



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 6269 (Substitute H-3 as passed by the House)
Sponsor: Representative Gary Howell
House Committee: Natural Resources
Senate Committee: Natural Resources

Date Completed: 12-12-18

CONTENT

The bill would amend Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act to do the following:

- **Allow a captive facility to accept coal ash generated in a county other than the county in which it was generated.**
- **Provide requirements for a new coal ash landfill, a new coal ash impoundment, or a new lateral expansion of a coal ash landfill or impoundment.**
- **Require the Department of Environmental Quality (DEQ) to issue a construction permit for a new coal ash landfill or new coal ash impoundment or a new lateral expansion of a coal ash landfill or coal ash impoundment only if the applicant met certain requirements.**
- **Provide the DEQ with criteria for making determinations on applications.**
- **Require the DEQ notice to the community in which the new coal ash landfill or new coal ash impoundment was proposed.**
- **Require an applicant to pay a \$13,000 fee.**
- **Require the owner or operator of a coal ash impoundment to comply with Federal regulations and laws.**
- **Require the owner or operator of a coal ash impoundment to provide financial assurance.**
- **Create the Coal Ash Care Fund, and provide for the disposition of money from the Fund.**

Definitions

"Coal ash" means the material recovered from systems for the control of air pollution from, or the noncombusted residue remaining after, the combustion of coal, including, bottom ash, fly ash, boiler slag, or fluidized-bed combustion ash.

Under the bill, "coal ash" would mean, generally, any of the following: a) material recovered from systems for the control of air pollution from, or the noncombusted residue remaining after, the combustion of coal or coal coke, including bottom ash, fly ash, boiler slag, flue gas desulfurization materials, or fluidized-bed combustion ash; and b) residuals removed from coal ash impoundments.

"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 Department for treatment, storage, or disposal and did not receive Department approval of its closure. A coal ash impoundment in existence before October 14, 2015, that received waste after the bill's effective date, and that did not have a permit pursuant to Part 31 (Water Resources Protection), would be considered an open dump beginning two years after the bill's effective date unless the owner or operator had completed closure of the coal ash impoundment or obtained an operating license for the coal ash impoundment.

"Captive facility" would mean a landfill or coal ash impoundment that accepts for disposal, and accepted for disposal during the previous calendar year, only nonhazardous industrial waste generated only by the owner of the landfill or coal ash impoundment.

"Coal ash landfill" would mean 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 four or other materials approved by the Department.

"Existing coal ash impoundment" would mean a coal ash impoundment that received coal ash before the bill's effective date, and that, as of that date, has not initiated elements of closure that include dewatering, stabilizing residuals, or placement of an engineered cover or otherwise closed pursuant to its Part 31 permit or pursuant to R 299.4309 of the Part 115 rules and, therefore, is capable of receiving coal ash in the future. A coal ash impoundment that had initiated closure would be considered an open dump unless the owner or operator had completed closure of the coal ash impoundment obtained an operating license for the coal ash impoundment within two years after the bill's effective date.

"Existing disposal area" would mean any of the following:

- A disposal area that has in effect a construction permit under Part 115.
- A disposal area that had engineering plans approved by the Director before January 11, 1979.
- An industrial waste landfill that was authorized to operate by the Director or by court order before October 9, 1993.
- An industrial waste pile that was located at the site of generation on October 9, 1993.
- An existing coal ash impoundment.

"Existing landfill unit" or "existing unit" would mean any landfill unit that received solid waste on or before October 9, 1993.

"Industrial waste" would mean solid waste that is generated by manufacturing or industrial processes and that is not a hazardous waste regulated under Part 111 (Hazardous Waste Management).

"Industrial waste landfill" would mean a landfill that is used for the disposal of industrial waste that has been characterized for hazard and that has been determined to be nonhazardous under Part 111.

"Lateral expansion" would mean 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 bill's effective date or the horizontal limits of coal ash in place on or before October 14, 2015.
- 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.

"Low-hazard-potential coal ash impoundment" would mean a coal ash impoundment that is a diked surface impoundment, the failure or misoperation of which is expected to result in no loss of human life and low economic or environmental losses principally limited to the impoundment owner's property.

"New coal ash impoundment" would mean a coal ash impoundment that first receives coal ash after the bill's effective date.

"New disposal area" would mean a disposal area that requires a construction permit under Part 115 and includes all of the following:

- A disposal area, other than an existing disposal area, that is proposed for construction.
- For a landfill, a lateral expansion, vertical expansion, or other expansion that results in an increase in the landfill's design capacity.
- A new coal ash impoundment, or a lateral expansion of a coal ash impoundment beyond the placement of waste as of October 14, 2015.
- For a disposal area other than landfills or coal ash impoundments, an enlargement in capacity beyond that indicated in the construction permit or in engineering plans approved before January 11, 1979.
- For any existing disposal area, an alteration of the disposal area to a different disposal area type than had been specified in the previous construction permit application or in engineering plans that were approved by the Director or his or her designee before January 11, 1979.

"Sanitary landfill" would mean a type of disposal area consisting of one or more landfill units and the active work areas associated with those units. Sanitary landfills would be classified as a type II landfill or a type III landfills. A type II landfill would be a municipal solid waste landfill that included a municipal solid waste incinerator ash landfill. A type III landfill, which would be any landfill that was not a municipal solid waste landfill or hazardous waste landfill and included all of the following:

- A construction and demolition waste landfill.
- An industrial waste landfill.
- A landfill that accepted waste other than household waste, municipal solid waste incinerator ash, or hazardous waste from conditionally exempt small quantity generators.
- A coal ash landfill.
- An existing coal ash impoundment that was closed or was actively being closed as a landfill pursuant to the Part 115 rules.

"Sharps" would mean needles, syringes, scalpels, and intravenous tubing with needles attached.

Establishment of Disposal Area

Under the Act, a person proposing the establishment of a disposal area must apply for a construction permit to the Department through the health officer (a full-time administration officer of a certified health department). The application must be accompanied by an engineering plan and a construction permit application fee.

Under the bill, for a new coal ash impoundment, the applicant would have pay \$1,000. A construction permit application for a lateral or vertical expansion of a coal ash impoundment would have to be accompanied by a \$750 fee.

New Coal Ash Landfill, Impoundment Standards

The bill would require a new coal ash landfill, a new coal ash impoundment, or a new lateral expansion of a coal ash landfill or impoundment to comply with the specified Part 115 rules pertaining to type III landfills (R 299.4304, R 299.4305, and R299.4307 to R 299.4317), except that the new landfill's or impoundment's minimum design standard would have to use a composite liner and not another liner listed in the Code.

The bill also would require a new coal ash landfill or coal ash impoundment or a new lateral expansion of a coal ash landfill or coal ash impoundment to comply with the location requirements of the Part 115 rules pertaining to type II landfills (R 299.4411 to R 299.4413 and R 299.4415 to R 299.4418), except that the landfill, impoundment, or lateral expansion would have to 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 a new lateral expansion of a coal ash landfill or coal ash impoundment unless the following applied:

- The landfill, impoundment, or expansion, respectively, complied with the above requirements, as applicable.
- The landfill, impoundment, or expansion, respectively, complied with the Part 115 rule that regulates type III landfill water quality performance standards (R 299.4306).
- The owner or operator had provided to the Department a detection monitoring program in a hydrogeological monitoring plan that complied with the Part 115 rules that regulate type II landfill and landfill groundwater monitoring and corrective actions (R 299.4440 to R 299.4445 and R 299.4905 to R 299.4908), as applicable.
- The Administrative Rules pertaining to alternative groundwater monitoring parameters (R 299.4440(3) and R 299.4440(6)) would not apply to coal ash impoundments or coal ash landfills.
- Groundwater sampling related to coal ash impoundments or coal ash landfills would not be able to be field filtered.

For the monitoring program, the waiver for sampling and analysis for heavy metals described in the relevant Part 115 rule (R 299.4440(2)) would not be available to coal ash impoundments or coal ash landfills. The constituents monitored in the detection monitoring program would have to include all of the following: i) boron, ii) calcium, iii) chloride, iv) fluoride, v) iron, vi) pH, vii) sulfate, and viii) total dissolved solids.

In addition, the landfill, impoundment, or expansion, respectively, would have to comply with one of the following:

- A requirements for confirming a statistically significant increase over background for certain constituents, if applicable.
- A requirements for an owner or operator of a coal ash landfill or coal ash impoundment who was obligated to prepare a response action plan, if applicable.
- A schedule, issued by the DEQ, of remedial measures, including a sequence of actions or operations, that leads to compliance with Part 115 within a reasonable time period but not more than two years after the bill's effective date.

The constituents listed in Part 115 would have to be analyzed by methods specified in "Standard Methods For The Examination Of Water And Wastewater, 19th edition," published by the United States Environmental Protection Agency (EPA), or by other methods approved by the Director or his or her designee.

Solid Waste Disposal Licensing

The Act requires a person to dispose of solid waste at a disposal area licensed under Part 115 unless a person is permitted by State law or rules promulgated by the DEQ to dispose of solid waste at the site of generation. The bill would require waste placement in existing landfill units to be consistent with past operating practices or modified practices to ensure good management.

The Act prohibits a person from conducting, managing, maintaining, or operating a disposal area within the State except as authorized by an operating license issued by the Department pursuant to Part 13 (Permits). In addition, a person may not conduct, manage, maintain, or operate a disposal area contrary to an approved solid waste management plan, or contrary to a permit, license, or final order issued under Part 115. A person who intends to conduct, manage, maintain, or operate a disposal area must submit a license application to the Department through a certified health department. The bill specifies that existing coal impoundments would be exempt from the licensing requirements of Part 115 for two years after the bill's effective date.

The applicant, at the time of application for a disposal area license, must submit to a health officer or the DEQ a certification verifying that the construction of the disposal area has proceeded according to the approved plan. Under the bill, an applicant for a license for an existing coal ash impoundment would be exempt from this requirement but, when applying for a license, would have to submit documentation in the applicant's possession or control regarding the construction of the impoundment.

An application for an operating license by a coal ash landfill or coal ash impoundment would have to be accompanied by a fee of \$13,000. On the anniversary of the issuance of the operating license, while the operating license remained in effect, the coal ash landfill owner or operator or the coal ash impoundment owner or operator would have to pay the Department a fee of \$13,000. If the anniversary of the issuance of the operating license fell on a legal holiday, the fee would have to be paid on the next business day. The Department would have to deposit the fees in the Coal Ash Care Fund.

After receiving a license application for either a coal ash impoundment or a coal ash landfill, the Department would have to do all of the following:

- Immediately send notice to the clerk of the municipality where the disposal area was located and the designated regional solid waste management planning agency.
- Publish a notice in a newspaper having major circulation in the vicinity of the disposal area.

The notices would have to meet all of the following requirements:

- Include a map indicating the location of the disposal area and a description of the disposal area.
- Specify the location where the complete application package could be reviewed and where copies could be obtained.

- Indicate that the DEQ would accept comments for 45 days after the notice's publication date.

The notices also would have to indicate that the DEQ would have to hold a public hearing in the area of the disposal area if, within 30 days after the date of publication, any of the following occurred:

- A written request for a hearing was submitted to the DEQ by the applicant or a municipality.
- A petition requesting a hearing and containing a number of signatures equal to not less than 10% of the number of registered electors of the municipality where the disposal area was located who voted in the last gubernatorial election is submitted to the Department.
- The Department determined that there was a significant public interest in or known public controversy over the application or that for any other reason a public meeting was appropriate.

The clerk of the municipality would have to determine the validity of a petition. A public hearing would have to be held after the DEQ made a preliminary review of the application and all pertinent data and before an operating license was issued or denied.

If an application were returned to the applicant as administratively incomplete, the DEQ would have to refund the entire fee. An applicant, within 12 months after a license denial or withdrawal of a license application, could resubmit the application with the additional information as needed to address the reasons for denial, without having to pay an additional application fee.

Hydrogeological Monitoring Program

The Department could not issue a license to a coal ash landfill or a coal ash impoundment unless the applicant had provided to the Department both of the following:

- An approved hydrogeological monitoring program that complied with the Part 115 rules that regulate type II landfill and landfill groundwater monitoring, if applicable, and corrective actions (R 299.4440 to R 299.4445 and R 299.4905 to R 299.4908), and included a detection monitoring program that met the requirements of a construction permit for a new coal ash landfill or new coal ash impoundment.
- All reports and other information required under Federal regulations for the preceding five years, as applicable.

Based on that information, the DEQ would have to determine whether any additional licensing requirements were necessary for the coal ash landfill or coal ash impoundment.

The Department could not issue a license to a coal ash landfill unless the applicant had provided to the DEQ a run on and run-off control system plan that complied with Federal regulations and was prepared and sealed by a registered professional engineer. This plan would have to be revised at least every five years in compliance with 40 CFR Part 257.

The Department could not issue a license to a coal ash impoundment unless the applicant had provided to the Department an inflow design flood control system plan that complied with 40 CFR Part 257 and was prepared and sealed by a registered professional engineer. This plan would have to be revised at least every five years.

The Department could not issue a license to a coal ash landfill or a coal ash impoundment unless that landfill or impoundment met all the requirements for a construction permit for a

new coal ash landfill or new coal ash impoundment and, if applicable, the requirements for an owner or operator of a coal ash landfill or a coal ash impoundment if he or she was obligated to prepare a response action plan or a schedule, issued by the DEQ, of remedial measures, including a sequence of actions or operations, that led to compliance with Part 115 within a reasonable time period but not more than two years after the bill's effective date.

The DEQ would not be able to issue a license for a coal ash impoundment that was not a low-hazard-potential coal ash impoundment unless the applicant had provided to the Department an emergency action plan that complied with 40 CFR Part 257 and was prepared and sealed by a registered professional engineer.

Waste from Outside the County

Under the Act, a person may not accept for disposal solid waste or municipal solid waste incinerator ash that is not generated in the county in which the disposal area is located unless the acceptance of solid waste or municipal solid waste incinerator ash that is not generated in the county is explicitly authorized in the approved county solid waste management plan. Under the bill, the prohibition would not apply to coal ash that was accepted for disposal at a captive facility that, after the bill's effective date, accepted only nonhazardous industrial waste generated only by the owner of the landfill or coal ash impoundment or its corporate affiliates.

Hydrogeological Monitoring

Under the bill, the DEQ could not license a landfill facility operating without an approved hydrogeologic monitoring program until it receives a hydrogeologic monitoring program and the results of the program. This requirement would apply to a coal ash impoundment. The Department would must use this information in conjunction with other information required by Part 115 or the rules promulgated under Part 115 to determine a course of action regarding licensing of the facility consistent with Solid Waste Disposal Act and with Part 115 and the Part 115 rules. In deciding a course of action, the DEQ must consider, at a minimum, the health hazards, environmental degradation, and other public or private alternatives.

The Department may do any of the following: a) revoke a license, or b) issue a timetable or schedule to provide for compliance for the landfill or coal ash impoundment, specifying a schedule of remedial measures, including a sequence of actions or operations, which leads to compliance with Part 115 within a reasonable time period but not more than one year.

The bill also would allow the Department to deny a license to a coal ash impoundment that had not been previously licensed under Part 115.

Captive Facility License

Part 115 prohibits the DEQ from issuing an operating license for a new disposal area within a planning area unless a solid waste management plan for that planning area has been approved and unless the disposal area complies with and is consistent with the approved solid waste management plan. The DEQ can 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 would eliminate the later provision.

Under the bill, the former prohibition would not prohibit the issuance of a license for a captive facility that was a coal ash impoundment or coal ash landfill in the absence of an approved county solid waste management plan.

Restrictive Covenant

Under the bill, when a disposal area that was a coal ash impoundment was licensed, an instrument that imposed a restrictive covenant upon the land involved would have to be executed by all of the owners of the tract of land upon which the impoundment was located or was to be located and the DEQ. If the land involved were owned by the State, the State Administrative Board would have to execute the covenant on its behalf. The restrictive covenant would have to be filed for record by the DEQ or a health officer in the office of the register of deeds of the county, or counties, in which the disposal area was located. The covenant would have to state that the land described in the covenant had been or would be used as a coal ash impoundment and that neither the property owners, their servants, agents, or employees, nor any of their heirs, successors, lessees, or assigns could engage in filling, grading, excavating, drilling, or mining on the property during the first 50 years following completion of the impoundment without the DEQ's authorization. In giving authorization, the Department would have to consider the original design, type of operation, material deposited, and any removal of the materials as part of the closure of the impoundment.

An industrial waste landfill could accept industrial waste of different types and from different generators, but would not be able to accept hazardous waste generated by conditionally exempt small quantity generators.

Federal Compliance

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

- Comply with the Part 115 rule that pertains to leaching tests to evaluate potential for groundwater contamination at unlined industrial waste landfills (R 299.4311).
- Ensure that the impoundment is not in violation of Part 31 (Water Resources Protection) or Part 55 (Air Pollution Control) and did not create a nuisance.
- Comply with the inspection requirements of 40 CFR Part 257, as applicable.
- Comply with the Federal regulations relating to periodic hazard potential classification assessments.
- Maintain on site a history of construction that complied with 40 CFR Part 257.
- Comply with 40 CFR Part 257 regarding periodic structural stability assessments.
- Comply with 40 CFR Part 257 regarding periodic safety factor assessments.
- Implement the detection monitoring program required by Part 115.

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

Comply with the following requirements consistent with 40 CFR Part 257: a) recordkeeping and maintaining an operating record; b) making the operating record publicly available on the internet; c) dust control; d) run-on/run-off control; e) regular and annual inspections; f) groundwater monitoring; g) corrective action; and h) closure and postclosure care.

- Maintain a fugitive dust plan.
- Once each year, prepare or have prepared a fugitive dust control report.
- Maintain an up-to-date operating record.
- Maintain an up-to-date publicly accessible internet site.

The owner or operator of an existing coal ash landfill or a coal ash landfill licensed under Part 115 shall comply with the inspection requirements of 40 CFR Part 257, as applicable.

Within one year after the bill's effective date, the owner or operator of an existing coal ash landfill or existing coal ash impoundment would have to assess whether the landfill or impoundment was located in an unstable area in of the landfill or impoundment. If the owner or operator determined that the landfill, the impoundment, or a unit was is located in an unstable area, the owner or operator would have to cease placing coal ash into the landfill, impoundment, or unit and proceed to close the landfill, impoundment, or unit in compliance with Part 115 and the rules promulgated under Part 115.

Placement of Coal Ash into an Existing Impoundment

Under the bill, placement of coal ash and associated liquids into an existing coal ash impoundment or coal ash impoundment licensed under Part 115 would be permitted and would have to be conducted consistent with good management practices as defined in the bill.

If the required detection monitoring confirmed a statistically significant increase over background for one or more of the constituents listed in the requirements for a construction permit for a new coal ash landfill or new coal ash impoundment, the owner and operator of a coal ash landfill or coal ash impoundment would have to comply with the Part 115 rules that regulate type II landfill and landfill groundwater monitoring (R 299.4440 and 299.4441), including, as applicable, conducting assessment monitoring and preparation of a response action plan in compliance with R 299.4442. The constituents to be monitored in the assessment monitoring program would have to include those listed in the bill.

These constituents would have to be analyzed by methods specified in "Standard Methods for the Examination of Water and Wastewater, 19th edition", published by the EPA, or by other methods approved by the Director or his or her designee.

If the owner or operator of a coal ash landfill or coal ash impoundment were obligated to prepare a response action plan, the owner or operator would have to comply with the Part 115 rules pertaining to a response action plan (R 299.4442 to R 299.4445), as applicable.

The owner or operator of a coal ash landfill would have to place landfill cover materials described in R 299.4304 over the entire surface of each portion of the final lift not more than six months after the final placement of coal ash within the landfill or landfill unit.

The owner or operator of a coal ash impoundment would have to begin to implement closure as described in the Part 115 rules not more than six months after the final placement of coal ash within the impoundment and would have to diligently pursue the closure. The closure would have to be completed in compliance with 40 CFR Part 257.

Coal ash impoundments or coal ash landfills could be closed as a type III landfill pursuant to the applicable rules or by removal of coal ash from the impoundment as described in Part 115.

If a coal ash impoundment were closed by the date that was two years after the bill's effective date and the DEQ accepted the certification of the closure, the owner was not required to provide financial assurance or pay into a perpetual care fund.

Closure by removal of coal ash would be complete when either of the following requirements are met:

- The owner or operator certified compliance with the requirements of 40 CFR Part 257.
- The owner or operator certified that testing confirmed that constituent concentrations remaining in the coal ash impoundment or landfill unit and any concentrations of soil or groundwater affected by released therefrom did not exceed the lesser of the applicable standards adopted by the Department or the groundwater protection standards established pursuant to 40 CFR Part 257 and the DEQ accepted the certification or, if the constituent concentrations did exceed those standards, the Department had approved a response action plan consistent with the Part 115 rules pertaining to the development and implementation of a remedial action plan (R 299.4444 and R 299.4445).

Upon completion of the closure by removal, the financial assurance and perpetual care fund would have to 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 or fund by the Department would be terminated and released. The termination and release would not impair the Department's authority to require, whether upon completion of closure or subsequently, financial assurance for corrective action as provided under NREPA.

Groundwater Contamination

If assessment monitoring of an unlined coal ash impoundment confirmed the presence of groundwater contamination in excess of maximum contaminant levels in effect as provided in the Safe Drinking Water Act, or a groundwater protection standard established under 40 CFR Part 257, the owner or operator of the coal ash impoundment would have to do all of the following:

- Notify the DEQ of the confirmation within 14 days.
- Cease acceptance of coal ash at the impoundment within 180 days after the confirmation.
- Begin to implement closure not more than 180 days after the confirmation and diligently pursue the closure.
- Prepare a response action plan and submit to the DEQ for review and approval.

After receiving DEQ approval, the owner or operator would have to implement and diligently pursue the response action plan and would have to comply with the Part 115 rules pertaining to corrective action (R 299.4443 to 299.4445). The closure would have to be completed in compliance with Part 257 of Title 4040 CFR Part 257.

For purposes of this section, "unlined coal ash impoundment" would mean a coal ash impoundment without a liner as described in 40 CFR Part 257 or another construction or system in place that was determined by the DEQ to be as protective as a liner as described in 40 CFR Part 257.

Financial Assurance

Generally, the DEQ may not issue a license to operate a disposal area unless the applicant has filed evidence of financial assurance.

Financial assurance established for an existing coal ash impoundment would have to be in the form of a bond in an amount equal to \$20,000 per acre within the impoundment boundary. However, the amount of the bond would have to be between \$20,000 and \$1.0 million. The bond would have to provide assurance for the maintenance of the finished coal ash impoundment for a period of 30 years after the coal ash impoundment or any approved portion was completed. In addition to the bond, a perpetual care fund would have to be

maintained.

Under the Act, the Department may not issue a license to operate a type II landfill unless the applicant demonstrates that for any new unit 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 in an amount specified by the Act. An applicant may use a financial test for an amount up to, but not exceeding 70% of the closure, postclosure, and corrective action cost estimate.

Under the bill, for applications for a license to operate submitted to the Department two years after the bill's effective date, an applicant that demonstrated that it met the requirements pertaining to a financial test and corporate guarantee for closure and postclosure (R 299.9709) could use the financial test under that rule for an amount not exceeding 95% of the closure, postclosure, and corrective action cost estimate.

Coal Ash Impoundment Trust Fund

The bill would impose on the owner or operator of a coal ash impoundment the same requirements the Act imposes on an owner or operator of a landfill under Section 11523b of NREPA. Under Section 11523b, the owner or operator of a landfill may establish a trust fund or escrow account to fulfill the requirements of Part 115. The trust fund or escrow account must be executed on a form provided by the Department.

Perpetual Care Fund

The owner or operator of a coal ash impoundment would have to establish and maintain a perpetual care fund for a period of 30 years after final closure of the coal ash impoundment as is currently required of a landfill owner or operator. A perpetual care fund could be established as a trust, an escrow account, or a perpetual care fund bond and could be used to demonstrate financial assurance for type II coal ash impoundments.

Surcharges

Part 115 requires the owner or operator of a landfill to pay certain surcharges. Under the bill, for landfills, those surcharges would remain the same.

Under the owner or operator of a coal ash impoundment that was not a captive facility would have to pay a surcharge of \$0.12 for each cubic yard or portion of a cubic yard of solid waste or municipal solid waste incinerator ash that was disposed of in the landfill or coal ash impoundment before October 1, 2019.

The owner or operator of a coal ash impoundment that was a captive facility would have to pay a surcharge of the following annual amounts:

- For a captive facility that received 100,000 or more cubic yards of waste, \$3,000.
- For a captive facility that received 75,000 or more but less than 100,000 cubic yards of waste, \$2,500.
- For a captive facility that received 50,000 or more but less than 75,000 cubic yards of waste, \$2,000.
- For a captive facility that received 25,000 or more but less than 50,000 cubic yards of waste, \$1,000.
- For a captive facility that received less than 25,000 cubic yards of waste, \$500.

The owner or operator of a coal ash impoundment that was not a captive facility would have to pay the surcharge within 30 days after the end of each quarter of the State fiscal year. The owner or operator of a coal ash impoundment that was a captive facility would have to pay the surcharge by January 31 of each year.

The owner or operator of a coal ash impoundment who was required to pay the surcharge would have to pass through and collect the surcharge from any person who generated the solid waste or who arranged for its delivery to the solid waste hauler or transfer facility notwithstanding the provisions of any contract or agreement to the contrary or the absence of any contract or agreement.

Surcharges collected would have to be forwarded to the State Treasurer for deposit in the Solid Waste Staff Account of the Solid Waste Management Fund established in Part 115.

Closure and Postclosure

The owner or operator of a disposal area must provide continuous financial assurance coverage until released from these requirements by the DEQ under Part 115.

The owner or operator of a landfill who has completed postclosure maintenance and monitoring of the landfill in accordance with this part, rules promulgated under Part 115, and approved postclosure plan may request that financial assurance be terminated. A person requesting termination of bonding and financial assurance must submit to the DEQ a statement that the landfill had been monitored and maintained in accordance with Part 115, rules promulgated under Part 115, and the approved postclosure plan for the postclosure period and must certify that the landfill is not subject to corrective action.

Under the bill, these provisions would apply to coal ash impoundments.

The bill would create the Coal Ash Care Fund within the State Treasury. The State Treasurer could receive money from any source for deposit into the Fund. The State Treasurer would have to direct the investment of the Fund, and credit to it interest and earnings from Fund investments.

Money would have to be spent from the Coal Ash Care Fund, upon appropriation, only for the following purposes relating to coal ash impoundments and coal ash landfills:

- Preparing generally applicable guidance regarding the solid waste permit and license program or its implementation or enforcement.
- Reviewing and acting on any application for a permit or license, permit or license revision, or permit or license renewal, including the cost of public notice and public hearings.
- Performing an advisory analysis.
- General administrative costs of running the permit and license program, including permit and license tracking and data entry.
- Inspection of licensed disposal areas and open dumps.
- Implementing and enforcing the conditions of any permit or license.
- Groundwater monitoring audits at disposal areas that are or have been licensed under Part 115.
- Reviewing and acting upon corrective action plans for disposal areas that were or would have been licensed under Part 115.
- Review of certifications of closure.
- Postclosure maintenance and monitoring inspections and review.
- Review of bonds and financial assurance documentation at disposal areas that were or would have been licensed under Part 115.

Annual Report

Coal Ash Care Fund

Under the bill, the report also would have to include the amount of revenue in the staff account of the solid waste management fund and the Coal Ash Care Fund at the end of the fiscal year.

By March 1 annually, the Department must prepare and submit to the Governor, the Legislature, the chairs of the standing committees of the Senate and House of Representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the Senate and House appropriations committees with primary responsibility for appropriations to the DEQ a report that details the activities of the previous fiscal year funded by the staff account of the Solid Waste Management Fund. This report must include, among other things, the amount of revenue in the staff account of the solid waste management fund at the end of the fiscal year.

MCL 324.11502 et al.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of Environmental Quality (DEQ) and no fiscal impact on local units of government. The bill would establish a regulatory and permitting program for coal ash landfills, the funding for which would come primarily from a \$13,000 annual fee paid by each regulated entity. The DEQ estimates approximately 15 facilities would be subject to these regulations and fees, resulting in estimated annual revenue of about \$195,000. The cost to the State to employ one full-time equated (FTE) employee is about \$120,000, so these fees would cover the employment costs of about 1.5 FTEs. If this program could be adequately staffed by 1.5 FTEs (in practice this could mean three people each spending 50% of their time on the program) then the fiscal impact of the bill on the DEQ would be neutral or potentially positive. If, however, additional FTEs were necessary, or if the program required significant overhead or other costs, then the fiscal impact on the DEQ would be negative and those additional costs would be borne by existing resources in the Waste Management and Radiological Protection Division of the DEQ.

Fiscal Analyst: 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.