



HAZARDOUS WASTE FEES

House Bill 4626 with committee amendments First Analysis (6-6-01)

Sponsor: Rep. Larry DeVuyst
**Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

In 1998, Michigan adopted the Uniform State Hazardous Materials Transportation Registration and Permit Program (the "Uniform Program"). That law provided for the reciprocal recognition of participating states' hazardous waste transporter permits. It also apportioned license fees among the participating states and established uniform forms and procedures for states to register persons transporting hazardous material by motor vehicle. When adopting the "uniform program," it was required that the Department of Environmental Quality (DEQ) submit a report to the legislature recommending a fee schedule to implement the new provisions. Previously, the DEQ had received \$3.6 million in federal funds and between \$1.6 and 1.8 million in state matching funds to administer its hazardous waste programs. The matching funds were obtained through hazardous and liquid industrial waste transporter license fees. However, under the "uniform program," the state only receives about \$200,000. Additional funds are needed to administer the state's hazardous waste programs in the future.

A workgroup composed mainly of representatives from the state's major industries, the DEQ, and environmental groups proposed a combination of user charges to raise the \$1.6 million required for state matching funds, including manifest processing charges, annual handler charges, and a one-time charge for obtaining a site identification number (*Department of Environmental Quality's Hazardous Waste User Charges Work Group Report to the Legislature*, September 1, 1998). Currently, there is sufficient money in the Environmental Pollution Prevention Fund for fiscal year 2001. After that date, the state needs a reliable funding source to ensure that it can continue to administer its hazardous waste programs.

THE CONTENT OF THE BILL:

House Bill 4626 would amend Part 111 (MCL 324.11104 et al.) and Part 121 (MCL 324.12101 et al.) of the Natural Resources and Environmental Protection Act (NREPA), concerning hazardous waste management and liquid industrial wastes, respectively, and would add a new section to the act (MCL 324.11153) to establish user charges for the hazardous waste and liquid industrial waste programs, and penalty provisions for failure to pay the charges. The user charges would be effective October 1, 2002, and would include site identification number user charges, manifest processing user charges, and annual handler user charges. Among the major provisions of the bill are the following:

- Money collected from the user charges would be deposited into the Environmental Pollution Prevention Fund and credited to a new account – a hazardous waste and liquid industrial waste users account – within the Environmental Pollution Prevention Fund. Money from this account would be used to implement the state's hazardous waste management programs.
- Money currently deposited into the Hazardous Waste Transporter Account would be deposited, instead, into the Environmental Pollution Prevention Fund, or into any account within that fund.
- Fees currently collected for hazardous waste disposal and appropriated to pay refunds and to fund waste minimization and waste reduction assistance programs would also be appropriated, for fiscal years 2002 and 2203 only, for hazardous waste management.

Hazardous Waste Disposal Fees. Under the act, a fee is assessed on all hazardous waste disposed of in a landfill or solidification facility. The fee is based on the quantity of hazardous waste received at a facility, as specified by the generator on a manifest (a form used to identify hazardous waste from the point of generation to the point of disposal, treatment, or

storage. However, certain kinds of hazardous waste - - such as incinerator ash, certain treated waste, and hazardous waste from a contaminated site -- are exempt from the fee requirement. In addition, a generator who documents a reduction in waste due to a process change is entitled to a refund. The fees collected are deposited in the general fund and appropriated to pay refunds and to fund waste minimization and waste reduction assistance programs. Under the bill, money from fees would also be appropriated, for fiscal years 2002 and 2203 only, for hazardous waste management.

Hazardous Waste and Liquid Industrial Waste Users Account. Currently, the act provides for a hazardous waste transporter account within the Environmental Pollution Prevention Fund, and specifies that money or other assets may be deposited there and used to implement the hazardous waste management provisions of the act. Funds not expended for this purpose may be used for hazardous waste emergency response and cleanup activities. House Bill 4626 would specify, instead, that money currently deposited into the transporter account would be deposited into the fund or into *any* account within the fund. In addition, the bill would create a hazardous waste and liquid industrial waste users account within the fund. Under the bill, money from this account would be appropriated to implement the hazardous waste management program.

The target revenue projection for the hazardous waste and liquid industrial waste users account would be \$1,600,000. The account would receive money collected from hazardous waste generators for manifest processing user charges and handler user charges, as well as money collected from hazardous waste generators, transporters, or treatment, storage, or disposal facilities for site identification number user charges, and from penalties imposed for late payment of these charges. The account would also receive money collected from liquid industrial waste generators, transporters, and facility owners for site identification number user charges and penalties.

Manifest Processing User Charge. Currently, the act specifies that a hazardous waste generator must provide a separate manifest to a transporter for each load of hazardous waste that is transported to property off the site where it was generated. The bill would add that, beginning on October 1, 2002, a person required to prepare a manifest would have to submit a manifest processing user charge of \$6 per manifest, and his or her tax identification number, to the Department of Environmental Quality (DEQ). Each calendar year, the DEQ could adjust the user

charge, as necessary to ensure that the total cumulative amount of the user charges assessed under the provisions of the bill were consistent with the target revenue projection of \$1,600,000 for the proposed hazardous waste and liquid industrial waste users account. However, the bill specifies that the charge could not exceed \$8.00 per manifest. Money collected under these provisions would be forwarded to the state treasurer for deposit into the Environmental Pollution Prevention Fund and credited to the proposed hazardous waste and liquid industrial waste users account.

Manifest Processing Penalties. Beginning in 2004, the DEQ would be required to send a form to each person subject to the manifest processing user charge, by February 28th of each year. The form would be used to specify the number of manifests prepared by that person and processed by the DEQ during the previous fiscal year. The form would have to be completed and returned to the DEQ with the appropriate payment by April 30th of each year. Failure to provide timely and accurate information, a complete form, or the appropriate manifest processing user charge would be a violation, subject to all of the following:

- Payment of the manifest processing user charge and an administrative fine of five percent per month of the amount owed for each month that the payment is delinquent. However, the administrative fine could not exceed 25 percent of the total amount owed.
- Beginning nine months after the date payment is due, but not paid, at the request of the DEQ, an action by the attorney general for the collection of the amount owed previously and the actual costs to the department in attempting to collect this amount.

Money collected from manifest processing user charges and from penalties under these provisions would be forwarded to the state treasurer, deposited in the Environmental Pollution Prevention Fund, and credited to the proposed hazardous waste and liquid industrial waste users account. In addition, the bill would require that the DEQ maintain information regarding the manifest processing user charges, as necessary to satisfy the bill's reporting requirements (see below).

Site Identification Number User Charge. The bill would require that a generator, transporter, or treatment, storage, or disposal facility obtain and use a site identification number assigned by the U.S. Environmental Protection Agency (EPA) or the department. Beginning on October 1, 2002, the DEQ

would have to assess a site identification number user charge of \$50 for each number it issued. However, the DEQ could not issue a number under these provisions unless the user charge and the tax identification number for the person applying had been received by the department.

(The bill provides two definitions of “site identification number.” Under Part 111 of the act, which regulates hazardous waste management, it would mean a number that is assigned by the EPA or by its designee to each generator, each transporter, and each treatment, storage, or disposal facility. If the generator or transporter or the treatment, storage, or disposal facility managed wastes that were deemed hazardous under the act, but not hazardous under the Solid Waste Disposal Act, then “site identification number” would refer to an equivalent number that had been assigned by the DEQ. Under Part 121 of the act, which regulates liquid industrial waste, the bill specifies that a “site identification number” means a number that is assigned by the EPA or the DEQ to a generator, transporter, or facility. The department could assign a number to a person or a facility to cover multiple unstaffed sites that generate uniform types of liquid industrial waste.)

Annual Handler User Charge. Beginning on October 1, 2002, the DEQ would be required to assess annual handler user charges as follows:

- A generator would have to pay a handler user charge that was the highest of the following applicable fees: a generator who generated more than 100 but less than 1,000 kilograms of hazardous waste in any month during a calendar year would pay \$100; one who generated 1,000 kilograms or more in any month, but less than 900,000 kilograms during the calendar year, would pay \$400; and one who generated 1,000 kilograms or more in any month and 900,000 kilograms or more during the calendar year would pay \$1,000.
- An owner or operator of a treatment, storage, or disposal facility for which an operating license was required or for which one had been issued under the provisions of the act would be required to pay an annual handler user charge of \$2,000 to the DEQ.
- A used oil processor or rerefiner, used oil burner, or used oil fuel marketer, as defined in the rules promulgated under the act, would be required to pay an annual handler user charge of \$100.
- The handler user charges would be based on each of the activities engaged in by the handler during the

previous calendar year for each of the above activities conducted during the previous calendar year.

- Payment of the handler user charges would have to be made using a form provided by the DEQ. The handler would have to certify that the information on the form was accurate. Beginning in 2003, the DEQ would have to send forms to the handlers by February 28th of each year, unless the charges had been suspended (see below). Handlers would have to return the completed forms and the appropriate payment by April 30th of each year, unless charges had been suspended.

Handler User Penalties. A handler who failed to provide timely and accurate information, a complete form, or the appropriate handler user charge would be in violation of the act and subject to all of the following:

- Payment of the handler user charge and interest on the amount due based on the rate set under Section 6013(3)(B) of the Revised Judicature Act, concerning the interest rates that may be charged on judgments, using the full increment of the amount due as principal, and calculated from the due date for the payment until the delinquent payment was finally made in full;
- Beginning six months after the date payment was due, but not paid, a civil fine equal to five times the amount of the applicable handler user charge; and
- Beginning nine months after the date payment was due, but not paid, at the request of the department, an action by the attorney general for the collection of the amounts owed, together with the actual cost to the department in attempting to collect the amounts specified above.

As with manifest processing user charges, money collected from handler users charges and site identification number user charges and from penalties imposed on late payments would be deposited into the Environmental Pollution Prevention Fund and credited to the proposed hazardous waste and liquid industrial waste users account. In addition, the bill would require that the DEQ maintain information regarding the user charges, as necessary to satisfy the bill’s reporting requirements (see below).

Suspension of Charges. The bill would also specify that, notwithstanding any other provision of the act, if the balance of the hazardous waste and liquid industrial waste users account created under the bill

exceeded \$3.2 million, the DEQ would be required to suspend the handler user charges until October of the following year.

Liquid Industrial Waste. The bill would require that provisions for site identification numbers and site identification number user charges for liquid industrial wastes under Part 121 of the act be handled by the DEQ in the same manner as is provided for hazardous waste management under Part 111 of the act. Beginning on October 1, 2002, site identification number user charges of \$50 would be imposed on liquid industrial waste generators, transporters, and on the owners or operators of liquid industrial waste facilities. As with provisions for hazardous waste management, money collected under these provisions for liquid industrial waste would be deposited into the Environmental Pollution Prevention Fund and credited to the hazardous waste and liquid industrial waste users account.

Further, the bill would amend the definition of "liquid industrial waste" to exclude a liquid that was not regulated under Part 615 of the act that was generated in the drilling, operation, maintenance, or closure of a well, or other drilling operation, including the installation of cathodic protection or directional drilling, if either of the following applied:

- The liquid had been left in place at the point of generation in compliance with parts 31 (water resources protection), 201 (environmental remediation), or 103 (leaking underground storage tanks).
- The liquid had been transported off-site from a location that was not a known facility, as defined in section 20101 of the act (MCL 324.20101), and all of the following occurred:

**The disposal complied with applicable provisions of Part 31, or Part 115 (solid waste management).

**The disposal was not to a surface water.

**The landowner of the disposal site had authorized the disposal.

Evaluation and Report to the Legislature. Beginning in 2005, the DEQ would have to evaluate the effectiveness and adequacy of the manifest processing user charges collected relative to the overall revenue needs of the state's hazardous waste management program. Beginning in 2006, the DEQ would have to summarize its findings in a report and provide that report to the legislature by no later than April 1st of each even-numbered year.

The department would also be required to submit similar reports on handler user charges and site identification number user charges.

FISCAL IMPLICATIONS:

The House Fiscal Agency (HFA) reports that the bill would increase state revenues, as follows. It would establish annual hazardous waste handler charges and dedicate this revenue for the hazardous waste program in the Department of Environmental Quality. Further, it would establish annual handler charges based on the volume of waste produced and the type of handler, facility or transporter. The total annual program cost of the hazardous waste program would be approximately \$4.75 million. Handler charges, the \$6 manifest charge, and the one time charge for site identification numbers would generate the \$1.6 million needed to replace lost transporter fees. The October 1, 2002, effective date for the new fees would provide revenue to be appropriated in fiscal years 2002 and 2003. This revenue increase would help support program costs through fiscal year 2004-2005. (6-5-01)

ARGUMENTS:

For:

Before the state adopted the Uniform State Hazardous Materials Transportation Registration and Permit Program, the DEQ administered hazardous waste and liquid industrial waste transporter programs that generated approximately \$1.6 million in revenues. For example, transporters had to pay a \$1,000 business application fee and a \$500 vehicle application fee. The state received \$1.5 million from this program. The liquid industrial waste transporter program required a \$400 business application fee and a \$100 vehicle application fee. The state received \$75,000 in revenues from that program. These fees were deposited into the Environmental Pollution Prevention Fund. The state also received approximately \$3.5 million in federal funds through federal Resource, Conservation, and Recovery Act (RCRA) grants, EPA contracts, and from Great Lakes Initiative grants. However, after adoption of the uniform hauler program, revenues from the hazardous waste programs were reduced to approximately \$180,000 to \$200,000.

In order to compensate for these revenues and provide the Department of Environmental Quality (DEQ) with funds to manage the state's hazardous waste programs, numerous user charges would be imposed. Businesses that derive a service from the

hazardous waste program, as well as those who create the waste, would pay fees that would include a manifest processing charge of \$6; annual handler charges that ranged from \$100 from small quantity generators to \$1,000 from very large quantity generators, and \$2,000 for treatment, storage, and disposal facilities; and a one-time \$50 charge for obtaining a site identification number. To obtain these fees, the department would have to collect each site identification number user charge at the time a handler applies for a site identification number, and bill the handler for the annual handler and manifest processing user charges by February 28 of each year. (The department reports that its new integrated hazardous waste data system would produce the approximately 7,000 annual billings required to collect these charges.)

For:

The bill is consistent with the majority recommendation of the work group that was assembled in 1998 to develop a fee schedule. Supporters of the bill maintain that its provisions would constitute a wise use of state funds, and, moreover, that using surplus revenues from the Environmental Pollution Prevention Fund to fill the gap for two years before the new fees are collected would provide a good example of responsible stewardship: the money in the fund was generated from hazardous and liquid industrial waste fees from hazardous waste transporters. It makes sense that it should be used to temporarily fund the hazardous waste program for fiscal years 2002 and 2003.

The bill would also provide measures to cap revenues from fees. The projected revenue from the user fees, or charges, is \$1.6 million. This would include revenue from manifest processing user charges that the DEQ would be allowed to adjust to ensure that the target was reached. The bill also requires that the department temporarily suspend collection of the annual handler user charges if the balance of the user charges account exceed \$3.2 million as of December 31 of each year.

Response:

The fees that originally funded the waste management program were eliminated in 1998. Since then, the DEQ has used money from the Environmental Pollution and Prevention Fund to fund its activities. Moreover, the fees provided under the bill would not take effect until October, 2002. Consequently, the bill would provide the regulated community with another eighteen months of minimal contribution to the hazardous waste program.

Against:

Environmental organizations generally support the bill's provisions for fee structures. However, they oppose provisions that would divert to hazardous waste management programs money in the Environmental Pollution Prevention Fund that is currently used for waste reduction programs. In testimony before the House Conservation and Outdoor Recreation Committee, representatives of these organizations pointed to current needs for this money. Specifically, of the state's 236 hazardous waste treatment, storage, and disposal facilities that are subject to cleanup requirements, only 71 have been rated as high priority sites. Of those high priority sites, only 36 have been subject to significant corrective action to minimize the risk to the public, and only two sites have completed cleanup activities.

When testifying, environmental representatives also pointed out that the state has not yet used money from the fund to minimize waste, as is required under the act. For example, the demand for various grant programs to fund pollution prevention activities still exceeds supply. Moreover, a preliminary report, "Recycling Measurement Report," issued by the Michigan Recycling Coalition (MRC), in May, 2001, indicates a need for more investment in recycling. The report states that Michigan has a 16 percent recycling rate, which is behind the Great Lakes states' average of 26 percent. Moreover, when compared to the recycling rate averages for the six other national regions, Michigan falls behind states in every region except the Mid-Atlantic region, which has a 15 percent average. The report concludes that these results illustrate the need for a proactive approach to fostering recycling programs, businesses, and markets in the state.

POSITIONS:

The Department of Environmental Quality (DEQ) supports the bill. (6-5-01)

The Environmental Quality Company of Wayne, Michigan, supports the bill. (6-5-01)

The Michigan Manufacturers Association (MMA) supports the bill. (6-5-01)

The Michigan Chamber of Commerce supports the bill. (6-5-01)

The Michigan Chemical Council supports the bill. (6-5-01)

The Michigan United Conservation Clubs (MUCC) supports the bill's provisions for fee structures. However, the organization opposes provisions that would divert money currently used for waste reduction programs to hazardous waste management programs. (6-5-01)

The Michigan Environmental Council (MEC) opposes the bill. (6-5-01)

Analyst: R. Young

■ 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.