill would repeal Sections 1116, 1117, 1118, 1119, 1120 & 1122 of NREPA:

- Section 1116 exempts facilities in existence on specified dates in 1980 from construction permits from review by the Site Review Board, unless they are expanded, enlarged, or altered.
- Section 1117 creates the Site Review Board, and describes its membership and duties.
- Section 1118 describes construction permits application requirements, including disclosure requirements, describes a revolving fund into which \$25,000 application fees are deposited; and contains a schedule of additional permit fees based on the type and size of the facility
- Section 1119 describes the duties of the DNRE after receiving a construction permit application, including the duty to notify permanent Site Review Board members, the municipality and county in which the facility is to be located, the local soil erosion control agency, relevant divisions of the DNRE, a regional planning agency, and other appropriate agencies. This section also describes the DNRE's plan review process for determining a plan's compliance with Part 111 before an application is referred to the Site Review Board. This section also requires the DNRE to coordinate and review all DNRE permits needed by the applicant, to hold a public hearing within 60 days after receiving a complete construction permit application; to provide specified information to each Site Review Board member, and to follow a public participation process if denying an application before referral to the Site Review Board.
- Section 11120 describes the time frame for referring an application to the Site Review Board, for the county and municipality to appoint members to serve on the board, and for the board's first meeting. It also sets notice requirements for a public hearing and requirements for the public hearing, requires the board to decide which issues will be negotiated and which will be decided by the board, and negotiation and resolution procedures.
- Section 11122 allows a person to establish a limited storage facility without a construction permit, but with an operating license, if the facility is compatible with local zoning, and prescribes applicable requirements.

Legislative Analyst: Shannan Kane
Fiscal Analyst: Viola Bay Wild

■ 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.