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BILL



ANALYSIS

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Senate Bill 1564 (as introduced 11-4-10)
Sponsor: Senator Patricia L. Birkholz
Committee: Natural Resources and Environmental Affairs

Date Completed: 11-9-10

CONTENT

The bill would amend 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 boards 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 Department of Natural Resources and Environment (DNRE) to revoke or modify an operating license if construction had deviated 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.**

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.)

Under Sections 11116 through 11120, a person may not establish a hazardous waste treatment, storage, or disposal facility without a construction permit from the DNRE. Those sections specify the information that must be included with an application for a construction permit and prescribe the calculation of the application fee, based on the type, size, and daily waste volume of the facility. The fee must be deposited in the State's General Fund. The application also must 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 establish a revolving fund, into which an applicant must deposit \$25,000 if his or her application is referred to a site review board (described below). This fee is in addition to the application fee, and covers the review board's expenses.

The bill would repeal Sections 11116 through 11120, but would reenact 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 would establish operating license application fees, as described below.

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

The existing site review process requires 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 would eliminate the site review boards, but would reenact 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 would prohibit the establishment and construction of such a facility without an operating license.

An applicant for an operating license would have to submit an application fee, which would have to be deposited in the Environmental Pollution Prevention Fund. Pursuant to procedures established by rule, the application fee would be 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, an application for an operating license would have to demonstrate that the

applicant had 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 was 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 would have to 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 would have to 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 would have to 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 continued 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 had 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.

Currently, 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, which must be deposited in the General Fund. Under the bill, this provision would apply to a treatment, storage, or disposal facility other than a facility already discussed or a limited storage facility (described below). Also, the fee would have to be deposited in the Environmental Pollution Prevention Fund, rather than the General Fund.

Limited Storage Facility

Section 11122 allows a person to establish a limited storage facility without a construction permit, but does require an operating license. A limited storage facility is 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 prescribes the information that must 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 is compatible with local zoning ordinances.

In the absence of a resolution or other formal determination, the application must

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 means that the proposed facility is to be considered compatible with applicable zoning ordinances.

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

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

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

The bill would repeal Section 11122, but would reenact 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 would have to be deposited in the Environmental Pollution Prevention Fund.

DNRE Inspection

Under Part 111, upon receiving an operating license application that fulfills all requirements, the DNRE must inspect the site and determine if the treatment, storage, or disposal facility complies with Part 111 and rules promulgated under it, and the stipulations included in the approved construction permit. Before issuing an operating license, the DNRE must file a written inspection report, which must be made available for public review.

The bill would retain these provisions, but they would apply following the construction of a proposed 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. The DNRE would have to conduct the inspection after it received the postconstruction documentation required under the bill. Also, the bill would refer to the stipulations included in the operating license, rather than the construction permit; and the Department would have to file its written report before issuing final authorization to manage, maintain, and operate the facility.

The DNRE would have to inspect a site upon receiving an operating license application meeting the bill's requirements to determine compliance with Part 111 and rules promulgated under it. The Department would have to 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 would retain these provisions, and also would require 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 complied with Part 111, coordinating permits, and holding a public hearing. (Section 11119 currently contains 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. The bill would repeal Section 11119.)

Under Part 111, a person may 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 would have to give notice of its final decision on an operating license application to people who requested to be on the list for that facility.

Postconstruction Review

Following the construction of a new, expanded, enlarged, or altered facility, the DNRE would have to review all information required to be submitted by the operating license. If it found that the owner or operator had deviated from the specific conditions established in the license, the Department would have to determine if cause existed for license modification or revocation, in accordance with provisions established by rule. At a minimum, the postconstruction documentation would have to include all of the following:

- Updated disclosure information, or a certification that the previous disclosure information continued 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 would have to require additional certification periodically during the operation or in order to verify proper closure of the site.

Closure Plan

Part 111 requires the owner or operator of a facility to submit a closure plan to the DNRE as part of a construction permit application license. In addition, the owner or operator must submit a postclosure monitoring and maintenance plan. Under the bill, this requirement would apply to an applicant for an operating license, rather than a construction permit.

Business Plan: Multisource Disposal Well

The bill would 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 plan would

have to contain all of the following information:

- The type, estimated quantities, and potential sources of waste to be disposed of in the well.
- The current and projected market information, including a feasibility study on the viability of the disposal well operations.
- A plan for maintaining profitability.
- The existing and potential alternative disposal methods and costs.
- The effect of the proposed disposal well operations on disposal facilities in Michigan that handle similar wastes.
- Additional information requested by the DNRE.

(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.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Overall, the bill would likely have little net effect on revenue to the State. Some small, indeterminate amount of revenue would be lost as the Department would 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 would be credited to the Environmental Pollution Prevention Fund (EPPF). Currently, fees are credited to the General Fund. Because the amount collected under Section 11123 would depend on how many applications the Department received, it is unknown how much additional revenue the EPPF would 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 would likely result in some increased cost to the Department. The bill would abolish the site review board, which currently reviews hazardous waste facility permits. Those responsibilities would fall on the Department. The costs of the site review board are currently paid by the fees charged to permit holders. These fees would still be charged under the bill; however, for the Department to use this fee revenue to fund the application process, the Legislature would 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.