

SPILL PREVENTION AND CONTINGENCY PLANS

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House Bill 6201 (H-5) as reported from committee
Sponsor: Rep. Lee Chatfield
Committee: Michigan Competitiveness
Complete to 10-2-18

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

SUMMARY:

House Bill 6201 would amend Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act (NREPA) to do all of the following:

- Establish notification requirements for a release of oil from a pipeline in the Straits of Mackinac.
- Require the owner or operator of a gas or oil pipeline in the Straits of Mackinac to submit, for approval by the Department of Environmental Quality (DEQ), both a spill prevention plan and a contingency plan for cleaning up spills.
- Establish civil fines for releases of gas or oil and other violations of the provisions of the bill.
- Create the Gas and Oil Pipeline Fund to support investigation and enforcement activities as well as activities that would prevent or mitigate releases of oil or gas into the environment.

The bill is described in more detail below.

Notification and report of release

The bill would require the owner, operator, or manager of a *straits gas or oil pipeline* from which a *release* occurs, and the person who causes a release, to immediately notify local officials and the DEQ of the release and, within 10 days or sooner if required by the DEQ, submit a written report to the DEQ describing the cause of the release, how the release was discovered, and what response measures have been or will be taken to prevent a similar release from happening. Within 60 days after the release, the person would have to meet with representatives of the DEQ, the Department of State Police, and the Michigan Public Service Commission to discuss the release and measures taken or to be taken in response to the release.

Straits gas or oil pipeline would mean an intrastate pipeline used to transport gas and/or oil through the Straits of Mackinac.

Release would include any spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of oil into the environment or the abandonment of an oil-containing facility or vessel from which oil may enter the environment.

These reporting requirements would not alter other applicable laws or rules or relieve a person from other state or federal reporting requirements.

Spill prevention plans

Within 180 days after the bill takes effect, the owner or operator of a straits gas or oil pipeline would have to submit to the DEQ, for its approval, a *spill prevention plan* that includes at least all of the following:

- Details of the method of response to spills of various sizes from any pipeline covered by the plan.
- Documentation of compliance with the federal Oil Pollution Act of 1990 and federal and state financial responsibility requirements.
- Certification that supervisors and key personnel in charge of the pipeline have been properly trained and that the pipeline has an operations manual.
- Certification of alcohol and drug use awareness programs for personnel in charge of the pipeline.
- A description of the pipeline's maintenance and inspection program and the current maintenance and inspection record.
- A description of installed spill prevention technology, with a map or diagram showing where it is.
- A description of oil or gas releases in Michigan in the prior five years and of the measures taken to prevent a reoccurrence.
- A timetable for implementing specific measures that will provide the best possible protection for public health and the environment.
- Any other information as the DEQ reasonably.

A spill prevention plan could be consolidated with a contingency plan (described below). The DEQ could accept plans prepared to comply with other state or federal law to the extent they complied with the requirements of the bill. The DEQ could establish additional standards for spill prevention plans.

Within 30 days after the bill takes effect, the owner or operator of a straits gas or oil pipeline would have to submit to the DEQ a copy of each existing spill prevention plan or procedure.

The pipeline owner or operator would have to pay an annual fee for each review plan submitted to the DEQ in the amount of \$2,500 for each geographic plan area or sub-area established by the Coast Guard and the Environmental Protection Agency that is covered by the plan.¹ The fee would be adjusted for inflation annually beginning three years after the bill takes effect.

The DEQ would approve a spill prevention plan only if the plan provides the best achievable protection from spill damages caused by the discharge of oil into the waters of the state and the DEQ finds that the plan meets the requirements of the bill and DEQ rules. If the DEQ were to find that the plan does not meet those requirements, it would have to notify the owner or operator in writing and identify where the plan is incomplete or inadequate. The owner or operator would have 30 days to modify and resubmit the plan, or a longer period authorized by the DEQ in writing.

An approved spill prevention plan would be valid for five years. The owner or operator would have to review, update if needed, and resubmit the plan to the DEQ at least once every five

¹ As a point of reference, the Straits of Mackinac are wholly within one such sub-area, and Lakes Michigan and Huron together comprise seven sub-areas.

years or within 60 days of a request from the DEQ. The owner or operator would also have to notify the DEQ in writing immediately of any significant change affecting the plan. The DEQ could require the owner or operator to update the plan as a result of a change identified by the owner or operator or independently identified by the DEQ. However, the DEQ could not assess any additional fees beyond the annual fee for updating a spill prevention plan within the five-year period.

An owner or operator that failed to submit or resubmit a spill prevention plan as required would be liable for a civil fine of \$1,000 for each day of violation.

The contents of a spill prevention plan would be exempt from disclosure under the Freedom of Information Act (FOIA).

Contingency plans

Within 180 days after the bill takes effect, the owner or operator of a straits gas or oil pipeline would have to submit to the DEQ, for its approval, a **contingency plan** for the containment and cleanup of gas or oil spills from the pipeline and for the protection of fisheries and wildlife, natural resources, and public and private property from these spills. The contingency plan would have to be designed to ensure that the owner or operator has the personnel, materials, and equipment needed to be able to remove gas and/or oil promptly, properly, and to the maximum extent possible, and to minimize any damage to the environment resulting from a worst-case spill. The contingency plan would have to include at least all of the following:

- Details of the method of response to spills of various sizes from any pipeline covered by the plan.
- A description of how the plan relates to, and is integrated into, relevant contingency plans that have been prepared by the state and the federal government.
- Procedures for early detection of spills and timely notification to appropriate authorities.
- The number, training, and qualifications of personnel assigned to direct and implement the plan, including names, addresses, and contact information for any contracted or subcontracted spill response organization.
- Provisions for periodic training and drill programs to evaluate the operational readiness of equipment and personnel.
- A description of how the environment, including fish and wildlife, will be protected; how effects on the environment will be mitigated; and how it will be ensured that risks posed to the public or environment by implementation of the plan are not unacceptable.
- Provisions for locating spill containment and cleanup equipment for strategic deployment, for using personnel trained in Federal Emergency Management Agency protocols by National Incident Management System certified instructors, and for legally disposing of recovered spilled gas or oil.
- The amount and type of equipment available to respond to a spill, its location, and the extent to which other contingency plans rely on the same equipment.
- An identification of who is responsible for supervising the implementation of the plan and the owner's and operator's designated point of contact for communication with the DEQ and other local, state, federal, and tribal officials if a spill occurs.
- The procedures to be used to notify local, state, federal, and tribal officials of a spill and the response actions taken.

A contingency plan could be consolidated with a spill prevention plan. The DEQ could accept plans prepared to comply with other state or federal law to the extent they complied with the requirements of the bill.

Within 30 days after the bill takes effect, the owner or operator of a straits gas or oil pipeline would have to submit to the DEQ a copy of each existing contingency or spill response plan established for the pipeline.

The pipeline owner or operator would have to pay an annual fee for each contingency plan submitted to the DEQ in the amount of \$12,500 for each geographic plan area or sub-area established by the Coast Guard and the Environmental Protection Agency that is covered by the plan. The fee would be adjusted for inflation annually beginning three years after the bill takes effect.

In reviewing the contingency plan, the DEQ would have to consider at least all of the following:

- The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures, response time, and logistical arrangements for coordination and implementation of response efforts.
- The volume and type of the gas or oil being transported within the area covered by the plan.
- The history and circumstances surrounding prior gas or oil spills within the area covered by the plan.
- The sensitivity of fisheries, aquatic life, and wildlife and other natural resources within the area covered by the plan.
- The extent to which the plan incorporates measures to reduce the likelihood of a spill and minimize the impact of a spill that are reasonable and cost-effective.

The DEQ would approve a plan only if the plan includes personnel, materials, and equipment capable of removing gas or oil promptly and properly, minimizing damage to the environment, and the DEQ finds that the plan meets the requirements of the bill and DEQ rules. If the DEQ were to find that the plan does not meet those requirements, it would have to notify the owner or operator in writing and identify where the plan is incomplete or inadequate. The owner or operator would have 30 days to modify and resubmit the plan, or a longer period authorized by the DEQ in writing.

An approved contingency plan would be valid for five years. The owner or operator would have to review, update if needed, and resubmit the plan to the DEQ at least once every five years or within 60 days of a request from the DEQ. The owner or operator would also have to notify the DEQ in writing immediately of any significant change affecting the plan. The DEQ could require the owner or operator to update the plan as a result of a change identified by the owner or operator or independently identified by the DEQ. However, the DEQ could not assess any additional fees beyond the annual fee for updating a contingency plan within the five-year period.

An owner or operator that failed to submit or resubmit a spill prevention plan as required would be liable for a civil fine of \$1,000 for each day of violation.

The contents of a contingency plan would be exempt from disclosure under FOIA.

The owner or operator of a straits oil or gas pipeline would have to meet annually with local emergency responders to review the spill prevention and contingency plans for the pipeline.

Liability and civil fines

The owner, operator, or manager of a straits gas or oil pipeline or a vessel from which gas or oil, or both, are released into the environment or may be discharged into the waters of the state, and any other person responsible for an activity that causes such a release, would be liable to the state for civil fines as follows:

- Each person liable for a release would be jointly and severally liable for a civil fine of up to \$37,500 for each day that a release occurs.
- If the release were the result of gross negligence or willful misconduct, each person liable for the release would be jointly and severally liable for a civil fine of at least \$150,000.

The fines described above would be adjusted for inflation beginning 3 years after the effective date of the bill.

In determining the amount of a civil fine, the court would have to consider all of the following:

- The seriousness of the violation(s).
- Any economic benefit to the violator resulting from the violation(s).
- The degree of culpability.
- Any other penalty for the same incident.
- Any history of prior violations.
- The nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the release.
- The economic impact of the fine on the violator.
- Any other matters as justice requires.

Gas and Oil Pipeline Fund

Finally, the bill would create the Oil and Gas Pipeline Fund within the state treasury. The review fees and civil fines described above would all be forwarded to the state treasurer for deposit into the Fund. Money in the Fund at the close of the fiscal year would remain in the Fund and not lapse to the general fund. Money in the Fund would be used, upon appropriation, only for the following purposes:

- For activities of the DEQ and the Department of the Attorney General in investigating and bringing enforcement actions for violations of the bill.
- For activities of state agencies to prevent or mitigate releases of gas and oil into the environment.

The bill would take effect 90 days after its enactment.

MCL 324.3101 et al.

FISCAL IMPACT:

House Bill 6201 would increase costs and revenues for the DEQ. The DEQ would realize additional administrative costs in the review of the required spill protection and contingency plans submitted by gas or oil pipeline owners or operators in the Straits of Mackinac; the extent of these increased costs is unclear at present.

These pipeline owners or operators would be required to pay an annual fee of \$2,500 per USCG/EPA-designated area included in a required spill protection plan, as well as an annual fee of \$12,500 per USCG/EPA-designated area included in a required contingency plan; both plans must be provided to the DEQ every five years. The precise extent of this new revenue is unclear at present; however, the DEQ estimates that there are at least two current owners/operators that would be subject to the bill, which would generate a minimum of \$30,000 in gross fee revenue contingent upon the number of USCG/EPA-designated areas covered by their respective spill protection and contingency plans.

Civil fines of not more than \$37,500 per day per spill, not less than \$150,000 for spills resulting from gross negligence or willful misconduct, and \$1,000 for failure to submit a spill protection plan or contingency plan would generate an uncertain amount of revenue contingent upon spills or unmet reporting obligations.

The plan review fees and civil fines included in the bill would be deposited to the newly created Gas and Oil Pipeline Fund, which the DEQ would administer to investigate and enforce violations of this part (with the Attorney General) and to prevent or mitigate oil and gas releases.

The bill is unlikely to affect costs or revenues for local units of government.

POSITIONS:

A representative of the Michigan Environmental Council testified in support of the bill. (9-25-18)

A representative of Clean Water Action testified in opposition to the bill. (9-26-18)

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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.