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BILL ANALYSIS



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Senate Bills 400, 401, and 402 (as introduced 6-16-15)
Sponsor: Senator Wayne Schmidt (S.B. 100)
Senator Jim Stamas (S.B. 401)
Senator Tonya Schuitmaker (S.B. 402)
Committee: Natural Resources

Date Completed: 9-30-15

CONTENT

Senate Bill 400 would amend Part 121 (Liquid Industrial Wastes) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Change the title of Part 121 to "Liquid Industrial By-Products", and refer to liquid industrial by-product rather than liquid industrial waste throughout the part.
- Exclude from classification as a liquid industrial by-product a material that is used or reused as an ingredient to make a product and meets other criteria prescribed in Part 121.
- Eliminate a requirement that a generator of liquid industrial by-product use a site identification number when necessary for transportation and pay the Department of Environmental Quality (DEQ) a \$50 fee for deposit into the Environmental Pollution Prevention Fund for each number the generator uses.
- Require a generator to label or mark containers and tanks of by-product to identify their contents.
- Refer to a shipping document rather than a manifest in record-keeping requirements for shipments of liquid industrial by-product, and revise the requirements.
- Allow certain required records and documents to be maintained in an electronic format.
- Allow a transporter to dispose of septage waste or liquid industrial by-product on land if authorized by the DEQ.
- Require the owner or operator of a disposal, treatment, storage, or reclamation facility to maintain a plan to respond to and minimize hazards from unplanned releases of liquid industrial by-product, document that employees responsible for managing by-product were trained in proper handling and emergency procedures, and report annually to the DEQ.
- Authorize the Attorney General to bring a civil action against a person for a violation of Part 121, and allow a court to impose a maximum civil fine of \$10,000 per violation for deposit in the General Fund.
- Include the costs of surveillance and enforcement by the State among the amounts that may be recovered from a violator who has damaged or destroyed natural resources.
- Change the name of the Liquid Industrial Transporter Waste Account to the "Liquid Industrial By-Product Transporter Account".

Senate Bill 401 would amend the Hazardous Materials Transportation Act to do the following:

- **Revise references to certain government entities responsible for oversight of motor carriers transporting hazardous materials.**
- **Refer to liquid industrial by-product rather than liquid industrial waste in a provision exempting certain motor carriers from the Act's registration and permitting requirements, but specifying that these motor carriers remain subject to Part 121 of NREPA and any other applicable law.**

Senate Bill 402 would amend the sentencing guidelines in the Code of Criminal Procedure to reflect the changes proposed by Senate Bill 400 and revise references to other sections of NREPA involving hazardous material violations.

The bills are tie-barred to each other and would take effect 90 days after enactment.

Senate Bill 400 is described below in further detail.

Classification as Liquid Industrial By-Product

"Liquid industrial waste" means any brine, by-product, industrial wastewater, leachate, off-specification commercial chemical product, sludge, sanitary or storm sewer clean-out residue, grease trap clean-out residue, spill residue, used oil, or other liquid waste that is produced by, is incident to, or results from industrial, commercial, or governmental activity or any other activity or enterprise, that is determined to be liquid by a prescribed test, and that is discarded. Under the bill, this definition would apply to the term "liquid industrial by-product". The bill would delete the references to the specific materials, (brine, industrial wastewater, etc.).

Part 121 provides that certain materials are not liquid industrial wastes when managed as specified. The bill would refer to by-products rather than wastes. The excluded materials include a material that is used or reused as an effective substitute for commercial products or returned to the original process, if the material does not require reclamation before 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. The bill also would exclude from classification as a liquid industrial by-product a material that is used or reused as an ingredient to make a product and meets the other criteria regarding reclamation, energy recovery or fuel production, and land application.

By-Product Identification & Record-Keeping

Currently, a generator of liquid industrial waste must obtain and use a site identification number assigned by the U.S. Environmental Protection Agency (EPA) or the Michigan Department of Environmental Quality, when needed for transportation. Until October 1, 2017, the DEQ must assess a site identification number user charge of \$50 for each number it issues. The money collected from the user charges must be forwarded to the State Treasurer for deposit into the Environmental Pollution Prevention Fund.

The bill would delete these provisions. Instead, a liquid industrial by-product generator would have to maintain labeling or marking on containers and tanks of by-product to identify their contents.

Part 121 prescribes requirements for the use and retention of a manifest for shipments of liquid industrial by-product. The bill would refer to a shipping document rather than a manifest in these provisions. "Manifest" means either of the following:

- A form and instructions approved by the DEQ used for identifying the quantity, composition, origin, routing, or destination of liquid industrial waste during its

transportation from the point of generation to the point of disposal, treatment, storage, or reclamation.

- For shipments of waste that are not generated or transported to a disposal, treatment, storage, or reclamation facility in Michigan, a specific form prescribed by the EPA.

The bill would delete this definition, and would define "shipping document" as 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 generator's name and address.
- The transporter's name.
- The type and volume of liquid industrial by-product in the shipment.
- The date the by-product was shipped off-site from the generator.
- The name, address, and site identification number of the designated facility (i.e., a disposal, treatment, storage, or reclamation facility).

The bill would delete a requirement that a generator submit a copy of the manifest to the DEQ within 10 days after the end of the month in which the load of waste is transported.

When the transporter picks up liquid industrial by-product, the generator or his or her authorized representative must certify that the information contained on the manifest is factual by signing the document. Under the bill, the certification also would have to include that the by-product was fully and accurately described on the shipping paper and in proper condition for transport. The bill would eliminate the signature requirement.

Currently, if a copy of the manifest is not received within 35 days after the initial transporter accepted the waste, the generator must contact the transporter and/or owner or operator of the designated facility to determine the status of the waste. If a copy of the manifest is not received within 45 days after the transporter accepted the waste, the generator must submit to the DEQ an exception report that includes a legible copy of the manifest for which the generator does not have confirmation of delivery and a cover letter explaining the generator's efforts taken to locate the waste and the results of those efforts. The bill would delete these requirements. Instead, if the generator did not receive confirmation of acceptance of the liquid industrial by-product by the designated facility, the generator would have to attempt to obtain confirmation by contacting the designated facility and the transporter, and notify the DEQ if resolution could not be achieved.

Currently, a generator transporting its own waste in quantities of 55 gallons or less is not subject to manifest requirements if certain conditions are met. The bill would delete this provision.

Under Part 121, a generator that operates an on-site reclamation, treatment, or disposal facility must keep records of all by-product produced, reclaimed, treated, or disposed of at the facility. The bill would extend this requirement to a generator that transports its own by-product.

Part 121 requires a generator to retain all required records for at least three years and make them readily available for review and inspection by the DEQ or a peace officer. The bill provides that required records could be retained in electronic format.

Transport of Liquid Industrial By-Product & Septage Waste

Part 121 provides that a transporter is subject to the registration and permitting requirements of the Hazardous Materials Transportation Act, and requires a transporter registered and permitted under that Act and licensed under Part 117 (Septage Waste Servicers) of NREPA to comply with prescribed conditions. The conditions include a prohibition against the disposal

on land of septage waste or liquid industrial by-product transported in a vehicle managed under Parts 117 and 121. Under the bill, this prohibition would apply unless land disposal were specifically authorized by the DEQ. The bill also would delete a requirement that all waste, including septage waste, transported in such a vehicle be manifested pursuant to Part 121.

Currently, if a generator of liquid industrial by-product is subject to reporting requirements of the Federal Public Health Service Act pertaining to the protection of underground sources of drinking water, and transports brine generated on his or her own property to his or her own disposal well, the generator is exempt from the manifest requirements. The bill would delete this exemption.

Part 121 requires a vehicle used to transport liquid industrial by-product by public roadway to carry a copy of the registration and permit issued in accordance with the Hazardous Materials Transportation Act and produce them upon request of the DEQ or a peace officer. The bill specifies that the registration and permit could be carried in electronic format.

The bill would eliminate references to a manifest in provisions requiring a transporter of liquid industrial by-product to confirm acceptance of the by-product and deliver it only to a specified designated facility.

A transporter is required to retain all required records for at least three years and make them readily available for review and inspection by the DEQ or a peace officer. Under the bill, the records could be retained in an electronic format.

For certain waste streams, the DEQ may authorize the use of a consolidated manifest. The bill would refer to liquid industrial by-product rather than waste, and to a shipping document rather than a manifest.

Currently, a transporter must maintain a trip log for consolidated manifest shipments and brine shipments, identify certain information on the trip log, and keep a copy of all trip logs available during transportation for the current shipment and retain the records as required under Part 121. The bill would delete these requirements.

By-Product Incident or Spill

If a fire, explosion, or discharge of liquid industrial by-product occurs that could threaten the public health, safety, and welfare, or the environment, or when a generator, transporter, or owner or operator of a designated facility first knows that a spill of by-product has reached surface water or groundwater, the generator, transporter, or owner or operator must take appropriate immediate action to protect the public health, safety, and welfare, and the environment, including notification of local authorities and the DEQ's Pollution Emergency Alerting System, unless the incident is reported to the State under another State law. Within 30 days, the generator, transporter, owner, or operator must prepare and maintain as part of his or her records a written report documenting the incident and the response action taken, and make it available to the DEQ upon request. The bill would include the site identification number of the transporter or designated facility among the information that must be included in the initial notification and the report.

Acceptance of Liquid Industrial By-Product by Designated Facility

The owner or operator of a facility that accepts liquid industrial by-product must accept delivery of by-product at the designated facility only if delivery is accompanied by a manifest or consolidated manifest properly certified by the generator and the transporter and the facility is the destination indicated on the manifest. The facility owner or operator must certify receipt of the by-product by completing the facility section of the manifest and returning a

signed copy to the DEQ within 10 days after the end of the month for all by-product received within that month. Additionally, the facility owner or operator must return a signed copy of the manifest to the generator.

The bill would delete all of the requirements related to the manifest, and instead would require only that the facility be the destination indicated on the shipping document and that the facility owner or operator confirm receipt and provide confirmation of the receipt to the generator or the generator's authorized representative.

Part 121 requires the owner or operator of a designated facility to retain all required records for at least three years and make them readily available for review and inspection by the DEQ or a peace officer. Under the bill, the records could be retained in electronic format.

The bill would require the owner or operator of a designated facility to 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 by-product to air, soil, and surface water.
- Document that all employees who have a responsibility to manage liquid industrial by-product were trained in the proper handling and emergency procedures appropriate for their job duties.

Additionally, the bill would require the owner or operator to submit to the DEQ by April 30 of each year a report describing its activities for the previous calendar year. The DEQ would have to provide a method of electronic reporting. At a minimum, the report would have to include the following information:

- The facility's name and address.
- The calendar year covered by the report.
- The types and quantities of liquid industrial by-product accepted and a description of the manner in which it was processed or managed.

A designated facility would not be subject to these reporting requirements for a calendar year if, during that year, the facility received liquid industrial by-products from only one generator and was owned, operated, or legally controlled by that generator.

Storage of Liquid Industrial By-Product

Part 121 requires all vehicles, containers, and tanks used to hold liquid industrial by-product to be closed or covered, except when necessary to add or remove by-product, to prevent escape. Under the bill, the vehicles, containers, and tanks would have to be closed or covered or otherwise managed in accordance with applicable State laws.

Enforcement

The bill would authorize the Attorney General to bring a civil action against a person for appropriate relief, including injunctive relief, for a violation of Part 121 or a registration or permit issued pursuant to Part 121. The court would have jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under Part 121, the court could impose a maximum civil fine of \$10,000 for each instance of violation and, if the violation were continuous, for each day of continued noncompliance. The fine would have to be deposited in the General Fund.

Under Part 121, the Attorney General or another person may bring a civil action to recover the full value of the damage done to the natural resources that are damaged or destroyed as a result of a violation. Except as otherwise provided, the damages must be deposited in the

General Fund. The bill would include the costs of surveillance and enforcement by the State among the amounts that may be recovered, and require these costs to be deposited in the General Fund as well.

A person who knowingly makes or causes to be made a false statement or entry in a license application or a manifest is guilty of a felony, punishable by imprisonment for up to two years and/or a fine of between \$2,500 and \$10,000. Except as otherwise provided, a person who violates Part 121 or a license issued under it is guilty of a misdemeanor punishable by imprisonment for a maximum of six months and/or a fine of between \$1,000 and \$2,500. In these provisions, the bill would refer to a registration or permit rather than a license, and a shipping document rather than a manifest.

Liquid Industrial By-Product Transporter Account

Part 121 provides for the Liquid Industrial Transporter Waste Account within the Environmental Pollution Prevention Fund. The DEQ may spend money from the Account, upon appropriation, for the implementation of Part 121. Funds not spent for this purpose may be used for emergency response and cleanup activities related to liquid industrial by-product that are initiated by the DEQ. The bill would change the name of the Account to the "Liquid Industrial By-Product Transporter Account".

MCL 324.12101 et al. (S.B. 400)
29.472 & 29.473 (S.B. 401)
777.13c (S.B. 402)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 400

The bill would have a negative, but likely minor fiscal impact on the Department of Environmental Quality. The bill would remove a \$50 site identification user charge for liquid industrial by-product generators. In total, the DEQ generates about \$30,000 from these site identification user charges, which is credited to the Environmental Pollution Prevention Fund (EPPF). This revenue would be lost under the bill. To provide some perspective, total EPPF revenue was about \$6.4 million in fiscal year 2013-14.

The bill also would have an indeterminate but likely minimal fiscal impact on the Department of Attorney General. According to the Department, the bill would increase the likelihood of new civil actions that could be brought by the State against those that violate the provisions of the law that would be amended. Currently, the Department of Environmental Quality rarely asks the Attorney General to bring civil actions against violators due to the narrow scope of the current statute. The bill would broaden the form of relief available and thus would make it more likely that the DEQ would request the Attorney General to file lawsuits against violators. The Department of Attorney General does not anticipate that the increase in civil actions it would bring would be significant and thus the costs would be minimal.

Finally, the bill could have a positive fiscal impact on the State General Fund. As the bill would add a penalty of a civil fine for noncompliance, any violations could result in an increase in State General Fund revenue.

Senate Bills 401 and 402

The bills would have no fiscal impact on State or local government.

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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.