



**House
Legislative
Analysis
Section**

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HAZARDOUS WASTE FEES

**House Bill 4626 as enrolled
Public Act 165 of 2001
Third Analysis (11-26-01)**

**Sponsor: Rep. Larry DeVuyst
House Committee: Conservation and
Outdoor Recreation
Senate Committee: Natural Resources
and Environmental Affairs**

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.

There are other environmental issues that must be addressed in the near future. For example, the construction of deep well injection of hazardous waste has raised concerns among local communities who would like to recover some of the costs involved in damages to infrastructures. In addition, the federal government has lowered the threshold on the amount of arsenic that may be contained in drinking water; and some have proposed that the state provide funds to test well water across the state to determine if, and how much, arsenic the wells contain. Further, the DEQ estimates that more than 25 million scrap tires are being stored or dumped at various sites around the state. Public Act 275 of 200, the DEQ's appropriations bill for fiscal year 2000-2001, included an appropriation for scrap tire grants, and also requires that the department ". . . develop a strategy to expand the use of tire-derived fuels by public utilities, governmental units, and private industry as a means of eliminating accumulated scrap tires." As a result, legislation has been introduced to establish a grant program to encourage new uses for scrap tires. (For additional details on injection wells and on scrap tires, see *Background Information*.)

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. The bill

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would also permit municipalities to impose impact fees on hazardous waste that is disposed of in multisource commercial hazardous waste disposal wells, and would require that the Department of Environmental Quality (DEQ) establish a scrap tire reduction grants program, and a program to provide free testing, in certain areas of the state, for the presence of arsenic in private drinking water wells. 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.
- The DEQ, in consultation with the Michigan Economic Development Corporation (MEDC) would establish a scrap tire reduction grants program.
- The DEQ would establish a program to test for arsenic in private drinking water wells in areas of the state where it knew that high levels of arsenic were, or might be, present.
- A municipality would be allowed to collect impact fees on hazardous waste disposed of in multisource commercial hazardous waste disposal wells within the municipality.

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.

Commercial Multisource Disposal Well Impact Fees.

Under Part 625 of the act, which regulates mineral wells, a multisource commercial hazardous waste disposal well is defined to mean a disposal well that receives hazardous waste that has been generated by more than one person. The definition excludes a well that receives waste generated by a subsidiary of the well owner or operator. The bill would amend the act to specify that a municipality could impose an impact fee of not more than five cents per gallon on hazardous waste disposed of in one of these wells located within the municipality. However, the bill would specify that if the waste disposal well was located within a village, then the impact fee would be imposed by the township, in agreement with the village. In addition, an impact fee would have to be assessed uniformly on all hazardous waste accepted for disposal. Also, the bill would specify that a municipality could enter into an agreement with the owner or operator of a multisource commercial hazardous waste disposal well to establish a higher impact fee than the five cents per gallon fee.

The bill would also require that impact fees be collected by the owner or operator of the waste disposal well and paid to the municipality quarterly by the thirtieth day after the end of each calendar quarter. However, the amount paid would have to be reduced by any amount of revenue paid to, or available to, the municipality from the waste disposal well under the terms of any preexisting agreements, including, but not limited to, contracts, special use permit conditions, court settlement agreement conditions, and trusts.

The bill would further specify that, unless a trust fund were established by a municipality, as provided under the bill, the revenue collected by the municipality would have to be deposited in its general fund and used for any purpose that promoted the public health, safety, or welfare of the municipality’s citizens. However, revenue collected under these provisions could not be used to bring or support a lawsuit or other legal action against an owner or operator of a waste disposal well who was collecting an impact fee, as provided under the bill, unless the owner or

operator had instituted a lawsuit or other legal action against the municipality.

Trust Fund. Under the bill, a municipality could establish a trust fund to receive revenue collected from impact fees. The fund would have to be administered by a board of trustees, which would consist of the following members:

- The chief elected official of the municipality creating the trust fund.
- An individual from the municipality appointed by the municipality's governing board.
- An individual approved by the owners or operators of the multisource commercial hazardous waste disposal wells within the municipality, and appointed by the municipality's governing board.

With the exception of the chief elected official, individuals appointed to serve on the board of trustees would serve for terms of two years.

The bill would also specify that money in the trust fund could be spent, by a majority vote of the board of trustees, for any purpose that promoted the public health, safety, or welfare of the municipality's citizens. However, revenue collected under this provision could not be used to bring or support a lawsuit or other legal action against an owner or operator of a waste disposal well who was collecting an impact fee, unless the owner or operator of the waste disposal well had instituted a lawsuit or other legal action against the municipality.

Scrap Tire Reduction Grants Program. The DEQ would be required to establish a scrap tire reduction grants program in consultation with the MEDC. The department would provide an application form and would require that certain information be provided. Under the program, grants would be issued for any of the following purposes:

- To fund projects that demonstrated new and emerging scrap tire reduction technologies. When a grant was issued for this purpose, information generated by the project would have to be made available to the department for distribution to others.
- To fund scrap tire reduction projects or ones that reused scrap tires for recreational purposes.
- To fund scrap tire recycling education projects.

• When issuing grants, the department would have to consider all of the following:

** The severity of the scrap tire problem being addressed.

** For projects that demonstrated new and emerging scrap tire reduction technologies, the extent to which the scrap tire reduction technology would reduce waste, and the potential for the application of the technology to other persons.

**The percentage reduction of volume or quantity or toxicity of waste that would be achieved.

** Whether the project was consistent with state law and policy.

** Additional criteria as considered appropriate by the department.

In addition, the DEQ would have to require at least a 25 percent recipient match for any grant issued.

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. Money that had been collected from liquid industrial waste generators, transporters, and facility owners for site identification number user charges and penalties would also be received in the account.

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 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.

Arsenic Testing Program. Up to \$500,000 would be allocated to implement an arsenic testing program, beginning on the effective date of the new federal drinking water standard for arsenic. The bill would require that the DEQ implement the program to provide free testing for arsenic in private drinking water wells in geographic areas of the state where the department knew, or suspected, that high levels of the element might be present. When promoting the program, the DEQ would have to encourage households with senior citizens, children, and individuals with medical illnesses to have their drinking water tested. After it conducted a test, the department would be required to notify the resident or residents of the household of the level of arsenic in the drinking water sample, including whether or not the level exceeded the federal drinking water standard for arsenic. In addition to the test results, the DEQ would also have to provide the resident or residents with educational materials about groundwater contamination and identify other substances that they might want to consider testing for.

Further, by October 1, 2002, the department, in conjunction with local health departments, would also be required to produce maps on a county by county basis to denote geographic areas that it knew contained arsenic, nitrates, or volatile organic compounds. The maps would be made available to local health departments and local public libraries, and would be posted on the department's web site.

Arsenic Education Program. Beginning on the effective date of the regulation that provides a new federal drinking water standard, the DEQ would be required to establish an arsenic education program that would produce educational materials for local health departments in geographic areas of the state

where the department knew arsenic levels were above the new standard.

Report to the Legislature. By March 15, 2002, and September 30, 2002, the department would have to submit a report to the legislature on the status of implementing provisions pertaining to arsenic in wells

BACKGROUND INFORMATION:

Underground Injection Wells. Deep well injection of hazardous waste is a method of disposal utilizing a well which penetrates from 2,800 to 5,800 feet below the surface of the earth. The waste is injected under pressure into porous and permeable limestone or sandstone formations. The typical pore space for a Michigan formation is approximately 15 percent, and these spaces are currently filled with highly concentrated brines that are seven to ten times as concentrated as seawater. When the waste is injected, it moves out in all directions, and compresses the existing brines. The principal concern with deep well injection is the protection of groundwater. There are four major ways in which injection practices can cause fluids to migrate into useable groundwater, each of which is addressed by current regulations: faulty well construction, improperly plugged or constructed wells nearby, faulty or fractured confining rock layers, and lateral displacement.

Underground, or deep well injection of waste, began nationally in the 1930's in oil fields as an alternative to surface disposal of produced brines. In Michigan, the reinjection of brine into wells began in 1943, at the Dow Chemical Company in Ludington. The underground injection of industrial waste began in 1951 at the Parke-Davis Company in Holland. Deep well injection was considered a method to isolate wastes that could not be easily treated by placing them into deep formations. It was believed that this would separate the waste from the accessible environment for geologic time.

Deep well injection of hazardous waste is currently regulated at the state level under the Mineral Wells Act, Part 625 of the Natural Resources and Environmental Protection Act (NREPA), and the Supervisor of Wells Act, Part 615 of the NREPA. Part 625 regulates wells used for mineral production, reinjection of natural brines, and waste disposal, and Part 615 regulates wells used for oil and gas production or brine disposal. The practice of underground injection came under federal control in 1974 with the passage of the federal Safe Drinking

Water Act. Under federal law (40 CFR 144.6), injection wells are grouped into five different categories or classes: Class I wells are disposal wells used to inject liquid wastes into geologic formations below underground subsurface drinking water sources; Class II wells are those associated with oil and gas production and used to reinject natural brines; Class III wells are those used to extract minerals; Class IV wells are wells once used to inject hazardous or radioactive waste into geologic formations that contained underground sources of drinking water, and are now banned; and Class V wells are used to dispose of wastewater from brine production, agricultural drainage, or air conditioning return water (Deep Well Injection of Hazardous Waste in Michigan, Department of Natural Resources' publication, 1986).

Since Michigan does not have primacy for the federal program, injection well owners or operators must obtain permits from the U.S. Environmental Protection Agency (EPA) and from the Department of Environmental Quality (DEQ). Permit applicants must provide the EPA with information on well construction, the mechanical integrity of a well, the selection of the formation into which the wastes are injected, and the type and source of the waste. The DEQ requires information on all of these except the source of the waste. Permits for the construction and operation of injection wells are issued by the DEQ's Geologic Survey Division. However, other DEQ divisions are involved in the regulation of the wells, based on the type of waste injected and the type of surface facilities required. For example, the department's Waste Management Division has primary responsibility in the regulation of surface facilities associated with Class I hazardous waste wells and the transportation of hazardous waste to a disposal site.

Federal and state injection well permits identify the types of waste eligible for disposal, as well as the compatibility of the wastes or the possibility for chemical reaction between wastes. The EPA and the DEQ require an initial analysis of waste fluids prior to injection. If the injected fluids are hazardous, the state may require additional testing, compatibility testing, or the use of buffers (flushing fresh water into the disposal horizon in between waste sources). The permit issued by the DEQ also specifies injection well monitoring requirements. For example, companies may be required to conduct a mechanical well monitoring test or monthly annulus testing on each well.

In Michigan, there are currently approximately 26 injection wells. Only 10 of these wells have permits to dispose of hazardous waste. Of the remaining 16 non-hazardous injection wells, only one well accepts commercial wastes, the others are "captive" facilities. Captive facilities are private facilities with disposal wells that can only receive wastes produced on-site. The construction of a 17th non-hazardous disposal well in Romulus has been completed under a construction permit authorized by the Geologic Survey Division of the DEQ. Further action has been delayed because a Wayne County Circuit Court judge has issued an injunction prohibiting the disposal of waste in the well. (Legislative Service Bureau memo dated January 30, 1995)

Scrap Tires. Michigan's scrap tire cleanup program is now in its eleventh year. The legislature enacted laws in 1990 that are now Part 169 of the Natural Resources and Environmental Protection Act (NREPA), regulating the collection, storage, and disposal of scrap tires. Public Act 133 of 1990 created the Scrap Tire Regulatory Act to impose restrictions on the disposal of scrap tires, and to create a Scrap Tire Regulatory Fund to provide funding for the program. Companion legislation, Public Act 148, amended the Michigan Vehicle Code to impose a 50 cent "tire disposal" surcharge on each vehicle title, or duplicate title, sold by the state. Money generated from the surcharge is deposited into the Scrap Tire Regulatory Fund. It is distributed as follows: up to half of the money is used annually for the administrative costs of running the program, including the salaries of inspectors and support staff; the rest of the money is distributed as grants for the clean-up or collection of abandoned scrap tires on public land (land owned by the state, or by a county, township, city, or village).

Later, Public Act 268 of 1995 allowed appropriations from the Scrap Tire Regulatory Fund to be used to clean up tires illegally dumped on private, as well as on public, land. Public Act 17 of 1997 was enacted in response to overcrowding at scrap tire storage facilities. It was prompted by two tire fires that occurred in late 1995 and in 1996. The act restricts the number of tires that may be accumulated at a storage site, and increased, from 29 to 39 feet, the distance allowed for fire lanes between piles of tires. Public Act 17 also allowed the department to use the performance bond maintained by the owner of a scrap tire collection site for cleanup costs, so that funds would be available to clean up after a fire or other emergency, and to bring a site into compliance with the act.

In most cases, property where 2,500 or more scrap tires are stored is considered a collection site and is regulated under the act. Persons transporting scrap tires as part of a commercial business are considered scrap tire haulers and are regulated under the act. Those who collect 100,000 scrap tires or more are regulated as scrap tire processors as well as purveyors of collection sites. All scrap tire haulers and owners of scrap tire collection sites must register with the DEQ by January 31st of each year. There is no registration fee for scrap tire haulers. However, the registration fee for collection site owners is \$200. Twenty commercial sites have registered with the DEQ for 1997. Commercial sites are those facilities that accept tires from retailers and the general public. An additional 40 to 50 sites are registered as collection sites that do not accept tires from the public. Under Part 169, stored scrap tires must meet certain safety and "clean-operation" requirements, including the following: tires must be kept at least 20 feet from the property line, and at least 60 feet from buildings or structures; tires must be covered, chemically treated, or shredded or chipped to control mosquito breeding; tire piles must be separated by at least 30 feet; certain collection sites shall be enclosed by a fence; proper drainage must be provided so that water does not pool on the property; piles must be accessible to fire fighting equipment; and the owner of the site must maintain a bond in a specified amount.

The Science and Technology Division of the Legislative Service Bureau provides a brief history of scrap tires in its publication "Managing Scrap Tires in Michigan, A History of Part 169" (Backgrounder, Vol. I, Issue 16 – 1997). The report notes that more than 242 million scrap tires are disposed of annually in this country, which amounts to approximately one tire per person. The DEQ estimates that Michigan accumulates between 7.5 and 9 million scrap tires per year. In the past, tire dealers accepted old tires when new ones were purchased. The old tires were then sold to a retreading plant, and waste tires were disposed of in landfills or simply dumped in piles on vacant land. Due to an awareness of the environmental problems that can result from these tires, however, landfill owners have begun to refuse tires or to set prohibitive rates for them. Piles of scrap tires may lead to a variety of environmental and public health problems. They are unsightly and provide breeding grounds for rodents and mosquitoes. Moreover, fires in large scrap tire piles are particularly difficult to extinguish. When they do occur, they can burn for weeks, resulting in serious air and water pollution.

The Backgrounder report makes note of issues that are an ongoing concern of the DEQ. One issue is delivery of scrap tires to collection sites in compliance with the law. Requiring tire haulers to keep records of tire deliveries has helped stop some illegal dumping of tires. However, record keeping inspection and site inspections require staff time. However, management of the scrap tire program is a part-time responsibility for most of the staff involved. Cleanup of existing tire piles is another continuing concern of the DEQ. Over 750,000 tires have been cleaned up under Part 169. However, an estimated 25 million tires are still piled at sites across the state. The Backgrounder also notes that market development has been discussed as a means to address DEQ's compliance and cleanup concerns, and that collection site owners believe markets and new uses for scrap tires are necessary to reduce existing tire stockpiles and make use of the newly discarded tires added there annually.

In its report, Statewide Strategy to Expand the Use of Tire-Derived Fuels, dated February 2, 2001, the DEQ expresses similar concerns. According to the report, the potential for success in this area is illustrated by the experience of a Michigan company that used tire-derived fuel (TDF): In November, 1992, Hillman Power Company in Hillman, Michigan, was issued a permit to use TDF as a co-fuel with wood to generate electricity. TDF generates approximately 15,000 British Thermal Units (BTUs) per pound, or 300,000 BTU's per tire, nearly triple the value of forest wood waste, which the Hillman company had previously used. Moreover, since 1992, Hillman has continued to successfully use TDF and currently is permitted to use more than 1.46 million tires per year. The company's success with TDF stirred the interest of other potential users. Since 1992, five other facilities have been issued permits to use TDF: Viking Energy of Lincoln; Viking Energy of McBain; Holnam, Inc., of Dundee; the City of Wyandotte; and TES Filer City (Tondur Energy). The current permitted capacity of these five facilities is 12.86 million tires per year, bringing the total permitted capacity in Michigan to 14.3 million scrap tires per year. In addition, two test burns using TDF have been complete at other potential TDF user sites, and the Hillman company has applied to expand its permitted capacity to two million tires per year. The addition of these three facilities would bring Michigan's annual TDF permitted capacity to over 18 million scrap tires per year.

The DEQ report does point out, however, that, while the permitted capacity far exceeds the annual generation rate of scrap tires by the Michigan

consumer, the actual use rate is somewhat less at this time. And, for various reasons, some of these facilities are not fully using the permitted capacity. The report also notes that, while TDF capacity increases, Michigan has also been developing other market capacity for scrap tires. The truck tire retread industry, used tire industry, use of tire chips in engineered landfills and domestic septic fields, and crumb rubber recycling have developed to the point that Michigan's annual scrap tire market capacity could exceed 20 million tires in the coming years. The DEQ concludes that the key to market success for scrap tires lies in continued stringent enforcement of Part 169 and the assurance that scrap tires will be delivered properly to acceptable scrap tire end-users. The Background, meanwhile, sees market development as a means to address DEQ's compliance and cleanup concerns; and collection site owners believe markets and new uses for scrap tires are necessary to reduce scrap tire stockpiles.

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 (DEQ). 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.

Senate amendments to the bill allow appropriations of up to \$500,000 each to implement a proposed program to test wells for arsenic content, and to implement the provisions of Public Act 114 of 2001 concerning a program to control the spread of aquatic nuisance species.

The bill would also require that the DEQ, in consultation with the Michigan Economic Development Corporation (MEDC), establish a scrap tire reduction grants program. Grants would be provided to demonstrate new and emerging scrap tire reduction technologies, recreation purposes, and recycling education projects. No revenue source has been identified for this program. (10-29-01)

ARGUMENTS:

For:

Before the state adopted the Uniform State Hazardous Materials Transportation Registration and Permit Program, the Department of Environmental Quality (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 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.

For:

Emphasis on recycling and on finding a final use for stockpiles of scrap tires is essential to end current problems with scrap tire fires. According to the Department of Environmental Quality (DEQ), between seven and one-half and nine million tires, or one each per person, are generated each year in Michigan. Disposal of unwanted tires is an enormous problem. Thousands end up in fields, ravines, and alleys. Of equal importance, scrap tires are difficult to dispose of in landfills because they tend to float to the surface. On the other hand, stockpiling them results in public health, environmental, and aesthetic problems. Consequently, in Michigan, and elsewhere across the country, emphasis is being placed more and more on recycling in scrap tire regulatory programs. This means the reuse of tires by having them retreaded; and the reuse of rubber for the production of rubber products, paving, or combustion for energy recovery. The scrap tire reduction grants program proposed under the bill would further development in this area by providing grants to fund new and emerging scrap tire reduction technologies.

For:

There have been complaints in the media recently that the public hasn't been fully informed about arsenic in the groundwater in some areas (*Flint Journal*, November 3, 2001), and reports of the possibility that too much arsenic in drinking water could lead to a greater risk of cancer, heart disease, diabetes and other health problems. Now expert panels, convened by the National Academy of Sciences (NAS), the National Drinking Water Advisory Council, and the Environmental Protection Agency's (EPA) Science Advisory Board have recommended that the standard for allowable arsenic in drinking water be lowered from 50 ppb, or parts per billion, to 10 ppb. Under the provisions of the bill, money from waste disposal fees will be used to allow the state to determine how much of this element is in citizens' private drinking water wells.

The proposed program will also map the contaminant's locations, and will be effective whenever the new federal drinking water standards for arsenic go into effect. The bill would allow up to \$500,000 to be spent on this program, and, in addition, up to \$500,000 on a program to control the spread of aquatic nuisance species proposed under the provisions of Public Act 114 of 2001.

Against:

Organizations that would be affected by the provisions of the bill generally support the bill's provisions for fee structures, but oppose amendments that were adopted to establish a scrap tire reduction grants program, and to allow municipalities to impose impact fees on hazardous waste that is disposed of in waste disposal wells.

The provision to establish a scrap tire reduction grants program would provide grants to companies that demonstrated new scrap tire reduction technologies and for other recycling or scrap tire reduction projects. Opponents of the provision maintain that such programs haven't worked in the past. They also oppose diverting waste reduction funds beyond their intended use. Others argue that the provision should be included in legislation that would increase scrap tire fees. Still others object because they believe the provision would give established companies in the field of scrap tire reduction technologies an unfair advantage over new and emerging companies.

The provision concerning impact fees would allow a municipality to impose an impact fee of up to five cents per gallon on hazardous waste disposed of in a hazardous waste disposal well that was located within the municipality. Opponents of the provision point out that this stipulation would appear to effect only one well in the state: the injection well owned by the EDS Company in Romulus. It is maintained that the municipality concerned had an opportunity to sign a host community agreement with the EDS Company to recover costs for fire services and damage to infrastructures, failed to do so because it didn't want the injection well located within its boundaries, and is now attempting to impose fees without having to negotiate with the company.

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■ 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.