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BILL ANALYSIS

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Senate Bill 92 (as introduced 1-25-07)
Sponsor: Senator Raymond E. Basham
Committee: Energy Policy and Public Utilities

Date Completed: 9-12-07

CONTENT

The bill would amend Part 121 (Liquid Industrial Waste) of the Natural Resources and Environmental Protection Act to do the following:

- Exempt from the Act various types of liquids, including vegetable or animal fat oil used to produce biofuels, and revise existing exemptions.**
- Prohibit the storage of liquid industrial waste for longer than one year, except for purposes of reclamation.**
- Revise several requirements concerning generators and transporters of liquid industrial waste.**
- Revise provisions concerning action that must be taken in the event of a discharge or spill of liquid industrial waste.**

Exemptions

Part 121 governs the generation, transportation, and storage of liquid industrial waste, and provides for enforcement by the Department of Environmental Quality (DEQ). "Liquid industrial waste" is defined as any brine, byproduct, industrial wastewater, leachate, off-specification commercial chemical product, sludge, sanitary sewer clean-out residue, 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 determined to be liquid by a specific paint filter liquids test, and that is discarded. Liquid industrial waste does not include particular types of waste, liquid, or material described in Part 121.

The bill also would exclude the following from the definition of liquid industrial waste:

- A liquid vegetable or animal fat oil that is used directly to produce biofuels.
- A liquid regulated under Public Act 239 of 1982 (which governs the disposal of dead animals).
- A liquid applied to land under Part 115 (Solid Waste Management).
- A residual amount of liquid remaining in a container and generated as a result of transportation of a solid waste in that container.
- A liquid brine authorized for use as dust and ice control regulated under Part 31 (Water Resources Protection) and Part 615 (Supervisor of Wells).
- A liquid designated in writing by the DEQ Director, with a statement of the reasons for the designation consistent with the purposes of Part 121.

In addition, the definition under the bill would exclude a liquid residue remaining in a container after pouring, pumping, aspirating, or another practice commonly employed to remove liquids has been used, if one of the following applies:

- Not more than one inch of residue remains on the bottom.
- For containers less than or equal to 110 gallons in size, not more than 3% by weight of residue remains in the container.
- For containers larger than 110 gallons, not more than 0.3% by weight of residue remains in the container.

The bill would delete a current exemption for a liquid industrial waste used for land application in accordance with a program for effective residuals management, approved by the DEQ Director or the U.S. Environmental Protection Agency (EPA), or both, pursuant to the Federal Water Pollution Control Act.

The current definition also excludes oil field brines used for public road dust control and ice removal as authorized under the terms of the rules, standards, and brine management plan approved by the DEQ in existence on June 1, 1993, until rules are promulgated. The bill would delete that language.

In addition, the current definition excludes a used oil that is directly burned to recover energy or used to produce a fuel if specific conditions are met. Among other things, the material must meet the used oil specifications of Part 111 (Hazardous Waste Management). The bill would refer, instead, to the used oil specifications of R 299.9809(1)(f) of the Michigan Administrative Code. (Rule 299.9809 describes materials that are subject to regulation as used oil under administrative rules; subsection (1)(f) concerns used oil that is burned for energy recovery and any fuel produced from used oil by processing, blending, or other treatment if it exceeds any of the used oil specifications identified in the rule.)

Storage

The bill would prohibit the owner or operator of a designated facility from storing liquid industrial waste for longer than one year unless the waste were being stored for purposes of reclamation and at least 75% of the cumulative amount, by weight or volume, of each type of liquid industrial waste that was stored on site each calendar year were reclaimed or transferred to a different site for reclamation during that year. The owner or operator of a designated facility would have to maintain documentation demonstrating compliance with this requirement.

(Part 121 defines "designated facility" as a treatment, storage, disposal, or reclamation facility that receives liquid industrial waste from off-site.)

Generators

Part 121 imposes certain requirements on a generator, which is a person whose act or process produces liquid industrial waste. Among other things, a generator must obtain and use a site identification number assigned by the EPA or the DEQ. Under the bill, this would be required when needed for transportation.

If transporting liquid industrial waste, a generator must engage, employ, or contract for the transportation with a transporter registered and permitted under the Hazardous Materials Transportation Act. Under the bill, this would not apply when a generator was transporting its own waste.

Transporters; Vehicles

A transporter is a person engaged in the off-site transportation of liquid industrial waste by air, rail, highway, or water. A transporter registered and permitted in accordance with the Hazardous Materials Transportation Act and Part 117 (Septage Waste Servicers) is subject to various requirements under Part 121.

The bill specifies that a transporter would be subject to the registration and permitting requirements of the Hazardous Materials Transportation Act. The requirements of Part 121 would apply to a transporter registered and permitted under that Act and licensed under Part 117.

Currently, all liquid waste, including septage waste, must be manifested pursuant to requirements of Part 121. Under the bill, the manifest requirements would apply to all waste, including septage waste, transported in a vehicle managed under Parts 117 and 121.

Currently, the words "Land Application Prohibited" must be affixed in a conspicuous location, visible on both sides of the vehicle, and clearly legible during daylight hours from a distance of 50 feet. The bill would delete this legibility requirement, and would require the words to be in least two-inch letters. The bill also would refer to a vehicle used to transport waste under Parts 117 and 121.

Under Part 121, all portions of a vehicle or equipment that have been in contact with liquid industrial waste must be cleaned and decontaminated before the transport of any products, incompatible waste, or nonwaste. The bill also would refer to hazardous waste regulated under Part 111.

A transporter who owns or legally controls a vehicle or equipment must maintain documentation that the vehicle or equipment was decontaminated before its use for the transportation of nonwaste or a product. Under the bill, this would apply to the transportation of any products, incompatible waste, hazardous waste regulated under Part 111, or nonwaste material.

Waste Discharge or Spill

Under Part 121, if there is a fire, explosion, or discharge of liquid industrial waste 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 has knowledge that a spill 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 Pollution Emergency Alerting System.

Under the bill, the notification would be required unless the incident were reported under another State law. In addition, a generator, transporter, or owner or operator of a designated facility would have to take action if it had "first" knowledge that a spill had reached water.

Part 121 also requires the generator, transporter, or owner or operator to prepare and maintain a written report documenting the incident and response action taken, including any supporting analytical data. Under the bill, the report also would have to document cleanup activities.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on local government if it resulted in more or fewer violations of Part 121 of the Natural Resources and Environmental Protection Act. There are no data to indicate how many offenders have been convicted of misdemeanors for violating Part 121. To the extent that the bill resulted in increased convictions or incarceration time, local governments would incur increased costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

The bill would have no fiscal impact on the Department of Environmental Quality.

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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.