



**House
Legislative
Analysis
Section**

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HAZARDOUS WASTE DISPOSAL

AS ENROLLED

**House Bill 5650 (Substitute H-1)
First Analysis (3-14-96)**

**Sponsor: Rep. Gregory E. Pitoniak
Committee: Conservation, Environment
and Great Lakes**

THE APPARENT PROBLEM:

Currently, the generation, transportation, and disposal of hazardous wastes is regulated under the hazardous waste management provisions of the Natural Resources and Environmental Protection Act (NREPA). However, certain facilities are excluded from the act's definition of disposal facility, including waste disposal wells, which are regulated under the former Mineral Well Act (now Part 625 of NREPA). The process for obtaining approval under Part 625 of the act for the use of a well for waste disposal is relatively simple, consisting of a technical review of the construction and geology associated with the well. The process for obtaining a permit under Part 111 of the act to construct a hazardous waste treatment, storage, or disposal facility is much more rigorous: the application must include a complete disclosure of the applicant's background, including a list of all state, federal, or Canadian environmental permits or licenses held by each person involved in the administration of the company, including its major shareholders; a notice that includes a map of the proposed facility's location must be published prior to submittal of the application in a local newspaper, whose major circulation is in the immediate vicinity of the proposed facility; an hydrogeological report, environmental assessment, engineering plan, and procedures for closure and postclosure monitoring must be submitted; and a public hearing must be conducted before an application is referred to a site review board for a comprehensive environmental review. In addition to an application fee, a \$25,000 deposit must be made by an applicant to cover any expenses incurred by site review board members. Reportedly, this application process can take up to two years. However, many believe that waste disposal wells should be regulated under the stricter provisions of Part 111 of NREPA. It is asserted that, when the Mineral Well Act was enacted, it was anticipated that injection wells would only be used for oil and gas extraction. Now, it is claimed, a "loophole" has been created by which these wells, which inject waste deep into the earth, may be allowed to dispose of hazardous waste without the public scrutiny and comprehensive review that is required of other

hazardous waste disposal facilities, such as landfills and incinerators. Legislation has been introduced that would accomplish this objective, by requiring that waste disposal wells maintain on-site treatment and storage facilities. Such facilities are required, under NREPA, to meet all of the requirements of other hazardous waste management facilities.

THE CONTENT OF THE BILL:

Part 111 of the Natural Resources and Environmental Protection Act (NREPA), which controls hazardous waste management practices, specifies that a person may not establish a treatment, storage, or disposal facility without obtaining a construction permit from the Department of Environmental Quality (DEQ). House Bill 5650 would add a new section to the act to require that a construction permit for on-site treatment and storage facilities be obtained prior to the drilling of a multisource commercial hazardous waste disposal well, or the conversion of a well to a multisource commercial hazardous waste disposal well. (The requirement would apply to governmental entities as well as other persons.) The bill would define a multisource commercial hazardous waste disposal well to refer to a disposal well that received hazardous waste that had been generated by more than one person. The definition would not include a disposal well that received hazardous waste generated from a subsidiary owned or operated by the owner of the hazardous waste disposal well. The bill would specify that it should not be construed to abrogate common law.

House Bill 5650 and Senate Bill 891 are tie-barred to each other. Senate Bill 891 would amend NREPA to require that a multisource commercial hazardous waste disposal well must maintain on-site treatment and storage facilities for which a construction permit and an operating license had been obtained, as required under the act.

MCL 324.62506a

House Bill 5650 (3-14-96)

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would establish good public policy by holding waste disposal wells to the same standards as other hazardous waste treatment, disposal, and storage facilities. The problem has become more compelling as the result of current circumstances in Michigan. Three years ago, a Birmingham, Michigan environmental disposal systems company constructed a commercial hazardous waste disposal well, or injection well, in Romulus, Michigan. Such wells inject hazardous or nonhazardous waste deep into the earth, usually into bedded rock formations that are porous and permeable enough to accept the injected fluid. The disposal formation is naturally bounded above by shales which are not permeable and therefore act as "caprocks," sealing the injected fluids in the disposal formation. To ensure that the disposed fluid reaches the disposal formations and to prevent the natural fluids in different zones from mixing with each other or with the injected fluids, a casing is cemented into the well hole. The company obtained approval from the Department of Environmental Quality (DEQ) to operate the well. However, the City of Romulus brought suit to halt the project, on the grounds that the well was not in compliance with local zoning ordinances, and the suit was upheld by the Wayne County Circuit Court. Further controversy was added to the enterprise when the *Detroit News* reported in a May 1, 1994, article that, in addition to receiving local waste, the company intended to use its well to dispose of hazardous liquids supplied by a Canadian waste transporter that is affiliated with the Michigan company. The company then constructed a second well on the Romulus-Taylor border, and has again applied to the DEQ for appropriate permits. Whether any health or safety effects will occur from this facility should be subject to public debate. This would be accomplished under the provisions of the bill, by allowing the concerns of the citizens of these two communities to be heard in a public hearing.

Response:

The bill is not based on good public policy and would, instead, serve to prevent companies from drilling and testing a well to determine if the geologic conditions were suitable for injection well disposal of wastes. The application process for obtaining approval for a treatment, storage, or disposal facility construction permit is very long and very expensive. Therefore, the requirement that waste disposal wells meet the stricter

requirements under Part 111 of the Natural Resources and Environmental Protection Act (NREPA) for hazardous waste management facilities would have the effect of deterring any well owner from making an application. Further, by so deterring a well owner, the legislation might be interpreted as a constitutional "taking" of private property; and it is possible that such an action might be prohibited under Public Act 101 of 1996, the Property Rights Preservation Act. The bill should provide, instead, that approval for the drilling and testing of a well be regulated under Part 625 of NREPA, as is currently the case, with the restriction that waste disposed of in a well be limited to nonhazardous waste until a permit is obtained under Part 111 for construction of a facility.

For:

The bill would assure that members of a community in which a proposed waste disposal well is located who may be concerned about the potential site will have an opportunity to comment in a public hearing. Too often, local officials and concerned citizens are frustrated in their attempts to assure that their views and concerns are properly heard and considered in the Department of Environmental Quality's permit process. Many factors are important to a community: the impact of a well on the health of local residents; and the impact on the area's air, water, and other natural resources. Citizen input is especially important in situations where a hazardous waste facility is to be located in a community, since homeowners whose residences are located near the site of a waste disposal well may have reason to fear that their homes will decrease in value, that hazardous wastes will be leaked into their groundwater, or that other health problems will result from the location of the facility. In addition, Michigan residents have been alarmed by reports that hazardous waste from Canada and from other states is being transported and disposed of in Michigan. While this activity maybe legal, there is no reason to encourage the practice by promoting the construction of injection wells, such as the one on the Taylor-Romulus area, that is owned by a company with subsidiaries in Canada and plans to import more out-of-state waste.

For:

The bill would close the current "loophole" in NREPA that allows waste disposal wells to be held to different standards from other hazardous waste treatment, disposal, and storage facilities. Of major importance is the bill's requirement -- in conjunction with the provisions of Senate Bill 891 -- that injection well companies construct on-site treatment and storage facilities before drilling or converting commercial hazardous waste disposal wells. Without this requirement, a company could conceivably inject

hazardous waste into a disposal well directly from a truck. This practice is environmentally unsafe, because, in order to protect the geological formation under the well, injected waste must be tested to assure that it is compatible with other wastes that have been injected into the well.

Against:

The bill is unnecessary. Despite efforts to reduce, recycle, reuse, or treat waste, there will always be certain items that have no value and cannot be further recycled. However, isolating these wastes deep in the earth until new recycling technology is developed provides a solution to the continued destruction of the state's natural resources. The technology is used successfully in other states: the Florida Department of Environmental Protection reports that there have been no cases of contaminated drinking water from its injection wells during the past 30 years; California reports no contamination of underground sources of drinking water since injection operations began there in the late 1940s; Louisiana has had only one instance of such contamination; Colorado has no documented cases of ground water contamination; and in Ohio, while there have been releases of injected wastes outside the permitted level at two facilities, there has been no evidence that any potentially useable ground water has been contaminated by a well. Moreover, it should also be noted that deep disposal wells are regulated by the Environmental Protection Agency (EPA), which has declared that it supports the technology surrounding the use of injection wells for the disposal of hazardous waste. In fact, in an October, 1994, letter, the EPA points out that hazardous waste injection wells are the most highly regulated well classification under its program and are considered the highest priority for regulation.

POSITIONS:

Representatives of the following provided testimony in support of the bill (3-12-96):

*The City of Romulus

*The City of Taylor

*The Department of Environmental Quality (DEQ)

*Wayne County

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.