



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 400, 401, and 402 (as enacted)
Sponsor: Senator Wayne Schmidt (S.B. 400)
Senator Jim Stamas (S.B. 401)
Senator Tonya Schuitmaker (S.B. 402)
Senate Committee: Natural Resources
House Committee: Natural Resources

PUBLIC ACTS 224-226 of 2015

Date Completed: 7-12-16

RATIONALE

Following a comprehensive review of Michigan's environmental regulations, the State's Office of Regulatory Reinvention recommended a number of statutory and administrative rule changes aimed at updating and streamlining regulatory processes.¹ The recommendations included statutory revisions pertaining to documentation requirements for the transport and disposal of liquid industrial waste. It was suggested that these recommendations be incorporated in the Natural Resources and Environmental Protection Act. In a related matter, it also was suggested that statutory references to liquid industrial "waste" should be changed to "by-product" to reflect the evolution of industry practice to develop ways to put waste products to beneficial use.

CONTENT

Senate Bill 400 amended 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 are trained in proper handling and emergency procedures, and report annually to the DEQ.**

¹ The Office of Regulatory Reinvention was abolished by Executive Order 2016-4 and its functions were transferred to a newly created Office of Performance and Transformation.

- **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".**

The bill also amended Part 117 (Septage Waste Servicers) of NREPA to refer to liquid industrial by-product, rather than liquid industrial waste, in a prohibition against transporting material regulated under Part 121 in a septage waste vehicle without the DEQ's permission.

Senate Bill 401 amended 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 prescribing the amount of fleet liability coverage a motor carrier must maintain for accidental occurrences.**
- **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 amended the sentencing guidelines in the Code of Criminal Procedure to reflect the changes enacted by Senate Bill 400 and revise references to other sections of NREPA involving hazardous material violations.

The bills took effect on March 26, 2016.

Senate Bill 400 is described below in further detail.

Classification as Liquid Industrial By-Product

Previously, Part 121 defined "liquid industrial waste" as 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 applies to the term "liquid industrial by-product". The bill deleted the references to the specific materials (brine, industrial wastewater, etc.).

Under the bill, certain materials are not liquid industrial by-products when managed as specified. Previously, Part 121 referred to wastes rather than by-products. 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 excludes 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

Previously, a generator of liquid industrial waste had to 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 was

required to assess a site identification number user charge of \$50 for each number it issued. The money collected from the user charges had to be forwarded to the State Treasurer for deposit into the Environmental Pollution Prevention Fund.

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

The bill refers to a shipping document rather than a manifest in requirements for the use and retention of a manifest for shipments of liquid industrial by-product. Previously, "manifest" meant 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 deleted this definition, and defines "shipping document" as a log, invoice, 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 deleted 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. Under the bill, the certification also must include that the by-product is fully and accurately described on the shipping paper and in proper condition for transport. The bill eliminated a requirement that the generator sign the document to certify the information.

Previously, if a copy of the manifest was not received within 35 days after the initial transporter accepted the waste, the generator had to 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 was not received within 45 days after the transporter accepted the waste, the generator had to submit to the DEQ an exception report that included a legible copy of the manifest for which the generator did 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 deleted these requirements. Instead, if the generator does not receive confirmation of acceptance of the liquid industrial by-product by the designated facility, the generator must attempt to obtain confirmation by contacting the designated facility and the transporter, and notify the DEQ if resolution cannot be achieved.

Previously, a generator transporting its own waste in quantities of 55 gallons or less was not subject to manifest requirements if certain conditions were met. The bill deleted 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 extended 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 may 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 applies unless land disposal is specifically authorized by the DEQ. Also, the bill deleted a requirement that all waste, including septage waste, transported in such a vehicle be manifested pursuant to Part 121. In addition, under the bill, the words "Land Application Prohibited" must be affixed in a conspicuous location and visible on both sides of the vehicle if it is both licensed under Part 117 to transport septage waste and authorized under the Hazardous Materials Transportation Act to transport liquid industrial by-product. Previously, this requirement applied if the vehicle was used to transport waste under Part 117 and 121.

Previously, if a generator of liquid industrial by-product was subject to reporting requirements of the Federal Public Health Service Act pertaining to the protection of underground sources of drinking water, and transported brine generated on his or her own property to his or her own disposal well, the generator was exempt from the manifest requirements. The bill deleted 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 may be carried in electronic format.

The bill eliminated 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 may be retained in an electronic format.

For certain liquid industrial by-product streams, the bill allows the DEQ to authorize the use of a consolidated shipping document. Previously, this provision referred to waste rather than liquid industrial by-product, and to a manifest rather than a shipping document.

Further, the bill deleted requirements that a transporter 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.

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. Within 30 days, the generator, transporter, owner, or operator must prepare and maintain a written report documenting the incident and the response action taken, and make it available to the DEQ upon request. The bill includes 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

Previously, the owner or operator of a facility that accepts liquid industrial by-product had to accept delivery of by-product at the designated facility only if delivery was accompanied by a manifest or consolidated manifest properly certified by the generator and the transporter and the facility was the destination indicated on the manifest. The facility owner or operator had to certify receipt of the by-product by completing the facility section of the manifest and returning a signed copy to the DEQ. Additionally, the facility owner or operator had to return a signed copy of the manifest to the generator.

The bill deleted all of the requirements related to the manifest, and instead requires that the facility be the destination indicated on the shipping document and that the facility owner or operator give 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 may be retained in electronic format.

The bill requires 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 are trained in the proper handling and emergency procedures appropriate for their job duties.

Additionally, the bill requires 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 must provide a method of electronic reporting. At a minimum, the report must 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 is not subject to these reporting requirements for a calendar year if, during that year, the facility receives liquid industrial by-products from only one generator and is owned, operated, or legally controlled by that generator.

Storage of Liquid Industrial By-Product

Previously, Part 121 required 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 must be closed or covered, except when necessary to add or remove by-product, or otherwise managed in accordance with applicable State laws.

Enforcement

The bill authorizes 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 has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under Part 121, the court may impose a maximum civil fine of \$10,000 for each instance of violation and, if the violation is continuous, for each day of continued noncompliance. The fine must 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 includes the costs of surveillance and enforcement by the State among the amounts that may be recovered, and requires these costs to be deposited in the General Fund as well.

The bill refers to a registration or permit rather than a license, and a shipping document rather than a manifest, in provisions establishing criminal penalties for violations. (A person who knowingly makes or causes to be made a false statement or entry in a registration or permit application or a shipping document 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 registration or permit issued under it is guilty of a misdemeanor punishable by imprisonment for up to six months and/or a fine of between \$1,000 and \$2,500.)

MCL 324.11704 et al. (S.B. 400)
29.472 & 29.473 (S.B. 401)
777.13c (S.B. 402)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Office of Regulatory Reinvention's liquid industrial waste recommendations related to the role of manifests in the hauling and disposal process, the development of an electronic manifesting system, and registration and licensing of waste haulers, among other things. The changes enacted by the bills will streamline administration with regard to these subjects while maintaining environmental protections.

Previously, in order to track shipments, the DEQ required liquid industrial by-product generators to use the uniform manifest form the EPA requires hazardous waste generators to use; thus, liquid industrial waste generators had to obtain a site identification number assigned by the EPA, at a cost of \$50 each. Reportedly, this was a hindrance to interstate commerce. Senate Bill 400, however, allows generators to use a standard bill of lading rather than the EPA's manifest form, eliminating the need to obtain an EPA identification number.

Additionally, the bill deleted a requirement that shipping documents be submitted to the DEQ, but requires generators to maintain the forms for a period of time. The bill further improves efficiency by allowing for the electronic maintenance of these records, as well as the electronic maintenance of registrations and permits.

Finally, the bill's updated terminology reflects current trends. Over the years, various industries have taken steps to find ways to recycle the waste resulting from their processes rather than disposing of it. By referring to liquid industrial "by-product" rather than "waste", the bill recognizes that these materials have beneficial uses and add value to the production process.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 400

The bill will have a negative, but likely minor fiscal impact on the Department of Environmental Quality. The bill removed a \$50 site identification user charge for liquid industrial by-product generators. In total, the DEQ received about \$30,000 from these site identification user charges, which was credited to the Environmental Pollution Prevention Fund (EPPF). This revenue is no longer collected under the bill. To provide some perspective, total EPPF revenue was about \$6.4 million in fiscal year 2013-14.

The bill also will have an indeterminate but likely minimal fiscal impact on the Department of Attorney General. According to the Department, the bill increases the likelihood of new civil actions that the State may bring against those that violate the provisions of the law that are amended. In past practice, the Department of Environmental Quality rarely asked the Attorney General to bring civil actions against violators due to the narrow scope of the statute. By broadening the form of relief available, the bill might make it more likely that the DEQ will request the Attorney General to file lawsuits against violators. The Department of Attorney General does not anticipate that the resulting increase in civil actions will be significant, and thus the costs will be minimal.

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

Senate Bills 401 and 402

The bills will 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.