

COAL ASH FACILITIES

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House Bill 6269 (H-1) as reported from committee

Sponsor: Rep. Gary Howell

Committee: Natural Resources

Complete to 11-27-18

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

BRIEF SUMMARY: House Bill 6269 would amend 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 regarding coal ash. Briefly, the bill would do the following:

- Ensure compliance with various Department of Environmental Quality (DEQ) rules and the Code of Federal Regulations regarding coal ash impoundments, coal ash landfills, hydrogeological monitoring plans, detection monitoring programs, solid waste management programs, and inflow design flood control system plans.
- Assign authority to the DEQ 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.
- Impose application fees on construction permits for coal ash impoundments.
- Impose specific duties upon owners or operators for maintenance of facilities or disposal areas and closures of licensed coal ash landfills or impoundments.
- Require financial assurance, trust funds, escrow accounts, perpetual care funds, and surcharges under certain circumstances.
- Create the Coal Ash Care Fund.

FISCAL IMPACT: House Bill 6269 would increase costs and revenues for the Department of Environmental Quality by designating the DEQ 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. The DEQ estimates that about 15 facilities would be subject to these fee requirements, with that number declining as facilities achieve closure in the coming years.

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 the DEQ for the monitoring of coal ash pollution in Michigan. However, the federal regulations were revised in 2018. Legislation has been 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.

THE CONTENT OF THE BILL:

Currently under Part 115 of NREPA, a person is required to obtain a construction permit from the DEQ before establishing a disposal area. Part 115 also grants the DEQ authority to promulgate administrative rules to carry out the responsibilities imposed upon the DEQ in NREPA.¹

Construction permit fee

To obtain a construction permit, a person must submit an application and a fee. The application fee currently varies depending on the kind of disposal area that will be constructed. The bill would add 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 impoundment would mean 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 the DEQ for treatment, storage, or disposal and did not receive DEQ approval of its closure. A coal ash impoundment in existence *before* October 14, 2015 that receives waste after the effective date of this bill, *and* that does not have a permit pursuant to Part 31 (Water Resources Protection) of NREPA, would be considered an open dump beginning two years after the effective date of the bill, 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 would refer 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 the effective date of this bill or the horizontal limits of coal ash in place on or before October 14, 2015. ***Coal ash landfill*** would refer 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 the DEQ.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.

¹ MCL 324.11538

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

Coal ash would mean 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.

DEQ rules

The bill would add a new section to ensure compliance with DEQ administrative rules (***Part 115 Rules***). A *new* coal ash landfill or lateral expansions of a coal ash landfill would have to comply with the requirements of Rules 299.4304, 299.4305, and 299.4307 through 299.4317.³ However, a lateral expansion of a coal ash landfill would *only* be subject to 299.4307(4)(b), and *not* (a), (c), or (d). This condition would mean that a lateral expansion of a coal ash landfill could only use a composite liner.

Part 115 Rules would mean Rules 299.4101 through 299.4922 of the Michigan Administrative Code, including any amendments to or replacements of those rules.

Additionally, a new coal ash landfill or coal ash impoundment, or lateral expansion of such, would have to comply with the location requirements set forth in Rules 299.4411 through 299.4413 and 299.4415 through 299.4418.⁴ The bill would add a caveat, though, requiring that the landfill or impoundment maintain a permanent minimum clearance from the bottom of the primary liner of not less than five feet to the natural groundwater level.

The DEQ could not issue a construction permit for a new coal ash landfill or new coal ash impoundment, or lateral expansion of such, unless all of the following apply:

- The landfill, impoundment, or expansion, respectively, complies with the previously-stated Rules in this section, above.
- The landfill, impoundment, or expansion, respectively, complies with Rule 299.4306.
- The owner or operator has provided to the DEQ a detection monitoring program in a Hydrogeological Monitoring Plan that complies with Rules 299.4440 through 299.4445 and 299.4905 through 299.4908, as applicable. The constituents monitored in the program would include boron, calcium, chloride, fluoride, iron, pH, sulfate, and the total dissolved solids. They would be analyzed by methods specified in “Standard Methods for the Examination of Water and Wastewater, 19th edition,” as published by the United States Environmental Protection Agency (EPA). However, the bill would also allow the elements to instead be monitored by other methods approved by the director or his or her designee.
- The landfill, impoundment, or expansion, respectively, complies with the detection monitoring program (described below), if applicable, or a schedule issued by the DEQ of remedial measures, including a sequence of actions or operations, that leads to compliance

³ These rules pertain to various ***Type III Landfill*** specifications, including, but not limited to, designs, location restrictions, leachate standards, and operating requirements. Rule 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. Rule 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.

with this part within a reasonable time period but not more than two years after the effective date of the bill.

Disposal construction and operating application process and fees

Currently under NREPA, a person is generally required to dispose of solid waste at a disposal area licensed under Part 115. The bill would add that waste placement in existing landfill units would have to be consistent with past operating practices or modified practices to ensure good management. Additionally, *existing coal ash impoundments* would be exempt from the licensing requirements of Part 115 until two years after the effective date of the bill.

Existing coal ash impoundment would refer to coal ash impoundments that effectively have a permit pursuant to Part 31, that received coal ash before the effective date of the bill, and that, as of that date, have not initiated elements of closure (including dewatering, stabilizing residuals, or placing an engineered cover), or are otherwise closed pursuant to its Part 31 permit or pursuant to Rule 299.4309 and therefore capable of receiving coal ash in the future.

Under NREPA, an applicant is currently required at the time of application for a license for a disposal area to submit to a health officer or the DEQ 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 would add 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 would still be required to submit documentation in the applicant's possession or control regarding the construction of the impoundment.

Currently, an application fee of \$2,500 is submitted with Type III landfill operating license applications and is then deposited in the Perpetual Care Account of the Solid Waste Management Fund. However, the bill would add separate operating licensure fees for both coal ash landfills and coal ash impoundments.

A \$13,000 fee would accompany an application for an operating license by a coal ash landfill or impoundment and would reoccur on the anniversary of the issuance of the license. If the anniversary fell on a legal holiday, then payment would be owed on the next business day. These fees collected by the DEQ would be deposited in the Coal Ash Care Fund.

Upon receipt of an application, the DEQ would be required to immediately send notice to the clerk of the municipality where the disposal area is located and the designated regional solid waste management planning agency as well as publish a notice in a newspaper that has a major circulation in the area. These notice requirements would have to 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 could be reviewed and copies could be obtained.
- Indicate that the DEQ would accept comments for 45 days after the date of publication of the notice.
- Indicate in the notice that the DEQ would hold a public hearing in the area of the disposal area, but only if a written request is submitted either by the applicant or municipality within 30 days after the date of publication of the notice, or by a petition submitted to the DEQ

containing signatures of at least 10% of the number of registered voters of the municipality where the disposal area is located who voted in the last gubernatorial election. The petition would be validated by the clerk of the municipality, and the public hearing would be held after the DEQ made a preliminary review of the application and all pertinent data, but before an operating license is issued or denied.

If an application for an operating license is returned to the applicant as administratively incomplete, the bill would require the DEQ to 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

The DEQ would not be able to issue a license to a *coal ash landfill* or a *coal ash impoundment* unless the following occurred:

- An applicant provided an approved hydrogeological monitoring program that complies with Rules 299.4440 through 299.4445,⁵ if applicable, and Rules 299.4905 through 299.4908⁶ of the Michigan Administrative Code and that includes a detection monitoring program that meets the requirements for receiving a construction permit.
- If applicable, the landfill or impoundment complies with Rules 299.4440 and 299.4441 (if the required detection monitoring program confirmed a statistically significant increase over background for one or more of the constituents listed above) *or* Rules 299.4442 through 299.4445 (if obligated to prepare a response action plan) of the Part 115 Rules, *or* a schedule issued by the DEQ of remedial measures, including a sequence of actions or operations, that leads to compliance with this part within a reasonable time period but not more than two years after the effective date of the bill.

The DEQ also would not be able to issue a license to a *coal ash landfill* unless an applicant provided the DEQ with a run-on and run-off control system plan that complies with 40 CFR 257.81(c)(1) and was prepared and sealed by a registered professional engineer. This plan would be revised at least every five years in compliance with 40 CFR 257.81(c)(4).⁷

The DEQ would further be unable to issue a license to a *coal ash impoundment* unless the applicant provided the DEQ an inflow design flood control system plan that complies with 40 CFR 257.82(c)(1) and was prepared and sealed by a registered professional engineer. This plan would be revised at least every 5 years in compliance with 40 CFR 257.82(c)(4).⁸

Finally, the DEQ could not issue a license for a coal ash impoundment that is not a low-hazard-potential coal ash impoundment unless the applicant provided the DEQ with an emergency action plan that complies with 40 CFR 257.74(a)(3).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>

Foreign solid waste

Currently under NREPA, a person is prohibited from accepting 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 would add that the above general prohibition would not apply to coal ash that is accepted for disposal at a captive facility that, after the effective date of this bill, 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, the DEQ, or a health officer or an authorized representative of a health officer, is currently required to inspect the site and cannot license a landfill facility operating without an approved hydrogeologic monitoring program. The bill would include that a coal ash impoundment also could not be licensed without an approved hydrogeologic monitoring program.

The DEQ also may currently revoke a license or issue a timetable or schedule for compliance for the *facility or operation*. The bill would amend these abilities to state that the DEQ may 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 1 year.

Solid waste management plan exception

The DEQ is currently prohibited from issuing 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 within Part 115. Additionally, *the DEQ may 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. Under the bill, the previous emphasized sentence would be replaced with the exception that this requirement would *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 currently apply to landfills and their facilities when an instrument imposes a restrictive covenant upon the land. The bill would add a new section to apply almost all of the same requirements and specifications on coal ash impoundments and their disposal areas.

The bill also would add that an industrial waste landfill could accept industrial waste of different types and from different generators, but could not accept hazardous waste generated by conditionally exempt small quantity generators.

DEQ rules and federal compliance

The bill would require that *existing* coal ash impoundments comply with the Rule 299.4311 within the Part 115 Rules. Additionally, the owner or operator would have to 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.

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

A license issued by the DEQ for the operation of a coal ash impoundment or landfill would have to include the following requirements from 40 CFR Part 257, Subpart D (Standards for the disposal of coal combustion residuals in landfills and surface impoundments):

- Recordkeeping and maintaining an operating record.
- Making the operating record public via the internet.
- Dust control.
- Run-on/run-off control.
- Regular and annual inspections.
- Groundwater monitoring.
- Corrective action.
- Closure and postclosure care.

Duties of an owner or operator and closure of a licensed coal ash landfill or impoundment

The owner or operator of a licensed coal ash *landfill or impoundment* would be required to do both of the following:

- Maintain a fugitive dust plan that complies with 40 CFR 257.80(b) and was prepared and sealed by a registered professional engineer.
- Once per year, prepare or have prepared a fugitive dust control report in compliance with 40 CFR 257.80(c).¹⁰

The owner or operator also would be required to maintain both an up-to-date operating record in compliance with 40 CFR 257.105¹¹ and publicly accessible internet site in compliance with 40 CFR 257.107.¹²

If the required detection monitoring program confirmed a statistically significant increase over background for one or more of the constituents listed above, then the owner or operator would have to comply with Rules 299.4440 and 299.4441 of the Part 115 Rules. This would include, as applicable, conducting assessment monitoring and preparation of a response action plan in compliance with Rule 299.4442. The constituents to be monitored in the plan include those listed above as well as the following 19 constituents: 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 would have to be analyzed by methods specified in “Standard Methods for the

¹⁰ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-80.pdf>

¹¹ <https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol25/pdf/CFR-2015-title40-vol25-sec257-105.pdf>

¹² <https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol25/pdf/CFR-2015-title40-vol25-sec257-105.pdf>

Examination of Water and Wastewater, 19th edition” (published by the EPA), or by other methods approved by the director or his or her designee.

The owner or operator would be required to comply with Rules 299.4442 through 299.4445 of the Part 115 Rules, as applicable, but only if obligated to prepare a response action plan.

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

Duties of an owner or operator and closure of a licensed coal ash impoundment

The owner or operator of a licensed coal ash *impoundment* would also have to comply with both of the following:

- The inspection requirements of 40 CFR 257.83, as applicable.¹³
- The requirements of 40 CFR 257.74(a)(2) relating to periodic hazard potential classification assessments.¹⁴ The assessment reports would be prepared and sealed by a registered professional engineer.

The owner or operator would further be required to do all of the following:

- Maintain on site 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 assessment reports would be certified by a professional engineer pursuant to Rule 299.4910(9) of the Part 115 Rules.
- Comply with 40 CFR 257.74(e) regarding periodic safety factor assessments. The assessment reports also would be certified by a professional engineer pursuant to Rule 299.4910(9).

Additionally, the owner or operator would have to begin to implement closure, as described in Rule 299.4309 of the Part 115 Rules, within six month after the final placement of coal ash within the impoundment and would have to diligently pursue the closure in compliance with 40 CFR 257.102(f)(1) and (2).¹⁵

Under the bill, financial assurance established for an existing coal ash impoundment would be \$20,000 per acre within the impoundment boundary in the form of a bond. However, the bond amount could not be less than \$20,000 or more than \$1.0 million. The bond would 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 would be maintained. If an impoundment were closed by two years after the effective date of the bill, and the DEQ accepted the certification of closure, then the owner would not be required to provide financial assurance or pay into a perpetual care fund.

¹³ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-83.pdf>

¹⁴ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-74.pdf>

¹⁵ <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec257-74.pdf>

Duties of an owner or operator and closure of a licensed coal ash landfill

The owner or operator of a licensed coal ash *landfill* also would be required to comply with the inspection requirements described in 40 CFR 257.84, as applicable.¹⁶ Additionally, within one year after the effective date of the bill, the owner or operator would have to assess whether the landfill is located in an unstable area, as defined in Rule 299.4409 of the Part 115 Rules.¹⁷ If the owner or operator determines that the landfill or unit is located in an unstable area, the owner or operator would have to 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.

The owner or operator also would be required to place landfill cover materials that are described in Rule 299.4304 over the entire surface of each portion of the final list within six months after the final placement of coal ash within the landfill or landfill unit.

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

- Compliance with the requirements of 40 CFR 257.102(c).¹⁸
- 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 applicable standards, as adopted by the DEQ under Part 115, and the DEQ accepts the certification, *or*, if the constituent concentrations do exceed those standards, the DEQ had approved a remedial action plan consistent with Rules 299.4444 and 299.4445 of the Part 115 Rules.

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

Financial assurance

Currently, the DEQ cannot issue a license to operate a type II landfill unless the applicant demonstrates that for any new or existing unit at the facility, the combination of the perpetual care fund, bonds, and the financial capability of the applicant as evidenced by a financial test, provides financial assurance.

Since April 9, 1997, the DEQ cannot issue a license to operate a type II landfill *unless* the applicant demonstrates that the combination of perpetual care fund, bonds, and the financial capability of the applicant provides adequate financial assurance for any new or existing unit at the facility. Additionally, an applicant may utilize a financial test for an amount up to, but not exceeding 70% of the closure, postclosure, and corrective action cost estimate. The bill would add that for applications submitted *after* two years after the effective date of this bill, an applicant that demonstrates that it meets the requirements of Rule 299.9709 could utilize the

¹⁶ <https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol25/pdf/CFR-2015-title40-vol25-sec257-84.pdf>

¹⁷ *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.

¹⁸ <https://www.gpo.gov/fdsys/pkg/CFR-2017-title40-vol27/pdf/CFR-2017-title40-vol27-sec257-102.pdf>

financial test under that rule for an amount not exceeding 95% of the closure, postclosure, and corrective action cost estimate.

The owner or operator of a landfill may also currently request that financial assurance be terminated if postclosure maintenance and monitoring has been completed. The bill would include an owner or operator of a coal ash impoundment.

Trust funds and escrow accounts

The owner or operator of a landfill may currently establish a trust or escrow account to fulfill the financial assurance requirements, and the bill would add that an owner or operator of a coal ash impoundment may do so as well.

Perpetual care fund

The owner or operator of a landfill is currently required to 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 would include 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 the DEQ 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 the DEQ 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 the DEQ to terminate financial assurance.
- Ability to use a perpetual care fund bond.

Surcharges

The owner or operator of a landfill is currently required to pay a surcharge in specific amounts based on the kind of facility and how much cubic yards of waste is collected. The bill would add coal ash impoundments to these requirements and clearly separate the required surcharges based on whether the landfill or coal ash impoundment is a captive facility.

Solid waste management plan

The bill would add 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, would be 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 any 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 would be considered to be consistent with the plan and included in the plan.

Solid Waste Management Fund

Currently, the Solid Waste Management Fund is created within the state treasury and 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.

Additionally, the DEQ is 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 *120* days of receipt for construction permits and *90* days of receipt for operating licenses as required in Part 115. However, the bill would lessen these time periods to *30* days, as required under Part 13 (MCL 324.1305).

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 would add that the revenue in the newly created Coal Ash Care Fund also be listed.

Coal Ash Care Fund

Finally, the bill would create 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 would 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.

ARGUMENTS:

For:

Supporters of the bill argue that having the DEQ 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 the DEQ will occur, which will help minimize negative environmental effects.

Against:

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

Critics also argue that this 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.

POSITIONS:

A representative of Consumers Energy testified in support of the bill. (10-3-18)

The following entities indicated support for the bill:

- Michigan Chamber of Commerce (10-3-18)
- Michigan Manufacturers Association (9-26-18)
- Michigan Municipal Electric Association (10-3-18)

A representative of the Department of Environmental Quality testified with no position. (10-3-18)

A representative of the Michigan Environmental Council testified in opposition to the bill. (10-3-18)

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.