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BILL



ANALYSIS

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Senate Bill 1564 (as enacted)

PUBLIC ACT 357 of 2010

Sponsor: Senator Patricia L. Birkholz

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Great Lakes and Environment

Date Completed: 1-18-11

RATIONALE

Previously, under the Natural Resources and Environmental Protection Act, two separate permits were required to construct and operate a hazardous waste treatment, storage, or disposal facility. This requirement was considered to add unnecessary complexity to the permitting process. Also, the statute contained references to a site review board established to review construction permit applications. The review board was eliminated by Executive Order 2009-45 and its duties were transferred to the Department of Natural Resources and Environment (DNRE). It was suggested that the two permits should be consolidated into one operating license, the references to the site review board should be eliminated, and the application process should be otherwise revised.

CONTENT

The bill amended Part 111 (Hazardous Waste Management) of the Natural Resources and Environmental Protection Act to do the following:

- **Repeal certain provisions pertaining to a permit required to construct a facility for the treatment, storage, or disposal of hazardous waste; and establish similar provisions with regard to a license to operate such a facility.**
- **Eliminate a board appointed to review construction permit applications.**
- **Require regulatory fees from operating license applications to be deposited into the Environmental**

Pollution Prevention Fund, rather than the General Fund.

- **Require documentation following the construction of a facility, and authorize the DNRE to revoke or modify an operating license if construction deviates from approved plans.**
- **Require the owner or operator of a treatment and storage facility with a multisource commercial hazardous waste disposal well to give the DNRE a business plan for the well operations.**

The bill took effect on December 22, 2010.

Construction Permit

Part 111 regulates the generation, disposal, storage, treatment, and transport of hazardous waste. ("Hazardous waste" means waste or a combination of waste and other discarded material, including solid, liquid, semisolid, or contained gaseous material, that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or contribute significantly to an increase in mortality or in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed.)

Previously, under Sections 11116 through 11120, a person could not establish a hazardous waste treatment, storage, or

disposal facility without a construction permit from the DNRE. Those sections specified the information that had to be included with an application for a construction permit and prescribed the calculation of the application fee, based on the type, size, and daily waste volume of the facility. The fee had to be deposited in the State's General Fund. The application also had to include a disclosure statement containing specific information regarding the applicant, certain people holding equity in or debt liability of the proposed facility, the facility operator, and certain employees.

Those sections also established a revolving fund, into which an applicant had to deposit \$25,000 if his or her application was referred to a site review board (described below). This fee was in addition to the application fee, and covered the review board's expenses.

The bill repealed Sections 11116 through 11120, but reenacted the provisions prescribing the information that must be included in an application, referring to an operating license for a hazardous waste facility rather than a construction permit. The bill established operating license application fees, as described below.

Those sections also provided for the establishment of a site review board to review and recommend to the DNRE whether a construction permit should be granted or denied final approval.

The site review process required multiple instances of site review board involvement and several opportunities for participation by the public and revision before issuance or denial of the construction permit. The bill eliminated the site review board, but reenacted certain similar provisions pertaining to the DNRE's responsibility with regard to operating license applications.

Operating License

Part 111 prohibits a person from conducting, managing, maintaining, or operating a treatment, storage, or disposal facility in Michigan without an operating license from the DNRE. The bill also prohibits the establishment and construction of such a facility without an operating license.

The bill requires an applicant for an operating license to submit an application fee, which must be deposited in the Environmental Pollution Prevention Fund. Pursuant to procedures established by rule, the application fee is the sum of \$25,000 plus all of the following, as applicable:

- For a landfill, surface impoundment, land treatment, or waste pile facility, \$9,000.
- For an incinerator or treatment facility other than a landfill, surface impoundment, land treatment, or waste pile facility, \$7,200.
- For a storage facility, other than storage associated with the treatment or disposal activities that may be regulated under a single license, \$500.

In addition, the bill requires an application for an operating license to demonstrate that the applicant has considered each of the following:

- The risk and impact of accident during the transportation of hazardous waste to the facility.
- The risk of fires or explosions from improper treatment, storage, and disposal methods.
- The impact on the municipality where the proposed facility is to be located in terms of health, safety, cost, and consistency with local planning and existing development, including proximity to housing, schools, and public facilities.

The application also must include the nature of the probable environmental impact, including specification of the predictable adverse effects on the following:

- The natural environment and ecology.
- Public health and safety.
- Scenic, historic, cultural, and recreational value.
- Water and air quality and wildlife.

In addition, the application must include a summary of measures evaluated to mitigate the impacts and a detailed description of the measures to be implemented by the applicant.

Also, the application must include a schedule for submittal of all of the following postconstruction documentation:

- Any changes in, or additions to, the previously submitted disclosure information, or a certification that the previous listings continue to be correct, following completion of construction of the facility.
- A certification under the seal of a licensed professional engineer verifying that the construction of the facility has proceeded according to the plans approved by the DNRE, and, if applicable, the approved construction permit, including as-built plans.
- A certification of the facility's capability of treating, storing, or disposing of hazardous waste in compliance with Part 111.
- Proof of financial assurance as provided by rule.

Under Part 111, the application for an operating license must contain the applicant's name and residence; the location of the proposed or existing facility; other information considered necessary by the DNRE, including proof of financial responsibility; and a fee of \$500. Under the bill, this provision applies to a treatment, storage, or disposal facility other than a facility identified above or a limited storage facility (described below). Previously, the fee had to be deposited in the General Fund. Under the bill, the fee must be deposited in the Environmental Pollution Prevention Fund.

Limited Storage Facility

Section 11122 allowed a person to establish a limited storage facility without a construction permit, but did require an operating license. A limited storage facility was subject to the rules pertaining to storage facilities generally.

("Limited storage facility" means a storage facility that meets all of the following conditions:

- It has a maximum storage capacity of 25,000 gallons of hazardous waste.
- Storage occurs only in tanks or containers.
- It has a maximum of 200 containers on site that have a maximum capacity of 55 gallons.
- It does not store hazardous waste on site for more than 90 days.

- It does not receive hazardous waste from a treatment, storage, or disposal facility.)

Section 11122 prescribed the information that had to be included in an application for a limited storage facility operating license, including a determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with DNRE rules, an environmental assessment, an engineering plan, procedures for closure, and a resolution or other formal determination of the governing body of the municipality in which the proposed facility would be located indicating that the facility was compatible with local zoning ordinances.

In the absence of a resolution or other formal determination, the application had to include a copy of a registered letter sent to the municipality indicating the intent to construct a limited storage facility, requesting a formal determination, and indicating that failure to pass a resolution or make a formal determination within 60 days meant that the proposed facility was to be considered compatible with applicable zoning ordinances.

If a municipality did not make a formal determination within 60 days of receiving the letter, it meant that the facility was to be considered compatible with local zoning ordinances, and the DNRE could not use incompatibility with those ordinances as the basis for denying a license.

The application had to be accompanied by a fee of \$500, which had to be deposited in the State's General Fund.

Before issuing an operating license for a limited storage facility, the DNRE had to deliberate on the impact that it would have on the municipality, and had to consider specific factors. The DNRE also had to consider the local ordinances, permits, or other requirements and their potential relationship to the proposed facility, as well as the concerns and objections submitted by the public. The Department could not issue an operating license unless the proposed facility was compatible with the zoning ordinances of the municipality.

The bill repealed Section 11122, but reenacted the provisions specifying the

application information, the provisions related to a formal determination by the municipality, and the fee requirement. Under the bill, however, the fee must be deposited in the Environmental Pollution Prevention Fund.

DNRE Inspection

Previously, upon receiving an operating license application meeting the requirements of Part 111, the DNRE had to inspect the site and determine if the treatment, storage, or disposal facility complied with Part 111 and rules promulgated under it, and the stipulations included in the approved construction permit. Before issuing an operating license, the DNRE had to file a written inspection report.

Under the bill, following the construction of a proposed treatment, storage, or disposal facility or the expansion, enlargement, or alteration of a facility beyond its original authorized design capacity or beyond the area specified in an existing operating license, original construction permit, or other authorization, and after the DNRE receives the postconstruction documentation required under the bill, the Department must inspect the site and determine if the facility complies with Part 111, the rules, and the stipulations included in the operating license. The Department must file its written report before issuing final authorization to manage, maintain, and operate the facility.

Upon receiving an operating license application meeting the requirements for a facility other than one described above or a limited storage facility, the DNRE must inspect the site to determine compliance with Part 111 and rules promulgated under it. The Department must file a written inspection report before issuing a license.

Operating License Application Review

Part 111 requires the DNRE to provide notice and an opportunity for a public hearing before making a final decision on an operating license application. The Department must make a final decision within 140 days after receiving a complete application, but may extend the deadline in order to fulfill the public participation requirements of the Solid Waste Disposal Act.

The bill retained these provisions, and also requires the DNRE to take certain actions upon receiving a license application, such as notifying certain entities, reviewing the proposed facility's plans to determine if they comply with Part 111, coordinating permits, and holding a public hearing. (Section 11119, which the bill repealed, contained similar provisions applicable to construction permit applications, along with a requirement to refer an application to a site review board and conduct a public participation process under the Solid Waste Disposal Act.)

Part 111 allows a person to request to be placed on a DNRE-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. Under the bill, the Department must give notice of its final decision on an operating license application to people who request to be on the list for that facility.

Postconstruction Review

The bill requires the DNRE, following the construction of a new, expanded, enlarged, or altered facility, to review all information that must be submitted by the operating license. If it finds that the owner or operator has deviated from the specific conditions established in the license, the Department must determine if cause exists for license modification or revocation, in accordance with provisions established by rule. At a minimum, the postconstruction documentation must include all of the following:

- Updated disclosure information, or a certification that the previous disclosure information continues to be correct.
- A certification that construction was done according to plans approved by the DNRE.
- A certification of the facility's capability, signed and sealed by a licensed professional engineer.
- Information regarding any deviations from the specific conditions in the operating license.
- Proof of financial responsibility.

The DNRE must require additional certification periodically during the operation

or in order to verify proper closure of the site.

Closure Plan

The bill requires the owner or operator of a treatment, storage, or disposal facility to submit a closure plan to the DNRE as part of the application for an operating license. Previously, this requirement applied to an application for a construction permit.

Business Plan: Multisource Disposal Well

The bill requires the owner or operator of a proposed treatment and storage facility with a multisource commercial hazardous waste disposal well to give the DNRE in its license application a business plan for the well operations. The plan must contain all of the following information:

- The type, estimated quantities, and expected potential sources of waste to be disposed of in the well.
- A feasibility study on the viability of the well's operations.
- Additional business plan information required by the DNRE and related solely to the preceding two items.
- Any additional business plan information, if the DNRE and the applicant agree that it should be submitted.

These requirements apply only to a person who submits an application for an operating license, other than a renewal license, after December 22, 2010.

(The Act defines "multisource commercial hazardous waste disposal well" as a disposal well that receives hazardous waste that is generated by more than one person. The term does not include a well that receives hazardous waste generated from a subsidiary of the person who owns or operates a hazardous waste disposal well.)

MCL 324.11102 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill eliminated the dual permit system, which was complex and sometimes

duplicative, and deleted references to the abolished site review board. These and other measures in the bill create a more efficient, user-friendly licensing process for hazardous waste facility owners and operators.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Overall, the bill will likely have little net effect on revenue to the State. Some small, indeterminate amount of revenue will be lost as the Department will no longer collect fees under Sections 11118(10)(d) through 11118(10)(h) (for the permitted site size of surface impoundment, land treatment, and waste pile facilities and other treatment or storage facilities, the projected daily waste volume of those facilities and landfills, and the hydrogeological characteristics of those facilities and landfills). More significantly, under the bill, application fees collected under Section 11123 for an operating license will be credited to the Environmental Pollution Prevention Fund (EPPF). Previously, fees were credited to the General Fund. Because the amount collected under Section 11123 will depend on how many applications the Department receives, it is unknown how much additional revenue the EPPF will receive under the bill. For FY 2010-11, \$1,576,700 is appropriated from the EPPF, and the Fund is projected to have a year-end balance of about \$1.1 million for FY 2009-10.

The bill deleted provisions for the site review board in conformity with Executive Order 2009-45, which abolished the board and transferred its responsibilities to the Department. The site review board had reviewed hazardous waste facility permits, and its costs were paid by the fees charged to permit holders. These fees will still be charged under the bill; however, for the Department to use this fee revenue to fund the application process, the Legislature will need to make an appropriation for that purpose.

Fiscal Analyst: Josh Sefton

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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