

Legislative Analysis



COAL ASH FACILITIES

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House Bill 6269 as enacted
Public Act 640 of 2018
Sponsor: Rep. Gary Howell
Committee: Natural Resources
Complete to 7-16-19

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

BRIEF SUMMARY: House Bill 6269 amends Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act (NREPA) to add required compliance regulations found in the Michigan Administrative Code and Code of Federal Regulations (CFR) regarding coal ash. Briefly, the bill does the following:

- Ensures compliance with various rules of the Department of Environment, Great Lakes, and Energy (EGLE)¹ and CFR regarding coal ash impoundments, coal ash landfills, hydrogeological monitoring plans, detection monitoring programs, solid waste management programs, and inflow design flood control system plans.
- Assigns authority to EGLE to oversee the application process of an operating license by a coal ash landfill or impoundment, including the ability to allow and deny a license, revoke licenses, and run public hearings pertaining to the license applications.
- Imposes application fees on construction permits for coal ash impoundments.
- Imposes specific duties on owners or operators for maintenance of facilities or disposal areas and closures of licensed coal ash landfills or impoundments.
- Requires financial assurance, trust funds, escrow accounts, perpetual care funds, and surcharges under certain circumstances.
- Creates the Coal Ash Care Fund.

FISCAL IMPACT: House Bill 6269 would increase costs and revenues for EGLE by designating EGLE as a regulatory authority for coal ash facilities in Michigan. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

In 2015, a federal law went into effect that allowed state oversight of coal combustion residuals and coal ash disposal. This allowed the transfer from the Environmental Protection Agency (EPA) to EGLE for the monitoring of coal ash pollution in Michigan. However, the federal regulations were revised in 2018. Legislation was proposed to bring Michigan standards and regulations in line with the federal standards so that Michigan can regulate coal combustion residuals and coal ash disposal in the state instead of the EPA.

¹ The bill refers to the Department of Environmental Quality (DEQ), which was renamed the Department of Environment, Great Lakes, and Energy (EGLE) by Executive Reorganization Order No. 2019-1, effective April 22, 2019. This summary refers to EGLE throughout.

THE CONTENT OF THE BILL:

Under Part 115 of NREPA, a person must obtain a construction permit from EGLE before establishing a disposal area. Part 115 also grants EGLE authority to promulgate administrative rules to carry out the responsibilities imposed upon it in NREPA.

Construction permit fee

To obtain a construction permit, a person must submit an application and a fee. The application fee varies depending on the kind of disposal area that will be constructed. The bill adds a fee of \$1,000 for a new ***coal ash impoundment*** and a fee of \$750 for a vertical or ***lateral expansion*** of a coal ash impoundment.

Coal ash means any of the following:

- Material recovered from system for the control of air pollution from, or the noncombusted residue remaining after, the combustion of coal or coal coke (which is a fuel derived from coal), including coal bottom ash, fly ash, boiler slag, fuel gas desulfurization materials, or fluidized-bed combustion ash.
- Residuals removed from coal ash impoundments.

Coal ash impoundment means a natural topographic depression, man-made excavation, or diked area that is *not* a landfill and that is designed to hold and, *after* October 14, 2015, accepted an accumulation of coal ash and liquids or other materials approved by EGLE for treatment, storage, or disposal and did not receive EGLE approval of its closure. A coal ash impoundment in existence *before* October 14, 2015, that receives waste after December 28, 2018 (the effective date of the bill), *and* that does not have a permit pursuant to Part 31 (Water Resources Protection) of NREPA is considered an open dump beginning December 28, 2020, unless the owner or operator has completed closure of the coal ash impoundment *or* obtained an operating license for the coal ash impoundment.

Lateral expansion refers to a horizontal expansion of the solid waste boundary of any of the following:

- A landfill, other than a coal ash landfill, if the expansion is beyond the limit established in a construction permit or engineering plans approved by the Solid Waste Control Agency before January 11, 1979.
- A ***coal ash landfill***, if the expansion is beyond the limit established in a construction permit issued after December 28, 2018, or the horizontal limits of coal ash in place on or before October 14, 2015. ***Coal ash landfill*** refers to a landfill that is used for the disposal of coal ash and may also be used for the disposal of inert materials and construction material used for purposes of meeting the definition of *beneficial use 4* or other materials approved by EGLE.²
- A coal ash impoundment, if the expansion is beyond the limit established in a construction permit or the horizontal limits of coal ash in place on or before October 14, 2015.

² *Beneficial use 4* is defined at MCL 324.11502(6).

EGLE rules

The bill adds a new section to ensure compliance with EGLE administrative rules. A new coal ash landfill or impoundment or new lateral expansion of a coal ash landfill or impoundment must comply with the requirements of R 299.4304, 299.4305, and 299.4307 through 299.4317 of the Michigan Administrative Code.³ However, the minimum design standard for a new coal ash landfill or impoundment or new lateral expansion of a coal ash landfill or impoundment is *only* subject to R 299.4307(4)(b), and *not* (4)(a), (c), or (d). This condition means that a new coal ash landfill or impoundment or new lateral expansion of a coal ash landfill or impoundment may only use a composite liner.

Additionally, a new coal ash landfill or impoundment or new lateral expansion of a coal ash landfill or impoundment must comply with the location requirements that are set forth in R 299.4411 through 299.4413 and 299.4415 through 299.4418,⁴ with the caveat that the landfill, impoundment, or expansion must maintain a permanent minimum clearance of not less than five feet from the bottom of the primary liner to the natural groundwater level.

EGLE cannot issue a construction permit for a new coal ash landfill or impoundment or new lateral expansion of a coal ash landfill or impoundment unless all of the following apply:

- The landfill, impoundment, or expansion complies with the rules described above.
- The landfill, impoundment, or expansion complies with R 299.4306.
- The owner or operator has provided to EGLE a detection monitoring program in a hydrogeological monitoring plan that complies with R 299.4440 through 299.4445 and 299.4905 through 299.4908, as applicable. The waiver described in R 299.4440(2) is not available to coal ash impoundments or landfills. The constituents monitored in the program must include boron, calcium, chloride, fluoride, iron, pH, sulfate, and total dissolved solids, and must be analyzed by methods specified in “Standard Methods for the Examination of Water and Wastewater, 19th edition,” as published by the EPA, or by other methods approved by the director of EGLE or his or her designee.
- R 299.4440(3) and (6) does not apply to coal ash impoundments or landfills.
- Groundwater sampling related to coal ash impoundments or landfills must not be field filtered.
- The landfill, impoundment, or expansion, respectively, complies with one of the following:
 - Section 11519b(2) and (4), if applicable.
 - A schedule, approved by EGLE, of remedial measures, including a sequence of actions or operations, that leads to compliance with Part 115 within a reasonable time period but not later than December 28, 2020.

³ These rules pertain to various *Type III Landfill* specifications, including designs, location restrictions, leachate standards, and operating requirements. R 299.4105 defines *Type III Landfill* as a sanitary landfill that is not a municipal solid waste landfill or hazardous waste landfill, but includes construction and demolition waste landfills, industrial waste landfills, and landfills that accept waste other than household waste, municipal solid waste incinerator trash, or hazardous waste from conditionally exempt small quantity generators.

⁴ These rules pertain to *Type II Landfill* location restrictions. R 299.4105 defines *Type II Landfill* as a sanitary landfill that is a municipal solid waste landfill and includes a municipal solid waste incinerator ash landfill.

Disposal construction and operating application process and fees

Under NREPA, a person is generally required to dispose of solid waste at a disposal area licensed under Part 115. The bill adds that waste placement in existing landfill units must be consistent with past operating practices or modified practices to ensure good management. Additionally, *existing coal ash impoundments* are exempt from the licensing requirements of Part 115 until December 28, 2018.

Existing coal ash impoundment refers to coal ash impoundments that received coal ash before December 28, 2018, and that, as of that date, have not initiated elements of closure (including dewatering, stabilizing residuals, or placing an engineered cover) or that are otherwise closed pursuant to the Part 31 permit or R 299.4309 and therefore capable of receiving coal ash in the future. A coal ash impoundment that has initiated closure is considered an open dump, unless the owner or operator completes closure of the impoundment or obtains an operating license for the impoundment by December 28, 2020.

Under NREPA, an applicant is required at the time of application for a license for a disposal area to submit to a health officer or EGLE a certification under the seal of a licensed professional engineer verifying that the construction of the disposal area has proceeded according to the approved plans. The bill adds that any applicant for a license for an *existing coal ash impoundment* is exempt from this requirement. However, when applying for a license, an applicant still must submit documentation in the applicant's possession or control regarding the construction of the impoundment.

Previously, an application fee of \$2,500 was submitted with Type III landfill operating license applications and then deposited in the Perpetual Care Account of the Solid Waste Management Fund. However, the bill adds separate operating licensure fees for both coal ash landfills and coal ash impoundments. A \$13,000 fee accompanies an application for an operating license by a coal ash landfill or impoundment and reoccurs on the anniversary of the issuance of the license. These fees collected by EGLE are deposited in the Coal Ash Care Fund.

Upon receipt of an application, EGLE must immediately send notice to the clerk of the municipality where the disposal area is located and the designated regional solid waste management planning agency and publish a notice in a newspaper that has a major circulation in the area. These notice requirements must meet the following additional requirements:

- Include a map indicating the location of as well as a description of the disposal area.
- Specify the location where the complete application package may be reviewed and copies obtained.
- Indicate that EGLE will accept comments for 45 days after publication of the notice.
- Indicate that EGLE will hold a public meeting in the area of the disposal area if any of the following occur within 15 days after the notice is published:
 - A written request for a public meeting is submitted to EGLE by the applicant or a municipality.

- EGLE determines that there is significant public interest in or controversy over the application or that a public meeting is appropriate for any other reason.

A public meeting described above must be held after EGLE makes a preliminary review of the application and all pertinent data, but before an operating license is issued or denied. During its review, EGLE must consider input provided at the public meeting.

If an application for an operating license is returned to the applicant as administratively incomplete, EGLE must refund the entire fee. An applicant for a license may resubmit the application, plus additional information as needed to address the reasons for denial, without having to pay an additional application fee, but only if the resubmission is within 12 months after the license denial or withdrawal.

Hydrogeological programs and federal compliance

EGLE cannot issue a license to a *coal ash landfill* or a *coal ash impoundment* unless the applicant has provided both of the following:

- An approved hydrogeological monitoring program that complies with R 299.4440 through 299.4445,⁵ if applicable, and R 299.4905 through 299.4908⁶ and that includes a detection monitoring program that meets the requirements for receiving a construction permit.
- All reports and other information required under 40 CFR 257.90 for the preceding five years, as applicable. Based on this information, EGLE must determine whether any additional licensing requirements are necessary for the coal ash landfill or impoundment. Any report or other information available on the applicant's website or already submitted to EGLE is not required to be provided with the application.

EGLE cannot issue a license to a *coal ash landfill* unless an applicant provides a run-on and run-off control system plan that complies with 40 CFR 257.81(c)(1) and was prepared and certified by a professional engineer pursuant to R 299.4910(9). This plan must be revised every five years in compliance with 40 CFR 257.81(c)(4).⁷

EGLE cannot issue a license to a *coal ash impoundment* unless the applicant provides an inflow design flood control system plan that complies with 40 CFR 257.82(c)(1) and was prepared and certified by a professional engineer pursuant to R 299.4910(9). This plan must be revised every five years in compliance with 40 CFR 257.82(c)(4).⁸ EGLE also cannot issue a license for a coal ash impoundment that is not a low-hazard-potential coal ash impoundment unless the applicant provides an emergency action plan that complies with 40 CFR 257.74(a)(3)⁹ and was prepared and certified by a professional engineer pursuant to R 299.4910(9).

⁵ These rules pertain to Type II Landfill groundwater monitoring and corrective action.

⁶ These rules pertain to landfill hydrologic monitoring plans and groundwater monitoring.

⁷ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-81.pdf>

⁸ <https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol25/pdf/CFR-2015-title40-vol25-sec257-82.pdf>

⁹ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-74.pdf>

EGLE cannot issue a license to a coal ash landfill or impoundment unless the landfill or impoundment complies with the construction permit and response action plan sections in the bill or a schedule approved by EGLE of remedial measures that leads to compliance with Part 115 within a reasonable time period, but not later than December 28, 2020.

Foreign solid waste

Under NREPA, a person cannot accept for disposal solid waste or municipal solid waste incinerator ash that is not generated in the United States, unless it is explicitly authorized in the approved county solid waste management plan.

The bill adds that the above general prohibition does not apply to coal ash that is accepted for disposal at a captive facility that, after December 28, 2018, accepts only nonhazardous industrial waste generated only by the owner of the landfill or coal ash impoundment or its corporate affiliates.

Inspections

Upon receipt of a license application, EGLE, or a health officer or an authorized representative of a health officer, is required to inspect the site and cannot license a landfill facility operating without an approved hydrogeologic monitoring program. Under the bill, a coal ash impoundment also cannot be licensed without an approved hydrogeologic monitoring program.

Previously, EGLE could revoke a license or issue a timetable or schedule for compliance for the *facility or operation*. Under the bill, EGLE can do any of the following:

- Revoke a license.
- Deny a license to a coal ash impoundment that has not been previously licensed under Part 115.
- Issue a timetable or schedule to provide for compliance for the *landfill or coal ash impoundment*, to ultimately lead to compliance within a reasonable time period but not more than one year.

Solid waste management plan exception

EGLE cannot issue an operating license for a new disposal area within a planning area unless a solid waste management plan has been approved pursuant to sections 11536 and 11537. Previously, *EGLE could issue an operating license for a disposal area designed to receive ashes produced in connection with the combustion of fossil fuels for electrical power generation* in the absence of an approved county solid waste management plan. The bill replaces this language with the provision that the requirement does *not prohibit the issuance of a license for a captive facility that is a coal ash impoundment or a coal ash landfill*.

Restrictive covenants

Certain requirements and specifications apply to landfills and their facilities when an instrument imposes a restrictive covenant upon the land. The bill adds a new section to apply almost all of the same requirements and specifications on coal ash impoundments and their disposal areas. The bill also adds that an industrial waste landfill may accept

industrial waste of different types and from different generators, but cannot accept hazardous waste generated by conditionally exempt small quantity generators.

EGLE rules and federal compliance

The owner or operator of an existing coal ash impoundment or a coal ash impoundment licensed under Part 115 must do all of the following:

- Comply with R 299.4311.
- Ensure that the impoundment is not in violation of Part 31 (Water Resources Protection) or Part 55 (Air Pollution Control) of NREPA and does not create a nuisance.
- Comply with the inspection requirements of 40 CFR 257.83, as applicable.¹⁰ The inspection report required by 40 CFR 257.83(b)(2) must be certified by a professional engineer pursuant to R 299.4910(9).
- Comply with the requirements of 40 CFR 257.74(a)(2) relating to periodic hazard potential classification assessments.¹¹ The reports must be certified by a professional engineer pursuant to R 299.4910(9), and the assessment must be revised every five years pursuant to 40 CFR 257.74(f)(2).
- Maintain in the operating record a history of construction that complies with 40 CFR 257.74(c)(1)(i) through (xi), which lists required information to be kept with the design and construction plans.
- Comply with 40 CFR 257.74(d) regarding periodic structural stability assessments. The reports must be certified by a professional engineer pursuant to R 299.4910(9), and the assessment must be revised every five years pursuant to 40 CFR 257.74(f)(2).
- Comply with 40 CFR 257.74(e) regarding periodic safety factor assessments. The reports must be certified by a professional engineer pursuant to R 299.4910(9), and the assessment must be revised every five years pursuant to 40 CFR 257.74(f)(2).
- Implement the detection monitoring program required by Part 115.
- As applicable, comply with requirements of 40 CFR 257.82 regarding hydrologic and hydraulic capacity requirements for surface impoundments.¹² The inflow design flood control plan must be certified by a professional engineer pursuant to R 299.4910(9) and be revised at least every five years pursuant to 40 CFR 257.82(c)(4).

The owner or operator of an existing coal ash impoundment or landfill or a coal ash impoundment or landfill licensed under Part 115 must do all of the following:

- Maintain a fugitive dust control plan that complies with 40 CFR 257.80(b)¹³ and is certified by a professional engineer pursuant to R 299.4910(9). An annual fugitive dust control report must be completed in compliance with 40 CFR 27.80(c).
- Maintain an up-to-date operating record in compliance with 40 CFR 257.105.¹⁴
- Maintain a publicly accessible internet site in compliance with 40 CFR 257.107.¹⁵

¹⁰ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-83.pdf>

¹¹ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-74.pdf>

¹² <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-82.pdf>

¹³ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-80.pdf>

¹⁴ <https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol25/pdf/CFR-2015-title40-vol25-sec257-105.pdf>

¹⁵ <https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol25/pdf/CFR-2015-title40-vol25-sec257-105.pdf>

The owner or operator of an existing coal ash landfill or a coal ash landfill licensed under Part 115 must comply with both of the following:

- As applicable, the inspection requirements of 40 CFR 257.84.¹⁶ The inspection report required under 40 CFR 257.84(b)(2) must be certified by a professional engineer pursuant to R 299.4910(9).
- As applicable, the run-on and run-off control requirements of 40 CFR 257.81.¹⁷ The run-on and run-off control system plan must be certified by a professional engineer pursuant to R 299.4910(9) and be revised every five years pursuant to 40 CFR 257.81(c)(4).

By December 28, 2019, the owner or operator of an existing coal ash landfill or impoundment must assess whether the landfill or impoundment is located in an unstable area as defined in R 299.4409.¹⁸ If the owner or operator determines that the landfill, impoundment, or a unit thereof is located in an unstable area, the owner or operator must stop placing coal ash into the landfill or unit and proceed to close the landfill or unit in compliance with Part 115 and the Part 115 rules.

Good management practices and closure

Placement of coal ash and associated liquids into an existing coal ash impoundment or one licensed under Part 115 is permitted and must be conducted consistent with good management practices, as further described below.

If the required detection monitoring program confirms a statistically significant increase over background for one or more of the listed constituents, the owner or operator must comply with R 299.4440 and 299.4441, including, as applicable, conducting assessment monitoring and preparing a response action plan in compliance with R 299.4442. The constituents to be monitored in the plan include those listed above as well as the following: antimony; arsenic; barium; beryllium; cadmium; chromium; cobalt; copper; lead; lithium; nickel; mercury; molybdenum; selenium; silver; thallium; vanadium; zinc; and radium 226 and 228 combined. These additional constituents must be analyzed by methods specified in the EPA's "Standard Methods for the Examination of Water and Wastewater, 19th edition," or other methods approved by the director or his or her designee.

If obligated to prepare a response action plan, the owner or operator of a coal ash landfill or impoundment must comply with R 299.4442 through 299.4445, as applicable.

The owner or operator of a coal ash landfill must place landfill cover materials described in R 299.4304 over the entire surface of each portion of the final lift within six months after the final placement of coal ash within the landfill or landfill unit.

¹⁶ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-84.pdf>

¹⁷ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-81.pdf>

¹⁸ *Unstable area* means a location that is susceptible to natural or human-induced events or forces which are capable of impairing the integrity of some or all of the landfill structural components that are responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas that are susceptible to mass movements, and karst terrains.

The owner or operator of a coal ash impoundment must begin to implement closure, as described in R 299.4309(7), within six months after the final placement of coal ash within the impoundment and must diligently pursue the closure. The closure must be completed in compliance with 40 CFR 257.102(f)(1) and (2).¹⁹

Coal ash impoundments or landfills may be closed as a Type III landfill pursuant to the applicable rules or by removal of coal ash from the impoundment.

If a coal ash impoundment is closed before December 28, 2020, and EGLE accepts the certification of closure, the owner is not required to provide financial assurance or pay into a perpetual care fund (see below).

Closure by removal of coal ash is complete when the owner or operator certifies either of the following:

- Compliance with the requirements of 40 CFR 257.102(c).²⁰
- That testing confirms that constituent concentrations remaining in the coal ash impoundment or landfill unit and any concentrations of soil or groundwater affected by any releases do not exceed the lesser of the applicable standards, as adopted by EGLE under Part 115 or the groundwater protection standards established under 40 CFR 257.95(h)²¹ and EGLE accepts the certification **or**, if the constituent concentrations **do** exceed those standards, EGLE has approved a remedy consistent with R 299.4444 and 299.4445.

Upon completion of the closure by removal, the financial assurance and perpetual care fund are terminated, the owner or operator is not required to provide financial assurance or contribute to a perpetual care fund, and any claim to the assurance fund by EGLE must be terminated and released. The termination and release do not impair EGLE's authority to require financial assurance for corrective action under NREPA.

Groundwater contamination

If the assessment monitoring of an unlined coal ash impoundment, as defined in the bill, confirms the presence of groundwater contamination exceeding maximum contaminant levels under section 6 of the Safe Drinking Water Act or a groundwater protection standard established under 40 CFR 257.95(h), the owner or operator must do all of the following:

- Notify EGLE within 14 days.
- Cease accepting coal ash at the impoundment within 180 days.
- Begin to implement closure as described in R 299.4309(7) within 180 days and diligently pursue the closure. The closure must be completed in compliance with 40 CFR 257.102(f)(1) and (2).
- Prepare a response action plan in compliance with R 299.4442 and submit it to EGLE for review and approval. Once the plan is approved by EGLE, the owner or operator must implement and diligently pursue it and must comply with R 299.4443 to 299.4445.

¹⁹ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-74.pdf>

²⁰ <https://www.gpo.gov/fdsys/pkg/CFR-2017-title40-vol27/pdf/CFR-2017-title40-vol27-sec257-102.pdf>

²¹ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-95.pdf>

Financial assurance

Under the bill, financial assurance established for an existing coal ash impoundment must be in the form of a bond in an amount equal to \$20,000 per acre within the impoundment boundary. The bond amount cannot be less than \$20,000 or more than \$1.0 million. The bond must provide assurance for the maintenance of the finished coal ash impoundment for a period of 30 years after the impoundment or any approved portion is completed. In addition to the bond, a perpetual care fund must be maintained. For applications for a license to operate submitted after December 28, 2020, an applicant that demonstrates that it meets the requirements of R 299.9709 may utilize the financial test under that rule for an amount not exceeding 95% of the closure, postclosure, and corrective action cost estimate.

The bill allows the owner or operator of a coal ash impoundment to establish a trust or escrow account to fulfill the financial assurance requirements.

The bill allows the owner or operator of a coal ash impoundment to request that financial assurance be terminated if postclosure maintenance and monitoring have been completed.

Perpetual care funds

The owner or operator of a landfill must establish and maintain a perpetual care fund for 30 years after final closure of the landfill, as well financial assurance for type II landfills. Many obligations are imposed to facilitate this requirement.

The bill includes an owner or operator of a coal ash impoundment, as well as type III landfills, in many of these requirements. Some of these obligations include the following:

- The maximum required fund amount of \$1,156,000.
- Increasing the amount of the fund by 7.5 cents per ton or cubic yard, or portion thereof, for certain materials that are disposed of, but only until the fund reaches the maximum required fund amount.
- Having prior written approval of EGLE to disburse any funds to the owner or operator, as well as providing notice of requests, denials, or change in ownership to the custodian of the fund.
- Enabling EGLE to withdraw from the fund if the owner or operator does not take the necessary actions to protect the environment or public health, safety, or welfare.
- Disbursement of the fund upon approval by EGLE to terminate financial assurance.
- Ability to use a perpetual care fund bond.

Surcharges

The owner or operator of a landfill must pay a surcharge in specific amounts based on the kind of facility and the cubic yards of waste collected.

The bill adds coal ash impoundments to these requirements and separates the required surcharges based on whether the landfill or coal ash impoundment is a captive facility.

Solid waste management plan

The bill adds to the current solid waste management plan regulations that an existing captive type III coal ash landfill or existing captive coal ash impoundment, or both, is

considered consistent with and included in the solid waste management plan for the county or region in which the disposal area is located if it continues to accept waste generated only by the owner of the disposal area and meets either of the following requirements:

- The disposal area was issued a construction permit and licensed for operation under Part 115.
- The disposal area met local land use law requirements when initially sited or constructed.

Additionally, a disposal area permitted, licensed, or otherwise in existence on the date of approval of the solid waste management plan for the planning area where the disposal area is located is considered to be consistent with the plan and included in the plan.

Solid Waste Management Fund

The Solid Waste Management Fund consists of both a solid waste staff account and a perpetual care account. Money is expended from either account, upon appropriation, only for specific purposes. EGLE is also required to prepare and submit a report that details the activities of the previous fiscal year funded by the staff account. Included in this report is the percentage and number of construction permit applications and operating license applications determined to be administratively complete for which a final decision was made within 30 days of receipt for construction permits and 30 days of receipt for operating licenses as required in Part 115. (The bill shortens these time periods from, respectively, 120 days and 90 days.) The amount of revenue in the staff account at the end of the fiscal year is also required to be in the report, and the bill adds that the revenue in the newly created Coal Ash Care Fund must also be listed.

Coal Ash Care Fund

Finally, the bill creates the Coal Ash Care Fund within the state treasury in the same fashion as the Solid Waste Management Fund. Additionally, money from the Coal Ash Care Fund must be expended in the same manner as money expended from the Solid Waste Staff Account within the Solid Waste Management Fund.

MCL 324.11502 et al.

FISCAL INFORMATION:

House Bill 6269 would increase costs and revenues for EGLE by designating EGLE as a regulatory authority for coal ash facilities in Michigan. The department would be charged with permitting facility expansion, new construction, and facility operation until closure. The cost of these new regulatory mandates is unclear. Owners or operators of active coal ash landfills and impoundments would have to pay an annual fee of \$13,000 to the newly created Coal Ash Care Fund. Facilities would also be required to maintain an assurance bond between \$20,000 and \$1.0 million, dependent on facility acreage, and maintain a perpetual care fund not to exceed \$1.2 million for 30 years after facility closure, mirroring perpetual care requirements for type III landfills.

It is uncertain whether this fee revenue will exceed, equal, or fall short of the costs created by these new regulatory requirements. The new Coal Ash Care Fund would be expended for these costs, including permit application review, relevant advisory analyses, permit program administration, site inspections and audits, and regulatory enforcement. EGLE estimates that about 15 facilities would be subject to these fee requirements, with that number declining as facilities achieve closure in the coming years.

ARGUMENTS:

For:

Supporters of the bill argued that having EGLE take over the duties from the EPA for permitting and regulating coal ash impoundments and landfills will streamline the process and facilitate communication. As a result, faster responses from EGLE will occur, which will help minimize negative environmental effects.

Against:

Opponents of the bill argued that, in order for EGLE to properly oversee coal ash activity in the state, Michigan laws must meet the minimum federal requirements. However, federal regulations often change, which could render this bill obsolete and require EPA oversight once again.

Critics also argued that the bill does not ensure that harmful chemicals will be prevented from contaminating groundwater and that stronger procedures should be included for regulating coal ash landfill liners.

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Austin Scott

■ 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.