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House Bill 5400 (Substitute H-3 as passed by the House)
House Bill 5401 (as passed by the House)
House Bill 5402 (Substitute H-1 as passed by the House)
Sponsor: Representative Wayne Schmidt (H.B. 5400)
Representative Edward McBroom (H.B. 5401)
Representative Phil Potvin (H.B. 5402)
House Committee: Natural Resources
Senate Committee: Natural Resources, Environment and Great Lakes

Date Completed: 5-21-14

CONTENT

House Bill 5400 (H-3) would amend Parts 31 (Water Resources Protection), 85 (Fertilizers), 115 (Solid Waste Management), and 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Provide for the classification of a number of industrial by-products as "beneficial use by-products" and exclude them, as well as inert materials, from the definition of "solid waste".
- Define several categories of "beneficial uses" for which the by-products could be used, and prescribe conditions for their use and storage.
- Redefine "inert material".
- Allow a person to request that the Department of Environmental Quality (DEQ) approve certain materials and/or uses as beneficial use by-products.
- Require the DEQ to approve a material as inert or for a specific use as a beneficial use by-product under certain circumstances.
- Allow the DEQ to approve a material that did not meet all of the requirements for inert materials or beneficial use, if the material and/or use would protect the public health and environment.
- Require the DEQ to approve a material as a low-hazard industrial waste or source-separated material, if certain conditions were met.
- Require the use of a material to be for a legitimate beneficial purpose other than a means to discard it in order to qualify or be approved by the DEQ as a beneficial use by-product.
- Provide that approval of materials as beneficial use by-products or inert materials would not require the use of those materials by any governmental entity or other person.
- Require a by-product sold or used beneficially as a fertilizer, soil conditioner, or liming material to be registered or licensed annually.
- Require a property owner who knew that a material had been put to beneficial use as construction fill to notify a prospective transferee.
- Require a beneficial use by-product generator or broker to notify the DEQ if the amount of a by-product used as construction fill at a particular site would exceed 5,000 cubic yards.

- **Require a generator or broker of more than 1,000 cubic yards of by-products for specified beneficial uses to report to the DEQ annually.**
- **Prescribe procedures for processing a request for generator or broker information under the Freedom of Information Act, and provide for the designation of such information as confidential, under certain circumstances.**
- **Provide that municipal solid waste incinerator ash that was used as a daily cover at a licensed disposal facility would not have to be disposed of in a landfill.**
- **Exempt from regulation under Part 201 property contaminated by hazardous substances resulting from the placement, storage, or use of beneficial use by-products or inert materials.**
- **Exempt specific uses and storage of beneficial use by-products from a permit requirement under Part 31.**
- **Require an application for a license to manufacture or distribute fertilizer to include specific information, if the fertilizer were a beneficial use by-product.**
- **Exempt the storage of a beneficial use by-product used as fertilizer from DEQ commercial fertilizer bulk storage regulations if proposed storage requirements were met.**

House Bill 5401 would amend Part 201 of NREPA to provide that a person who stored or used a beneficial use by-product or inert material in compliance with Part 115 would not be liable for remediation of the release of a hazardous substance.

House Bill 5402 (H-1) would amend Public Act 162 of 1955, which governs the licensing, inspection, and sale of agricultural liming material, to require a filing with the Michigan Department of Agriculture and Rural Development (MDARD) related to the sale of liming material to include specific information, if the material were a beneficial use by-product.

House Bills 5400 (H-3) and 5402 (H-1) would take effect 90 days after they were enacted. House Bill 5400 (H-3) is tie-barred to House Bill 5401. House Bills 5401 and 5402 (H-1) are tie-barred to House Bill 5400.

House Bill 5400 (H-3)

Part 115: Solid Waste Management

Definition of "Solid Waste". Part 115 defines "solid waste" as garbage, rubbish, ashes, incinerator ash and residue, street cleanings, municipal and industrial sludge, solid commercial waste, solid industrial waste, and animal waste. The term excludes a number of materials, such as coal ash when used under certain conditions. Coal ash is not considered solid waste when used as aggregate, road material, or building material that in ultimate use is or will be stabilized or bonded by cement, limes, or asphalt. Under the bill, coal ash also would be excluded from the definition of "solid waste" if the coal ash itself would act as a bonding agent and it had at least 10% available lime.

Currently, coal ash also is not considered solid waste when used as the sole material in a depository designed to reclaim, develop, or otherwise enhance land, subject to DEQ approval. The bill would delete this exclusion.

The bill also would exclude the following from the definition of "solid waste":

- Inert material (described below).
- Beneficial use by-products (described below).

- Coal bottom ash, if substantially free of fly ash or economizer ash, when used as cold weather road abrasive.
- Stamp sands when used as cold weather road abrasive in the Upper Peninsula by a public road agency or any other person pursuant to a plan approved by a public road agency.
- Any material that is reclaimed or reused in the process that generated it.
- Any secondary material that, as specified in or determined pursuant to Federal regulations, is not a solid waste when combusted.

Beneficial Use. The bill would define various categories of beneficial uses of certain materials. "Beneficial use 1" would mean use as aggregate, road material, or building material that in ultimate use is or will be bonded or encapsulated by cement, limes, or asphalt.

"Beneficial use 2" would mean use as construction fill at nonresidential property or use as road base or soil stabilizer that meets all of the following requirements:

- Is placed at least four feet above the seasonal groundwater table.
- Does not come into contact with a surface water body.
- Is covered by concrete, asphalt pavement, or other material approved by the DEQ.
- Does not exceed four feet in thickness, except for areas where exceedances are incidental to variations in the existing topography.

The four-foot limit would not apply to construction fill placed underneath a building or other structure.

"Beneficial use 2" also would include road shoulder material that does not exceed four feet in thickness except where incidental to variations in existing topography, is placed at least four feet above the seasonal groundwater table, does not come into contact with a surface water body, is sloped, and is covered by asphalt pavement, concrete, six inches of gravel, or other material approved by the DEQ.

"Beneficial use 3" would mean applied to land as a fertilizer or soil conditioner under Part 85 (Fertilizers) or a liming material under Public Act 162 of 1955 (which House Bill 5402 (H-1) would amend) if the material is applied at an agronomic rate consistent with generally accepted agricultural and management practices (GAAMPs), and the use, placement, or storage at the location of use do not do any of the following:

- Violate Part 55 (Air Pollution Control) or create a nuisance.
- Cause groundwater to no longer be fit for one or more protected uses as defined in R 323.2202 of the Michigan Administrative Code (i.e., public health, safety, and welfare; domestic, commercial, industrial, agricultural, recreational, and other uses of groundwater; the value or utility of riparian land; and livestock, wild animals, and aquatic life or plants and the value in them).
- Cause a violation of a Part 31 surface water quality standard.

(Under the bill, "agronomic rate" would mean a rate that meets both of the following requirements:

- Is generally recognized as by the agricultural community or is calculated for a particular area of land to improve the physical nature of soil or to provide macro- or micronutrients in an amount not materially in excess of that needed by the crop, forest, or vegetation grown on the land.
- Takes into account and minimizes runoff of beneficial use by-products to surface water or neighboring properties, the percolation of excess nutrients beyond the root zone, and the liberation of metals from the soil into groundwater.)

"Beneficial use 4" would mean any of the following uses:

- To stabilize, neutralize, solidify, or otherwise treat waste for ultimate disposal at a facility licensed under Part 115 or Part 111 (Hazardous Waste Management).
- To treat wastewater, wastewater treatment sludge, or wastewater sludge in compliance with Part 31 or the Federal Water Pollution Control Act at a private or publicly owned wastewater treatment plant.
- To stabilize, neutralize, solidify, cap, or otherwise remediate hazardous substances or contaminants as part of a response activity in compliance with Part 201 (Environmental Remediation), Part 213 (Leaking Underground Storage Tanks), or the Comprehensive Environmental Response, Compensation and Liability Act, or a corrective action in compliance with Part 111 or the Solid Waste Disposal Act.
- As construction material at a landfill licensed under Part 115.

"Beneficial use 5" would mean blended with inert materials or with compost and used to manufacture soil.

Inert Material. Currently, "inert material" means a substance that will not decompose, dissolve, or in any other way form a contaminated leachate upon contact with water, or other liquids determined by the DEQ as likely to be found at the disposal area, percolating through the substance. The bill would delete this definition. Instead, "inert material" would mean any of the following:

- Rock.
- Trees, stumps, and other similar land-clearing debris, if the debris is buried on the site of origin or another site, with the approval of the site owner; the debris is not buried in a wetland or floodplain; the debris is placed at least three feet above the groundwater table; and the placement of the debris does not violate Federal, State, or local law or create a nuisance.
- Excavated soil from a site of environmental contamination, corrective action, or response activity if the soil is not a listed hazardous waste under Part 111 and if hazardous substances in the soil do not exceed generic soil cleanup criteria for unrestricted residential use or background concentration as defined in Part 201, as applicable.
- Portland cement clinker produced by a cement kiln using wood, fossil fuels, or solid waste as a fuel or feedstock, excluding cement kiln dust generated in the process.
- Cuttings, drilling materials, and fluids used to drill or complete a well installed pursuant to Part 127 (Water Supply and Sewer Systems) of the Public Health Code, if the location of the well is not a facility contaminated by the release of a hazardous substance.
- Any material determined by the DEQ under the bill to be an inert material, either for general use or for a particular use.

"Inert material" also would include "uncontaminated" excavated soil or dredged sediment. Excavated soil or dredged sediment would be considered uncontaminated if it does not contain more than de minimis amounts of solid waste and one of the following applies:

- The soil or sediment is not contaminated by a hazardous substance as a result of human activity.
- For any hazardous substance that could reasonably be expected to be present as a result of past land use and human activity, the soil or sediment does not exceed the background concentration, as that term is defined in Part 201.
- For any hazardous substance that could reasonably be expected to be present as a result of past land use and human activity, the soil or sediment falls below Part 201 generic residential soil direct contact cleanup criteria and hazardous substances in leachate from the soil or sediment falls below Part 201 generic residential health-based groundwater drinking water values or criteria, and the soil or sediment would not cause

a violation of any surface water quality standard at the area of placement , disposal, or use.

The bill specifies that soil or sediment that naturally contained elevated levels of hazardous substances above unrestricted residential or any other Part 201 generic soil cleanup criteria would not be considered contaminated. A soil or sediment analysis would not be required if, based on past land use, there was no reason to believe that the soil or sediment was contaminated.

Additionally, "inert material" would include construction brick, masonry, pavement, or broken concrete that is reused for fill, rip rap, slope stabilization, or other construction, if all of the following conditions are met:

- The use of the material does not violate NREPA provisions regarding the occupation, filling, or grading of a flood plain, Part 301 (Inland Lakes and Streams), or Part 303 (Wetlands Protection).
- The material is not materially contaminated.
- The material does not include exposed reinforcing bars.

Typical surface oil staining on pavement and concrete from driveways, roadways, and parking lots would not be material contamination.

"Inert material" also would include asphalt pavement or concrete pavement that has been removed from a public right-of-way, has been stockpiled or crushed for reuse as aggregate material, and does not include exposed reinforcement bars.

Definition of Beneficial Use By-Product. The bill would define "beneficial use by-product" as the following materials, if they are stored for beneficial use or are used beneficially as specified and the bill's requirements for approval of a beneficial use by-product (described below) are met:

- Coal bottom ash or wood ash used for beneficial use 3 or wood ash or coal ash, except for segregated flue gas desulfurization material, used for beneficial use 1, 2, or 4.
- Pulp and paper mill ash used for beneficial use 1, 2, 3, or 4.
- Mixed wood ash used for beneficial use 1, 2, 3, or 4.
- Cement kiln dust or lime kiln dust used as a flue gas scrubbing reagent or for beneficial use 1, 2, 3, or 4.
- Stamp sands used for beneficial use 1 or 2.
- Foundry sand from ferrous or aluminum foundries used for beneficial use 1, 2, 3, 4, or 5.
- Pulp and paper mill material (other than rejects, from screens, cleaners, and mills dispersion equipment, containing more than de minimis amounts of plastic; or scrap paper) used for beneficial use 3.
- Spent media from sandblasting, with uncontaminated sand, newly manufactured, unpainted steel used for beneficial use 1 or 2.
- Dewatered concrete grinding slurry from public transportation agency road projects used for beneficial use 1, 2, 3, or 4.
- Lime softening residuals from the treatment and conditioning of water for domestic use or from a community water supply used for beneficial use 3 or 4.
- Soil washed or otherwise removed from sugar beets that is used for beneficial use 3.
- Segregated flue gas desulfurization material used for beneficial use 1 or 3.
- Materials and uses approved by the DEQ under the bill.

Approval of materials and uses by the DEQ would not require the use of those materials by any governmental entity or any other person.

Qualification as Beneficial Use By-Product; Storage & Use. Except for a material that the DEQ approved as a beneficial use-by-product as described below, to qualify as a beneficial use by-product, a material could not be a Part 111 hazardous waste or mixed with a hazardous waste. The material could not be stored at the site of generation or use for more than three years, or the amount that was transferred off-site for use during a three-year period would have to equal at least 75% by weight or volume of the amount stored on-site for beneficial use at the beginning of the three-year period. The material would have to be stored in a manner that maintained its usefulness, controlled wind dispersal, and prevented loss of the material beyond the storage area. In addition, the material would have to be stored in a manner that did not cause groundwater to no longer be fit for one or more protected uses, and did not cause a violation of a Part 31 surface water quality standard or otherwise violate Part 31. Also, the material would have to be transported in a manner that prevented accidental leakage, spillage, or wind dispersal.

The use of the material would have to be for a legitimate beneficial purpose other than a means to discard it. Additionally, it would have to be used according to generally accepted engineering, industrial, or commercial standards for that use. For beneficial use 2, specified materials would have to meet environmental standards prescribed in the bill.

For beneficial use 3, the material or its use, as applicable, would have to meet all of the following requirements:

- The material would have to be coal bottom ash, wood ash, pulp and paper mill ash, mixed wood ash, foundry sand from ferrous or aluminum foundries, cement kiln dust, lime kiln dust, lime water softening residuals, flue gas desulfurization gypsum, soil washed or otherwise removed from sugar beets, or dewatered concrete grinding slurry from public transportation agency road projects.
- The amount of specific constituent materials applied to any area of land over any period of time could not exceed cumulative load pounds per acre as prescribed in the bill.
- If MDARD determined that any other constituent was subject to a cumulative loading requirement, the amount of that constituent applied to an area of land over any period of time could not exceed that cumulative loading requirement.

For beneficial use 5, the material would have to be foundry sand from ferrous or aluminum foundries. Representative sampling would have to demonstrate that prescribed maximum concentrations of certain substances were not exceeded.

The determination of whether a material was a hazardous substance under Part 111 or met the environmental standards prescribed for beneficial use 2 would have to be based on an analysis of a representative sample of the material by the initial generator. The initial generator would have to maintain records of the test results for at least 10 years after the material was sent off site and make them available to the DEQ upon request. The generator would have to resample and analyze the material when raw materials or processes changed in a way that could reasonably be expected to materially affect analysis results.

Except as otherwise provided, storage and use of beneficial use by-products would have to comply with all other applicable provisions of NREPA. The storage of material for beneficial use 3 that complied with commercial fertilizer bulk storage requirements prescribed in the Michigan Administrative Code would have to be considered to comply with the storage requirements of Part 115.

A person who actively managed and reused a beneficial use by-product that had already been used in compliance with Part 115 could rely on analytical data from the prior use.

Beneficial Use 1 & 2 along Roadways. All of the following provisions would apply to beneficial uses 1 and 2 along roadways.

Routine repair and replacement of roadways constructed using beneficial use materials would not constitute generation of beneficial use by-products triggering the bill's requirements if the by-products remained or were reused at the same roadway and were used in a manner that met the definition of beneficial use 1 or 2, as appropriate. If the by-products would be reused at a place other than the same roadway, the requirements applicable to generators of beneficial use by-products would have to be met.

However, a person who actively managed and reused a beneficial use by-product that had already been used in compliance with Part 115 could rely on analytical data from the prior use. The bill's requirements regarding notice and reporting to the DEQ (described below) would apply only if the category of beneficial use would change. For beneficial use 2, the requirement that the materials be covered by concrete, asphalt, or six inches of gravel would apply at the time of placement and use. The development of potholes, shoulder erosion, or similar deterioration would not result in a violation of Part 115. If road materials containing beneficial use by-products were ground, reheated, or melted for reuse, the requirements of Part 55 (Air Pollution Control) would have to be met. The bill provides that Part 115 would not prohibit the Michigan Department of Transportation (MDOT) from seeking additional data or information for road building materials or from requiring that those materials met MDOT specifications and standards.

Beneficial Use 3. For beneficial use 3, the material that was offered for sale or use annually would have to be registered or licensed under Part 85 or Public Act 162 of 1955 (which House Bill 5402 (H-1) would amend). In addition to the information required under Part 85 or Public Act 162, the following information would have to be submitted to MDARD with the license or registration application:

- Directions for use to ensure that the material was applied at an agronomic rate that had been reviewed by a certified crop advisor.
- A laboratory analysis report.

The laboratory analysis report would have to contain sampling results that demonstrated that the material did not pose harm to human health or the environment.

For a fertilizer, the report would have to include certain information used by a certified crop advisor to determine an agronomic rate consistent with GAAMPs. For a soil conditioner, the report would have to include scientifically acceptable data that gave reasonable assurance that the material would improve the physical nature of the soil by altering its structure by making soil nutrients more available or otherwise enhancing the soil media, resulting in beneficial crop response or other plant growth. For a liming material, the report would have to include scientifically acceptable data demonstrating that the material would correct soil acidity.

When a material was licensed or registered as required, the laboratory analysis report and the scientifically acceptable data submitted with a prior application could be resubmitted for a subsequent application unless the raw materials or processes used to generate the material changed in a way that could reasonably be expected to materially affect the report or data.

Open Dumping. The bill specifies that Part 115 would not authorize open dumping prohibited by the Federal Solid Waste Disposal Act.

Beneficial Use 2: Owner Responsibility. If a property owner had knowledge that a material had been used for beneficial use 2, before transferring the property, the owner would have to notify a prospective transferee of that fact, including the date and location of the use, if known. An owner's contractor, consultant, or agent who used a material on the property for beneficial use 2 would have to notify the owner, including the date and location of use.

Beneficial Use By-Product not Required. The bill specifies that Part 115 would not require the use of any beneficial use by-product, including the uses and by-products identified in the bill, by any governmental entity or any other person.

Notice & Report to the DEQ. If the amount of a beneficial use by-product used for beneficial use 2 as construction fill at a particular site would exceed 5,000 cubic yards, written notice would have to be submitted to the DEQ before the by-product was used at the site the first time. The generator of the by-product would have to submit the notice unless the generator transferred material to a broker. In that case, the broker would have to submit the notice.

By October 30 of each year, any generator or broker of more than 1,000 cubic yards of material used as beneficial use by-products for beneficial use 1, 2, or 4 in the immediately preceding period of October 1 to September 30, or any person that used or reused more than that amount of a source-separated material in that period, would have to submit to the DEQ a report containing all of the following information, as applicable:

- The business name, address, telephone number, and name of a contact person for the generator, broker, or other person.
- The types and approximate amounts of beneficial use by-products generated, brokered, and stored during that period.
- The approximate amount of beneficial use by-products shipped off site during that period and the uses and conditions of use.
- The amount of source-separated materials used or reused.

A generator or broker could designate the information regarding the types and amounts of by-products generated, brokered, stored, or shipped off site as confidential business information. If the scope of a request for public records under the Freedom of Information Act (FOIA) included information designated as confidential, the DEQ promptly would have to notify the generator or broker of the request, including the date the Department received it. Pursuant to Section 5 of FOIA, the DEQ would have to issue a notice extending for 10 business days the period during which the Department would respond to the request. The DEQ would have to grant the request unless, within 12 business days after the Department received the request, the generator or broker demonstrated to the DEQ's satisfaction that the information should not be disclosed because it constituted a trade secret or secret process, or was production or commercial information whose disclosure would jeopardize the generator's or broker's competitive position. If there were a dispute over the release of information between the generator or broker and the person requesting it, the DEQ Director would have to grant or deny the request. The DEQ would have to notify the generator or broker of a decision to grant the request at least two days before the release of the requested information.

Approval of Materials & Uses. The bill would allow a person to request the DEQ, consistent with the definitions and other terms of Part 115, to approve a material, a use, or a material and use as a source-separated material; a beneficial use by-product for beneficial use 1, 2, 4, or 5; an inert material; a low-hazard industrial waste; or another material, use or material and use that could be approved under Part 115. Among other things, a person could request the DEQ to approve a use that did not qualify as beneficial use 2 as construction fill because the property was not nonresidential property or as construction fill, road base or soil stabilizer, or road shoulder material because the material exceeded four feet in thickness.

A request would have to contain a description of the material, including the process generating it; results of analyses of representative samples of the material for any hazardous substances that the person knew or had reason to believe could be present in the material, based on its source, its composition, or the process that generated it; and, if applicable, a description of the proposed use. The DEQ would have to approve or deny the

request within 150 days after receiving it, unless the parties agreed to an extension. If the DEQ determined that the request did not include sufficient information, within 60 days after receiving the request, the Department would have to notify the requester. The notice would have to specify the additional information required. The 150-day period would be tolled until the requestor submitted the specified information. If the DEQ approved a request, the approval would have to include the following statement: "This approval does not require any use of any beneficial use by-product by a governmental entity or any other person."

The DEQ could impose conditions and other requirements consistent with the purposes of Part 115 on an approved material and/or use that were reasonably necessary for the use. If a request were approved with conditions or other requirements, the approval would have to state them specifically. If the request were denied, the DEQ's denial would have to state with specificity, to the extent practical, all of the reasons for denial. If the DEQ failed to approve or deny a request within the 150-day period, the request would be considered approved.

A person requesting approval could seek review of any final DEQ decision pursuant to the Revised Judicature Act.

The DEQ would have to approve a material for a specified use as a beneficial use by-product if all of the following requirements were met:

- The material was an industrial or commercial material that was or had the potential to be generated in high volumes.
- The proposed use would serve a legitimate beneficial purpose other than providing a means to discard the material.
- A market existed for the material or there was a reasonable potential for the creation of a new market for it if it were approved as a beneficial use by-product.
- The material and use met all Federal and State consumer protection and product safety laws and regulations.

Approval also would be required if the material met all of the following conditions:

- Hazardous substances in the material did not pose a direct contact health hazard to humans.
- The material did not leach, decompose, or dissolve in a way that formed an unacceptably contaminated leachate (i.e., a leachate that exceeded either Part 201 generic residential groundwater drinking criteria or surface water quality standards established under Part 31).
- The material did not produce emissions that violated Part 55 or created a nuisance.

The DEQ could approve a material for a specified use as a beneficial use by-product if the material met the first set of requirements but failed to meet the second set of requirements, if the Department determined that the material and use were protective of the public health and environment. In making this determination, the DEQ would have to consider the potential for exposure and risk to human health and the environment given the nature of the material, its proposed use, and the environmental fate and transport of any hazardous substances in the material in soil, groundwater, or other relevant media.

The DEQ would have to approve a material as inert if all of the following requirements were met:

- The material was proposed to be used for a legitimate purpose other than a means to dispose of the material.
- Hazardous substance in the material did not pose a direct contact health hazard to humans.

- The material did not leach, decompose, or dissolve in a way that formed an unacceptably contaminated leachate upon contact with water or other liquids likely to be found at the area of placement, disposal, or use.
- The material did not produce emissions that violated Part 55 or created a nuisance.

The Department could approve a material as inert if it met the legitimate purpose requirement but failed to meet the other requirements if the Department determined that the material was protective of the public health and environment. In making the determination, the Department would have to consider the same factors it would have to consider with respect to a proposed use of a by-product.

The DEQ would have to approve a material as a low-hazard industrial waste if hazardous substances in representative samples of the material did not leach, using the higher of the following:

- One-tenth the hazardous waste toxicity characteristic threshold as set forth in Part 111 rules.
- Ten times the generic residential groundwater drinking water cleanup criteria as set forth in Part 201 rules.

The DEQ would have to approve a material as a source-separated material if the person seeking the designation demonstrated that the material could be recycled or converted into raw materials or new products by being returned to the original process from which it was generated, by use or reuse as an ingredient in an industrial process to make a product, or by use or reuse as an effective substitute for a commercial product. To qualify as a source-separated material, the material, product, or reuse would have to meet all Federal and State consumer protection and product safety laws and regulations, and could not create a nuisance. If a material would be applied to or placed on land, or would be used to produce products that were applied to or placed on land, the material would have to qualify as an inert material or beneficial use by-product.

Any written determination by the DEQ made before the bill took effect designating a material as an inert material, an inert material appropriate for general reuse, an inert material appropriate for reuse at a specific location, an inert material appropriate for specific reuse instead of virgin material, a source-separated material, a site-separated material, a low-hazard industrial waste, or a non-solid-waste material, would remain in effect according to its terms or until forfeited in writing by the person who received the determination. Upon termination, expiration, or forfeiture, the requirements of Part 115 in effect at that time would control. The amendments made by the bill would not rescind, invalidate, limit, or modify any prior determination in any way.

Administration & Enforcement Authority. The Michigan Department of Agriculture and Rural Development, rather than the DEQ, would have to administer and enforce Part 115 in connection with any material that was licensed or registered under Part 85 or Public Act 162 of 1955.

Municipal Solid Waste Incinerator Ash. As a rule, municipal solid waste incinerator ash must be disposed of in a landfill that meets requirements prescribed under Part 115. Under the bill, this would not apply to municipal solid waste incinerator ash that met criteria specified by the DEQ and that was used as daily cover at a licensed disposal facility.

Part 201: Environmental Remediation

Part 201 provides for the cleanup of "facilities", i.e., property that has been contaminated by the release of hazardous substances. Part 201 also prescribes criteria to establish liability for the cost of response activities on such property.

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. The bill would exclude from the definition an area, place, or property where hazardous substances in concentrations above unrestricted residential cleanup criteria were present due only to the placement, storage, or use of beneficial use by-products or inert materials at the area, place, or property in compliance with Part 115.

The term "release" includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injective, escaping, leaching, dumping, or disposing of a hazardous substance into the environment, or the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance. The bill would exclude from the definition the placement, storage, or use of beneficial use by-products or inert materials at the site of storage or use if in compliance with Part 115.

Under Part 201, a property owner or operator who knows the property is a facility and who is liable must report the release of a hazardous substance to the DEQ within 24 hours after obtaining knowledge of it. Upon confirmation of a release or threat of release of a substance that is regulated by MDARD, the DEQ must notify MDARD, which must initiate the necessary response activity to immediately stop or prevent further release at the site. The Department of Agriculture and Rural Development must consult with the DEQ in the development of response activities, and give the DEQ information necessary to identify substances regulated by MDARD. "Substance regulated by the department of agriculture and rural development" means a pesticide, fertilizer, or soil conditioner as defined in Part 85. The bill also would include a liming material as defined in Public Act 162 of 1955.

(Under that Act, "liming material" means all or any form of limestone, lime rock, marl, slag, by-product lime, industrial or factory refuse lime, water softener lime, and any other material manufactured, prepared, sold, or distributed primarily for correcting soil acidity.)

Part 31: Water Resources Protection

Part 31 requires the DEQ to establish pollution standards for lakes, rivers, streams, and other waters of the State in relation to the public use to which they may be put, as it considers necessary, and to issue permits that will assure compliance with State standards to regulate municipal, industrial, and commercial discharges or storage of any substance that might affect water quality.

Section 3112 prohibits a person from discharging any waste or waste effluent into the waters of the State without a permit from the DEQ, and requires the Department to condition the continued validity of a permit upon the permittee's meeting the effluent requirements that the Department considers necessary to prevent unlawful pollution by the dates it considers reasonable and necessary and to assure compliance with applicable Federal law and regulations.

Under Section 3113, a person who seeks new or increased use of the State's waters for sewage or other waste disposal purposes must file with the DEQ an application containing specified information. If a permit is granted, the DEQ must condition it upon restrictions the Department considers necessary to adequately guard against unlawful uses of the State's waters.

Under the bill, notwithstanding Sections 3112 and 3113, a permit under Part 31 would not be required for either of the following:

- The use of a beneficial use by-product for beneficial use 3 in compliance with Part 115.
- The storage of a beneficial use by-product in compliance with Part 115.

Part 85: Fertilizers

License Application. Under Part 85, a person may not manufacture or distribute fertilizer in Michigan, except specialty fertilizer and soil conditioners, except as authorized by a license issued by MDARD. Part 85 prescribes in the information that must be included in the license application. Under the bill, if the fertilizer were a beneficial use by-product intended for beneficial use 3 under Part 115, the application also would have to include the same information the bill would require to be submitted to MDARD with an application for a license or registration of such a by-product.

Storage. Part 85 authorizes MDARD to promulgate rules regarding the bulk storage of fertilizers. Under the bill, if storage of a material used as a beneficial use by-product for beneficial use 3 under Part 115 met the storage requirements of that part, the storage would be exempt from a particular commercial fertilizer bulk storage regulation under the Michigan Administrative Code.

House Bill 5401

Part 201 of NREPA provides that certain people are liable for the release of a hazardous substance, including a person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of a hazardous substance owned or possessed by that person, by any other person, at a facility owned or operated by another person and containing the hazardous substance. Under the bill, this provision would not include a person who stored or used, or arranged for the storage or use of, a beneficial use by-product or inert material in compliance with Part 115.

House Bill 5402 (H-1)

Under Public Act 162 of 1955, every lot, package, or parcel of liming material sold, offered, or exposed for sale or distributed within Michigan must have, in a conspicuous place on the outside, a legible and plainly written statement certifying the following:

- The net weight of the contents of the package, lot, bag, sack, carton, container, or bulk lot.
- The exact, complete name of the product.
- The name and principal address of the manufacturer or person responsible for placing the commodity on the market.
- The minimum neutralizing value in terms of calcium carbonate.
- The degree of fineness.

Before any liming material is sold or offered for sale, the manufacturer, importer, or party who causes it to be sold or offered for sale in Michigan must file with the MDARD Director a certified copy of the required analysis and certificate. If requested by the Director, the certified copy of analysis must be accompanied by a sealed package containing at least two pounds of the liming material with an affidavit that it is a representative sample of the liming material to be sold or offered for sale.

Under the bill, if the liming material were a beneficial use by-product intended for beneficial use 3 under Part 115 of NREPA, the filing also would have to include the information House Bill 5400 (H-3) would require to be submitted to MDARD with an application for a license or registration of such a by-product.

MCL 324.8504 et al. (H.B. 5400)
324.20126 (H.B. 5401)
290.532 (H.B. 5402)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would have an indeterminate, but negative fiscal impact on the Department of Environmental Quality (DEQ), and no fiscal impact on local units of government. House Bill 5400 (H-3) would create a number of new responsibilities for the DEQ, which would generally result in new administrative costs related to approving uses of materials, classifying materials, and other functions. These costs would be borne by existing DEQ resources.

The bills also would have a minimal fiscal impact on the Department of Agriculture and Rural Development. Although the bills would provide no additional revenue for the Department, the Department should be able to carry out its proposed responsibilities under existing resources.

Fiscal Analyst: Bruce Baker
Josh Sefton

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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.