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BILL ANALYSIS

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House Bill 4518 (as reported with amendments)

Sponsor: Representative James A. Kosteva

House Committee: Conservation and Environment

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 11-17-87

RATIONALE

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 economical shipment to a disposal facility, however. Therefore, they attempt to store their waste until they can combine it with another generator's in order to ship the waste economically. Currently, waste may accumulate for up to 90 days at a facility without needing a construction permit and operating license for storage. In some remote areas around the State, however, 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 store their waste temporarily; yet, if they do store it for more than 90 days, they must complete the construction permit site review process which may take at least a year under current law.

Some people feel that a system of limited storage of waste is necessary to ensure efficient transport and disposal of wastes and that alternative methods of waste disposal besides landfilling are needed and should be encouraged.

CONTENT

The bill would amend the Hazardous Waste Management Act to require the Department of Natural Resources and its Director, the Hazardous Waste Site Review Board, and the State Hazardous Waste Management Planning Committee to assist in implementing the policy of this State to minimize the placement of untreated hazardous waste in disposal facilities. The bill would do the following:

- Require that owners and operators of landfills and solidification facilities pay a fee assessed on hazardous waste to the Department of Natural Resources (DNR).
- Exempt certain hazardous wastes from the fee requirement.
- Provide a fee refund to those generators who documented a reduction in the amount of hazardous waste generated.
- Allow establishment of a limited hazardous waste storage facility with an operating license granted from the DNR.
- Provide that the Hazardous Waste Service Fund could be used for insuring the closure and postclosure monitoring and maintenance of a treatment, storage, or disposal facility.
- Establish violations and penalties for improperly transporting or storing hazardous waste.

Hazardous Waste Disposal Fee

Beginning January 1, 1989, each landfill and solidification facility owner or operator would have to pay a fee to the DNR of \$10 per ton, \$10 per cubic yard, or 1/2 cent per pound of hazardous waste disposed of in a landfill. The fee would be based on the quantity of waste specified on the manifest or monthly operating report on the unit of measure used by the owner or operator.

Exemptions

The following hazardous waste would be exempt from the fee provided for in the bill:

- Ash that resulted from the incineration of hazardous waste.
- Hazardous waste exempted by rule because of its character or treatment it had received.
- Hazardous waste that was removed from a site of environmental contamination that was included in a list submitted to the legislature pursuant to the Environmental Response Act or as a part of a site cleanup activity at the expense of the State or Federal government.
- Solidified waste disposal produced by a solidification facility licensed pursuant to and destined for land disposal.
- Hazardous waste generated pursuant to a one-time closure or site cleanup activity that had been authorized by the Director of the DNR.
- Primary and secondary waste-water treatment solids which included an aggressive biological treatment facility.

Refunds

The bill provides 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 have to 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. In the absence of a resolution or other formal determination, however, the application would have to 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 have to 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 that 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 have to assess the proposed facility's compatibility with ordinances in effect at the date of receipt of the registered letter. The environmental assessment would have to 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 have to 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 Director would be required to deliberate on the impact that the proposed LSF would have on the municipality in which it was to be located and consider, at a minimum, all of the following:

- The risk and impact contamination of ground and surface water by leaching and runoff from the proposed limited storage facility.
- The risk of fires or explosion from improper storage methods.

- The impact on the municipality in terms of health, safety, cost, and consistency with local planning and existing development. In addition, local ordinances, permits, or other requirements and their potential relationship to the proposed limited storage facility would have to be considered.
- The nature of the probable environmental impact.

The Director also would have to consider concerns and objections of the public. The Director could not issue an operating license under the bill unless it was compatible with the local 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 have to require additional certification periodically during the operation or to verify proper closure of the site. Further, the DNR Director would have to approve or deny the application for an operating license. If the Director denied the operating license, the reasons for the denial would have to be stated in writing.

Hazardous Waste Service Fund

The bill provides that monies in the Hazardous Waste Service Fund could be used for insuring the closure and postclosure 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 regard to closure or postclosure monitoring and maintenance of the site and 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 have to 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 have to send written verification of compliance to the owner or operator of the facility.

An order to cease receiving hazardous waste could 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 who 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 have to be issued suspensions or restrictions of the facility's license by the DNR. The suspensions 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. 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, or 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 a violation.

MCL 299.504 et al.

FISCAL IMPACT

This bill would generate revenues to the State of \$10-\$40 million per year. In the first year, the revenue would be \$7.5 million to \$30 million. The bill would require 1.0 FTE, or about \$28,350 the first year and then about \$37,800 in subsequent years.

SENATE COMMITTEE ACTION

The Committee adopted an amendment to the bill to correct a reference to a section number of the bill that was incorrectly identified.

ARGUMENTS

Supporting Argument

The bill represents a commendable compromise between environmentalists and businesses. Small businesses need to be able to store wastes temporarily, 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.

Supporting Argument

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 are 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.

Supporting Argument

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.

Supporting Argument

The Environmental Protection Agency (EPA) may fully ban the landfilling of hazardous waste in the years ahead. In the interim, an economic disincentive, as provided in the bill, would be useful to shift disposal of hazardous waste away from landfilling toward more environmentally desirable alternatives. Imposition of the disposal fee would be a significant first step in demonstrating that the State is serious about emphasizing waste reduction and reducing our reliance on landfilling.

Supporting Argument

Requiring, as the bill would, operators or operators of treatment, storage and disposal facilities to maintain financial assurance for closure/postclosure care would ensure that State funds would not have to be expended to close, decontaminate, and/or monitor a facility if it suddenly went out of business. In addition, the bill, by insuring that a facility did not store excessive waste, giving explicit authority to the DNR to order cessation of waste receipt by a facility, and, in the case of excessive waste inventories, requiring the development and implementation of a compliance plan to reduce waste volumes, would substantially increase the DNR's ability to protect the environment and reduce the possibility that State funds would have to be expended to close a facility.

Supporting Argument

In 1986, small generators of hazardous wastes were subjected to a substantial increase in the level of regulatory control. Limited storage facilities, proposed under the bill, are needed to allow these companies to develop small off-site storage facilities where wastes can be consolidated into loads that can be transported more economically and safely. Currently, the cost of transporting small shipments is so high that it encourages mismanagement.

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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.