



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone 517 373-6466

LIMITED STORAGE FACILITY FEE

House Bill 4518 as enrolled
Second Analysis (11-24-87)

RECEIVED

APR 30 1988

Sponsor: Rep. James A. Kosteva

Committee: Conservation & Environment State Law Library

THE APPARENT PROBLEM:

Before March 1986, regulations for generators of less than one-ton of hazardous wastes were minimal. During 1986, regulations were substantially increased for generators of 220 pounds of waste or more. Many smaller generators still do not produce enough waste to make an economic shipment to a disposal facility. Therefore, they attempt to store their waste until they can combine it with another generator's in order to make an economic shipment. Currently, waste may accumulate for up to 90 days at a facility without needing a construction permit and operating license for storage. However, in some remote areas around the state it takes longer than 90 days for enough waste to be generated to make it economically feasible to ship the waste. Often in these instances the small generators need a place to temporarily store their waste, yet if they do store it for more than 90 days they would have to complete the construction permit site review process (which may take at least a year).

Some of the major concerns to environmentalists are the generation and transport of hazardous waste and storage of waste underground. Thus, legislation providing for the limited storage of waste is necessary to ensure efficient transport and disposal of wastes. Further, legislation is also needed which would promote alternative methods of waste disposal besides landfilling.

THE CONTENT OF THE BILL:

In general, the bill would provide for the creation of limited storage facilities. It would also create incentives for recycling and disincentives for landfilling. Finally, the bill would also make more alternatives available for conservation officers who discovered minor violations to the act. A detailed description of the bill's provisions follow.

Storage Facility Fee

Starting January 1, 1989, owners and operators of landfills and solidification facilities would be required to pay a fee assessed on hazardous wastes to the Department of Natural Resources (DNR). The fee would be based on the quantity of waste specified on the manifest (or monthly operating report) and would be \$10 per ton, \$10 per cubic yard, or 1/2 cent per pound depending on the unit of measure used by the owner or operator to calculate the fee. The fee for fractional quantities of hazardous wastes would be proportional. If the wastes were required to be listed on a manifest and the owner/operator of the landfill determined that the waste quantity figure on the manifest was not accurate, the owner/operator would be responsible for correcting the waste quantity figure on all manifest copies accompanying the shipment. In addition, he or she would have to note the reason for the changes and assess the fee in accordance with the corrected waste quantity figure. Payment would be made within 30 days after the close of each quarter. The owner/operator would assess off-site generators the fee. Owners and operators of landfills that generated and disposed of hazardous

wastes on site would be responsible for paying the fee unless a written signed certification was provided by the generator indicating that the waste was exempt from the fee.

Exempt Hazardous Waste

Several hazardous wastes would be exempt from the fee requirement. For example, hazardous waste could be exempted because of its character or the treatment it had received. In addition, ash that resulted from the incineration of hazardous waste would be exempt, as would hazardous waste that was removed from a site of environmental contamination that was included as part of a site cleanup activity at the expense of the state or federal government. The bill would also exempt solidified hazardous waste destined for land disposal, hazardous waste generated according to a one-time closure or site cleanup activity as long as the closure or cleanup activity was authorized in writing by the director of the DNR (hazardous waste resulting from the cleanup of inadvertent releases which occurred after the effective date of the bill would not be exempt from the fee). Further, primary and secondary wastewater treatment solids from a wastewater treatment plant which included an aggressive biological treatment facility would be exempt under the bill as would emission control dust or sludge from the primary production of steel in electric furnaces.

If waste that was exempt from the fee was required to be listed on a manifest, the certification would contain the manifest number of the shipment and the specific fee exemption for which the waste qualified. If the waste that was exempt from the fee was not required to be listed on a manifest, the certification would provide the volume of exempt waste, the waste code or waste codes of the exempt waste, the date of disposal of solidification, and the specific fee exemption the waste qualified for. The DNR or a health department would evaluate the accuracy of the generator fee exemption certifications and would take enforcement action against a generator who filed a false certificate. In addition, the department would take enforcement action to collect fees that weren't paid. Further, all fees collected would be forwarded to the state treasurer and deposited in the general fund to be appropriated to pay funds to generators and to fund programs created under the Waste Minimization Act, the Environmental Technology Act and the Waste Reduction Assistance Act. Fees would not be assessed on waste being disposed of in a landfill or solidified in a solidification facility after December 31, 1992.

Refunds

Under the bill, landfill owners/operators and solidification owners/operators would forward fee revenue due the department with a completed form provided or approved by the DNR. The owner/operator would certify that all information provided in the forms was accurate. The forms

H.B. 4518 (11-24-87)

would include general information on the volume of waste subject to a fee and information about the generator. In addition, the bill would provide that a generator who documented to the DNR a reduction in the amount of hazardous waste generated as a result of a process change would be eligible for a refund from the state. In addition, generators who documented a reduction in the amount of hazardous waste that was being disposed of in a landfill, either directly or following solidification at a solidification facility, as a result of a process change or the generator's increased use of source separation, input substitution, process reformulation, recycling, or treatment would be eligible for a refund from the state. In each case, refunds would be in the amount of \$10 per ton, \$10 per cubic yard, four cents per gallon, or 1/2 cent per pound of waste reduced or managed through an alternative to landfill disposal. However, a generator would not be eligible to receive a refund for the portion of a reduction in the amount of hazardous waste generated that was attributable to a decrease in the generator's level of production of the products that resulted in the generation of the hazardous waste. Beginning January, 1990 and in each year thereafter a generator seeking a refund would calculate the refund due by comparing waste generation, treatment and disposal activity in the calendar year immediately preceding the date of filing with waste generation, treatment, and disposal activity in the calendar year two years before. A generator would have to file a request with the DNR by June 30 of the year following the year for which the refund was being claimed. Refunds could never exceed the total fees paid by the generator to the landfill operator/owner and the solidification facility operator/owner.

Limited Storage Facilities

Anyone could establish a limited storage facility without a construction permit from the DNR. However, the bill would prohibit establishment of a limited storage facility, or management, maintenance or operation of a limited storage facility without an operating license from the DNR. Limited storage facilities would be subject to the rules pertaining to storage facilities.

Applicants for limited storage facility (LSF) operating licenses would have to apply for that license on a form provided by the DNR that would include the name and residence of the applicant, the location of the proposed or existing facility, and proof of financial responsibility. The application would include existing hydrogeological characteristics specified in a hydrogeological report and monitoring program, 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 LSF would be located indicating that the limited storage facility was compatible with local zoning ordinances. However, in the absence of a resolution or other formal determination, the application would include a copy of a registered letter sent to the municipality (dated 60 days prior to the date that the application was submitted) indicating the intent to construct an LSF. The letter would also request formal determination on whether the proposed facility was compatible with local zoning ordinances in effect and indicating that failure to pass a resolution or make a formal determination within 60 days of receipt of the letter would result in a conclusive presumption that the proposed facility was compatible with applicable zoning ordinances and incompatibility with local zoning would not be a basis for denial of the license by the DNR. Further, in determining whether the proposed LSF was compatible with local zoning ordinances, the municipality would assess the proposed facility's

compatibility with ordinances in effect at the date of receipt of the registered letter. The environmental assessment would include an evaluation of the proposed facility's impact on the air, water, and other natural resources of the state and an environmental failure mode assessment. In addition, the application would be accompanied by a fee of \$500, which would be deposited in the general fund of the state.

Prior to issuing an operating license for a LSF, the DNR would deliberate on the impact that the proposed LSF would have on the municipality in which it was to be located and would consider various implications such as the risk and impact of accident during the transportation of hazardous waste, the risk and impact of contamination of ground and surface water by leaching and runoff from the proposed LSF, and the risk of fires or explosions from improper storage methods. The impact on the municipality where the proposed LSF would be located in terms of the health, safety, cost, and consistency with local planning and existing development would also be considered. The DNR would consider local ordinances, permits, or other requirements and their potential relationship to the proposed LSF, and the concerns and objections submitted by the public. In addition, the director would facilitate efforts to provide that concerns and objections were mitigated by establishing additional stipulations specifically applicable to the LSF and operation at the site. The DNR would not issue an operating license unless the proposed LSF was compatible with the zoning ordinances of the municipality in which the limited storage facility would be located.

The applicant would have to submit certification to the DNR under the seal of a licensed professional engineer verifying that the construction of the LSF had proceeded according to the plans approved by the DNR. The DNR would require additional certification periodically during the operation or to verify proper closure of the site. Further, the DNR director would either approve or deny the application for an operating license. If the director denied the operating license, the reasons for the denial would be stated in writing.

Hazardous Waste Service Fund

The bill would provide that monies in the Hazardous Waste Service Fund could be used for insuring the closure and post closure monitoring and maintenance of treatment, storage, or disposal facilities. Under the bill the DNR would be allowed to use the funds when the owner/operator of the treatment, storage, or disposal facility was not fulfilling obligations in regards to closure or post closure monitoring and maintenance of the site and the surety bond, instrument, mechanism, or secured trust fund maintained by the owner/operator. In addition, the DNR would be allowed to administer funds when the surety bond, instrument, mechanism, or secured trust fund maintained by the owner/operator was no longer adequate or in effect. The DNR could request the attorney general to recover expenditures from the fund from the owner/operator of a facility who was not fulfilling his or her obligation in regard to closure or post closure monitoring and maintenance of the facility. Upon receipt and verification that a licensed storage, treatment, or disposal facility did not have or had not maintained a suitable instrument or mechanism the DNR could issue an order of noncompliance directing the owner/operator of the facility to take steps to eliminate the act or practice that resulted in the violation. The same procedure would be followed if hazardous waste at the facility exceeded the maximum quantities allowed under the act. Further, the order would have to specify the

corrective action necessary and could order a facility that had exceeded the maximum quantities of hazardous waste allowed under the terms of the facility's license to cease receiving hazardous waste. In addition, the order would specify the time limit in which corrective action had to be completed. If a facility came into compliance with the act following issuance of an order of noncompliance, the DNR would send written verification of compliance to the owner or operator of the facility.

If an order was given to cease receiving hazardous waste it would not remain in effect for more than seven days without affording the owner or operator an opportunity for a hearing. If the order remained in effect following the hearing, or if the owner/operator waived rights to a hearing, he or she would have to cooperate with the department in the development and implementation of a compliance plan to reduce the amount of hazardous waste at the facility. When the DNR determined that the owner/operator had failed to make reasonable and continuous efforts to comply with the order of noncompliance and the resulting compliance plan, the director could issue an order suspending or restricting the facility's license. However, the suspension or restriction could not remain in effect for more than seven days without affording the owner or operator of the facility an opportunity for a hearing to contest the suspension or restriction.

Owner/operators that received orders of noncompliance for failing to maintain suitable instruments or mechanisms and who did not make efforts to comply with the order of noncompliance would be issued suspensions or restrictions of the facility's license by the DNR. The suspensions would not remain in effect for more than seven days without affording the owner or operator of the facility an opportunity for a hearing to contest the suspension or restriction. Upon verification that a facility had not maintained a suitable instrument or mechanism, or that hazardous waste at a licensed facility exceeded the maximum quantities allowed and that the owner/operator had previously been issued an order of noncompliance the DNR could issue a second or subsequent order of noncompliance, or initiate an action to suspend or restrict the facility's license or permit without first issuing an order of noncompliance.

Transporter Vehicles

Violations such as failing to carry a hazardous waste transporter vehicle license in a vehicle, transferring a business or vehicle license (for hazardous waste) from one business or vehicle to another, or violation of a transporter vehicle license would be misdemeanors punishable by imprisonment for not more than 90 days or a fine of not more than \$500, or both, for each violation. Law enforcement officers or conservation officers could issue appearance tickets to a person who committed those violations.

FISCAL IMPLICATIONS:

The House Fiscal Agency estimates that the bill would generate between \$2-5 million in revenue. (6-16-87)

ARGUMENTS:

For:

The bill is a commendable compromise between environmentalists and businesses. Small businesses need to be able to temporarily store wastes, and the bill would allow off-site storage facilities to be built more easily by not requiring them go through the construction site review

board process. Thus, the bill would help generators comply with the regulations and avoid jeopardizing the environment.

For:

The state is attempting to move away from landfilling towards alternative waste disposal methods. Currently, landfilling is the cheapest disposal method in terms of dollars spent by businesses. However, the costs to the environment and the state when spills and leaks occur is astronomical. Therefore, landfilling is actually one of the most expensive and dangerous techniques used to dispose of waste. The bill is needed to provide a disincentive for landfilling and to encourage, through the use of refunds, the development of alternative disposal methods.

For:

The hazardous waste management act currently provides tremendous penalties for transport violations. However, there are few punishments for minor violations of the act. The bill would improve enforcement capability for transport violations by allowing conservation officers to write appearance tickets and issue small fines.