

Legislative Analysis



LIQUID INDUSTRIAL BYPRODUCTS

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Senate Bill 400 (S-1, as passed by the Senate)
Sponsor: Sen. Wayne Schmidt

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 401 (S-1)
Sponsor: Sen. Jim Stamas

Senate Bill 402 (S-1)
Sponsor: Sen. Tonya Schuitmaker

House Committee: Natural Resources
Senate Committee: Natural Resources
Complete to 10-26-15

SUMMARY:

Senate Bills 400, 401, and 402 would, when taken together, amend several laws relating to the handling of liquid industrial waste, which would be renamed "liquid industrial byproduct." The bills are tie-barred, meaning that none can take effect unless all are enacted into law. Each would take effect 90 days after enactment. A more detailed summary of each of the bills follows.

Senate Bill 400

SB 400 would amend several sections of the Natural Resources and Environmental Protection Act (NREPA) by making changes related the transportation and storage of liquid industrial waste, a term that would be replaced with "liquid industrial byproduct" in the bill.

The new term would mean any material that is produced by, is incident to, or results from industrial, commercial, or governmental activity or any other activity of enterprise, that is determined to be liquid by "Method 9095 (paint filter liquids test)" in the Environmental Protection Agency (EPA) handbook, "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods."

The present term is similar to this new definition, though it cites specific materials and substances that are considered liquid industrial waste, in addition to a similarly worded version of the definition above.

SB 400 also would eliminate the current term "manifest," and replace it with "shipping document," which would mean a log, an invoice, a bill of lading, or other record, in either written or electronic form, that includes all of the following information:

- The name and address of the generator.
- The name of the transporter.
- The type and volume of liquid industrial byproduct in the shipment.
- The date the byproduct was shipped off-site from the generator.
- The name, address, and site ID number of the designated facility.

Generally speaking, "shipping document" would replace "manifest" where "manifest" is presently used, and requirements relating to using a manifest would be updated so that the provision using the new term.

The definition of the term "site identification number" would be amended by removing language stating that the Department of Environmental Quality (DEQ) may assign such a number to a generator, or to a person or facility to cover multiple unstaffed sites that generate uniform types of liquid industrial waste. Current provisions relating to a generator needing a site identification number would be removed

The bill also would amend a list of substances that are not considered liquid industrial byproducts so that the following exemption would now read as follows [New language underlined]:

Currently, a material used or reused as an effective substitute for commercial products, or used or reused as an ingredient to make a product, or returned to the original process, if the material does not require reclamation prior to use or reuse, is not directly burned to recover energy or used to produce a fuel, and is not applied to the land or used in products applied to the land, is not considered such a byproduct.

SB 400 also would require that the owner or operator of a designated facility do the following:

- Maintain a plan designed to respond to and minimize hazards to human health and the environment from unplanned releases of liquid industrial byproduct to air, soil, and surface water.
- Document that all employees who have a responsibility to manage liquid industrial byproducts are trained in the proper handling and emergency procedures appropriate for their job duties.
- By April 30 of each year, submit to the DEQ a report describing its activities for the previous calendar year. The DEQ must provide for a method of electronic reporting. A facility is exempt for a calendar year if during that calendar year, that facility only received byproducts from one generator and was owned, operated, or legally controlled by that generator. The report must include the following:
 - The name and address of the facility.
 - The calendar year covered by the report.
 - The types and quantities of liquid industrial byproduct accepted and a description of the manner in which the byproduct was processed or managed.

The bill would authorize the attorney general to commence a civil action for appropriate relief, including injunctive relief, for a violation of Part 121 (Liquid Wastes). In addition to other allowable forms of relief, a fine of up to \$10,000 per instance of violation, and, if the violation is continuous, each day of noncompliance, may be levied.

Senate Bill 401

SB 401 would amend Sections 2 and 3 of the Hazardous Materials Transportation Act primarily by using the new term liquid industrial byproducts, and by making other technical changes that would not change the current meaning of the law.

Senate Bill 402

SB 402 would amend Section 13c of the Code of Criminal Procedure by update language to reflect the terms used by SB 400 and SB 401, and by adding a new Class E Felony, "hazardous substance-substantial endangerment." This felony would carry a maximum of five years imprisonment.

FISCAL IMPACT:

Senate Bill 400 would have a negative fiscal impact on the Department of Environmental Quality (DEQ). This bill amends Public Act 451 of 1994 (Natural Resources and Environmental Protection Act) by altering certain provisions of Part 121 concerning liquid industrial waste by-product. Among the changes to current law included in SB 400 is the deletion of the requirement that liquid waste by-product generators obtain a site identification number from DEQ when transporting their by-product. Presently these numbers are issued by DEQ for \$50 each; revenue generated from the issuance of these numbers is deposited in the Environmental Pollution Prevention Fund (EPPF). This deletion would reduce EPPF revenue by removing the aforementioned site identification number requirement; DEQ estimates that \$30,000 in revenue is generated from these fees. The total revenue deposited to the EPPF in FY 2014-15 is currently estimated at \$5.9 million. The EPPF funds appropriations in DEQ's Office of Environmental Assistance, Law Enforcement, Air Quality, and Resource Management Divisions in addition to supporting the department's administrative functions. The total appropriation from the EPPF for FY 2015-16 is \$7.8 million.

This bill would also have a positive impact on the state's General Fund; the extent of this impact is unknown, however. Senate Bill 400 allows the Attorney General to pursue civil action against violators of Part 121 (liquid industrial by-products) and provides the court with the option of imposing a civil fine of up to \$10,000 per violation and for each subsequent day of continued noncompliance. Fines collected would be deposited in to the state's General Fund. It is unclear how much revenue these civil fines would generate because they are pursued and levied on a case-by-case basis; these fines' frequency and magnitude vary from year to year. However, SB 400 would provide the possibility for an increase in General Fund revenue through these increased civil fines if it becomes law. Senate Bill 400 would have no fiscal impact on local units of government.

Senate Bills 401 and 402 would have no fiscal impact on DEQ and no fiscal impact on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.