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BILL ANALYSIS

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Senate Bill 1328 (as introduced 9-25-12)
Sponsor: Senator Tom Casperson
Committee: Natural Resources, Environment and Great Lakes

Date Completed: 9-26-12

CONTENT

The bill would amend several parts of the Natural Resources and Environmental Protection Act to do the following:

-- Revise the allocation of money from the Clean Michigan Initiative (CMI) Bond Fund to be used for grants and loans.
-- Eliminate a requirement that a loan agreement between a CMI loan recipient and the applicable State department include a commitment that the loan is secured by a full faith and credit pledge.
-- Provide that a person conducting a response activity would not have to obtain a State or local permit if certain requirements were met.
-- Include the provision of an alternate water supply in the definition of "response activity".
-- Eliminate a requirement for permanent markers under a postclosure plan if a hazardous substance is present at a concentration of more than 10 times a particular cleanup criterion, if the land or resource use restrictions met other requirements.
-- Allow a person to request a certificate of completion of a response activity from the Department of Environmental Quality (DEQ), confirming that an approved response activity had been completed.
-- Require the DEQ to make a decision on a request for a certificate of completion within a prescribed period, and provide that the request would be approved if the Department did not make its decision by the deadline.
-- Allow a person to appeal to a review panel the DEQ's decision on a certificate of completion.
-- Require the DEQ's evaluation and revision of environmental cleanup criteria to take into account best practices from other states, reasonable and realistic conditions, and sound science.
-- Prescribe the conditions a person would have to meet to demonstrate compliance with indoor air inhalation criteria for a hazardous substance.
-- Exempt from liability for contamination a person who owned or occupied a residential condominium unit, under certain circumstances.
-- Allow the owner or operator of an underground storage tank (UST) system to address venting groundwater pursuant to Part 201 (Environmental Remediation) in lieu of corrective actions to do so pursuant to Part 213 (Leaking Underground Storage Tanks).

The bill also would repeal provisions of the Act pertaining to the regulation of polychlorinated biphenyls (PCBs), and rescind related administrative rules. In addition, the bill would rescind a number of rules pertaining to environmental contamination response activity.

Clean Michigan Initiative Bond Fund

Part 196 (Clean Michigan Initiative Implementation) provides for the allocation of money from the Clean Michigan Initiative Bond Fund, including up to $335.0 million for use by the DEQ for response activities at facilities. Of that amount, $75.0 million must be used to provide grants and loans to local units of government and brownfield redevelopment authorities for response activities at known or suspected facilities with redevelopment potential. Currently, of the $75.0 million, a maximum of $37.5 million must be used to provide grants and a maximum of $37.5 million must be used to provide loans. Under the bill, up to $50.0 million would have to be used for grants and up to $25.0 million would have to be used for loans.

The bill would eliminate a requirement that up to $12.0 million be used for grants to the municipal landfill grant program. (The section establishing the program was repealed in 2010.)

Part 196 requires a loan recipient to enter into a loan agreement with the administering State department. At a minimum, the agreement must contain a commitment that the loan is secured by a full faith and credit pledge of the applicant, or, if the applicant is a brownfield redevelopment authority, from the municipality that created the authority. The bill would delete the provision specifying the content of the loan agreement.

Environmental Remediation

Permit for Response Activity. Under the bill, a person, including the DEQ, conducting a response activity under part 201 (Environmental Remediation) at a facility or other area necessary for implementation of that activity, would not have to obtain a State or local permit for the response activity if each of the following requirements were met to the greatest extent practicable, considering the exigencies of the situation when carrying out the response activity:

-- The person conducted the response activity in accordance with a response activity plan or a remedial action plan approved by the DEQ.

-- The person satisfied the standards or requirements of an otherwise applicable State or local permit.

Subject to specific exceptions, "facility" means any area, place, or property where a hazardous substance in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use has been released, deposited, disposed of, or otherwise comes to be located.

"Response activity" means evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or natural resources. Under the bill, the term also would include providing an alternative water supply.

Postclosure Plan. Under Part 201, upon completion of remedial actions at a facility for a category of cleanup that does not satisfy cleanup criteria for unrestricted residential use, the person conducting the remedial actions must prepare and implement a postclosure plan for the facility. The plan must include land or resource use restrictions, as well as permanent markers to describe restricted areas of the facility and the nature of those restrictions.

A permanent marker is not required if the applicable land or resource use restrictions relate to protection of the integrity of exposure controls that prevent contact with soil, and those controls are composed solely of asphalt, concrete, or landscaping materials.

This exception does not apply if any of the hazardous substances addressed by the exposure control is present at a concentration of more than 10 times an applicable soil direct contact cleanup criterion. The bill would delete this language.

("Remedial action" includes cleanup, removal, containment, isolation, destruction, or treatment of a hazardous substance released or threatened to be released into the environment; monitoring; maintenance; or the taking of other actions that may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment).

Certificate of Completion. Under the bill, upon completion of a response activity under Part 201, a person could request a certificate of completion from the DEQ. "Certificate of completion" would mean a written response provided by the DEQ confirming that a response activity has been completed in accordance with the applicable requirements of Part 201 and is approved by the Department.

To obtain a certificate of completion, a person would have to submit to the DEQ a certificate of completion request form, as well as documentation of the completed response activity. The Department would have to specify the required content of the form and make it available on the DEQ website.

Upon receiving a request, the DEQ would have to issue a certificate or deny the request, or notify the submitter that there was not sufficient information for the Department to make a decision. If the request did not include sufficient information, the DEQ would have to identify the information required to make a decision. If the request were denied, the Department's denial would have to state with specificity all of the reasons for it, to the extent practical.

The DEQ would have to make a decision and give the person a certificate, as appropriate, within one of the following time frames, as applicable:

-- 150 days after the DEQ received the request, if the response activity were undertaken without the Department's prior approval and it determined that the activity complied with the applicable requirements of Part 201.
-- 90 days after the request was received, if the response activity were undertaken pursuant to a Department-approved response activity plan, and the DEQ determined that the activity was completed in accordance with the plan.

If the DEQ failed to provide a written response within the required time frame, the response activity would be considered approved.

Any required time frame could be extended by mutual written agreement of the DEQ and a person submitting a request for a certificate of completion or a person who had received a certificate.

A person requesting a certificate of completion could appeal the DEQ's decision in accordance with the review panel process prescribed in Part 201.

Under the review panel process, a person who submitted a response activity plan or a no further action report under Part 201 may appeal a DEQ decision regarding a technical or scientific dispute concerning the plan or report by submitting a petition to the DEQ Director and paying a fee of $3,500. Part 201 prescribes a procedures for resolution of the dispute, including a negotiation period and, if necessary, a convening of the Response Activity Review Panel. Under the bill, these provisions also would apply to a person who submitted a request for a certificate of completion.

Cleanup Criteria. Part 201 prescribes categorical cleanup criteria for different types of facilities. By December 31, 2013, the DEQ must evaluate and revise the criteria. The evaluation must incorporate knowledge gained through research and studies in the areas of fate and transport and risk assessment. Under the bill, this provision also would apply to the revisions. In addition, the evaluation and revisions would have to take into account best practices from other states, reasonable and realistic conditions, and sound science.

Under the bill, a person could demonstrate compliance with indoor air inhalation criteria for a hazardous substance at a facility under Part 201 if all of the following conditions were met:

-- The use of the facility were subject to the Michigan Occupational Safety and Health Act.
-- The hazardous substance were included in a hazard communication program.
-- The person complied with that Act and the rules promulgated under it applicable to the exposure to the hazardous substance.

Response Activity Screening Levels. Response activity screening levels established by the DEQ under Part 201 could be used as any of the following:

-- Screening levels to determine whether conditions at a property required further evaluation.
-- A basis for making a determination that a property was a facility.
-- A basis for determining that a response activity satisfied the requirements of Part 201 if response activity screening levels were met or satisfied.

Site-Specific Criteria. Under Part 201, the DEQ must approve site-specific criteria in a response activity if such criteria, in comparison to generic criteria, better reflect best available information concerning the toxicity or exposure risk posed by the hazardous substance or other factors. The bill would refer to numeric or nonnumeric site-specific criteria.

Exemption from Liability. Part 201 provides that certain people are not liable with respect to contamination at a facility resulting from a release or threat of release unless the person is responsible for an activity causing that release or threat. The bill would include a person who owned or occupied a residential condominium unit for both of the following:

-- Contamination of the unit if hazardous substance use within the unit were consistent with residential use.
-- Contamination of any general common element, limited common element, or common area in which the person has an ownership interest or right of occupation by reason of owning or occupying the residential condominium unit.

Leaking Underground Storage Tanks

Corrective action at sites where a release has occurred or a threat of release exists from an underground storage tank (UST) system is regulated exclusively under Part 213 (Leaking Underground Storage Tanks). If a release or threat of release at a site is not solely the result of a release or threat of release from a UST, the owner or operator may choose to perform response activities under Part 201 in lieu of corrective actions under Part 213.

(Under Part 213, "corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment from a UST system that is necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare; the environment; or natural resources.)

The bill also would allow a UST system owner or operator to choose to address venting groundwater pursuant to Part 201 in lieu of corrective actions to do so pursuant to Part 213, if a release from a UST system involved venting groundwater.

PCBs

The bill would repeal Subpart 1 (PCB Compounds) of Part 147 (Chemical Compounds) of the Act. The DEQ is responsible for the administration and implementation of the Subpart to protect the public health, safety, and welfare from the toxic effects and environmental dangers of PCBs. The DEQ must promulgate rules to administer the Subpart.

The Subpart prohibits a person from disposing of liquid or solid waste resulting from the use of PCBs in his or her business or of an item, product, or material containing a concentration equal to or greater than 100 parts per million of PCBs except in conformity with DEQ rules. A violator is guilty of a misdemeanor punishable by a fine of at least $2,500 and not more than $25,000.

The bill also would rescind R 299.3301 to R 299.3319. These rules pertain to PCBs.

Other Rescinded Rules

As of the bill's effective date, the bill would rescind a number of DEQ rules pertaining to environmental contamination response activity. The bill would rescind other rules effective December 31, 2013.

The bill would delete a reference to several of these rules in Part 201 prohibiting the DEQ from implementing and enforcing some of the rules.

MCL 324.19608 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have an indeterminate, but likely negative, fiscal impact on State

government, and no fiscal impact on local units of government. The bill would shift $12.5 million in Clean Michigan Initiative brownfield bonding authority from loans to grants, which would result in $25.0 million in bonding authority for loans and $50.0 million in bonding authority for grants. To the extent that this shift would result in more brownfield projects being funded by CMI grants, additional CMI bonds would be issued which would result in increased debt service costs that would appear in the Department of Treasury budget.

The bill also would result in some new costs for the Department of Environmental Quality associated with the development of forms for, and processing of certificates of completion. An estimate for these costs is not available as it is unknown what the demand for certificates of completion would be.

Fiscal Analyst: Josh Sefton