

Legislature Considers New Environmental Fees

A series of bills pending in the Michigan Legislature would establish new fees for solid waste disposal facilities, National Pollutant Discharge Elimination System (NPDES) permits and groundwater discharges. The fees have been proposed by the Michigan Department of Environmental Quality (MDEQ) to provide funding for specific programs.

NPDES Permit Fees

Senate Bill 250 would create a national pollutant discharge elimination system program fund within the state treasury. Monies from the NPDES fund could only be used to administer the NPDES program, including:

- The development and maintenance of water quality standards;
- Permit development and issuance;
- Maintenance of program data;
- Ambient water quality monitoring to determine the effectiveness of permit requirements;
- Inspections and monitoring of NPDES source;
- Compliance assistance and education;
- Enforcement; and
- Program administration activities.

Senate Bill 252 would require all NPDES permit holders to pay annual fees totaling \$7.221 million for state fiscal year 2004. In subsequent years, the total amount of fees would be adjusted for inflation using the Detroit consumer price index.

MDEQ would send a notification to each person subject to the fee by November 30 of each year. Payment would be required by January 15 of the following year. Failure of MDEQ to send a fee assessment notification would not relieve that person's obligation to pay the fee. If

MDEQ does not meet the November 15 deadline for sending the fee assessment, the payment would be due not later than 45 days after receiving a fee notification.

The amount of fees owed by each facility would be determined by a point system. Each facility would receive a number of points based on factors such as:

- the amount of authorized discharge (in millions of gallons per day);
- the “complexity” of the discharge, as determined by the type of wastewater authorized to be discharged, the number of special conditions in the NPDES permit, the number of parameters required to be monitored, whether a wasteload allocation based effluent limit is included in the permit, the number of bioaccumulative chemicals of concern required by to monitored, the facility’s receiving water concentration and whether the permit contains limits on heat or temperature discharges;
- permittee-initiated actions, such as a request for a variance from a water quality standard, a request of a permit modification requiring public notice, or a request to use an discharge a water treatment additive.

If MDEQ considers a facility to be in “significant noncompliance” during the year covered by the fee, the number of fee points assigned to the facility would be increased by 10%.

“Significant noncompliance” would be defined as:

- Exceedances of pollutant limits at a given outfall for any two or more months during two consecutive quarters;
- Chronic violations of any monthly effluent limit for any four or more months during two consecutive quarters.;
- Any effluent violations that cause or have the potential to cause a water quality problem;
- Noneffluent violations, such as an unauthorized bypass, unpermitted discharge, or pass through of pollutants that causes or has the potential to cause a water quality problem;
- The failure of a publicly owned treatment works to implement or enforce an approved industrial pretreatment program;
- A violation of a narrative requirement or any other violation of concern to MDEQ;
- A permit schedule violation such as the failure to start construction, end construction or attain final compliance within 90 days after the scheduled date;

- A permit reporting violation that is not submitted at all or submitted 30 or more days late; and
- Enforcement order violations.

Incentive points would be deducted for facilities that meet conditions established by MDEQ that reduce MDEQ's effort in operating the NPDES program. Each qualifying action by a permittee would reduce the number of base fee points by 5% during the year in which the action is taken. Incentive points could be deducted for actions such as reporting of self-monitoring data and submitting application materials electronically.

A separate point system would assign points to municipal facilities.

The total amount of funds to be collected (i.e. \$7.221 million in FY 2004 adjusted for inflation in later years) would be divided by the total number of points assigned to all NPDES facilities. Each NPDES facility would then pay its pro-rata share of the fee based on the number of points assigned to it.

Late payment of fees would be subject to an interest penalty and possible enforcement action by MDEQ, potentially including suspension or revocation of the NPDES permit.

MDEQ has produced an Excel spreadsheet that lists preliminary fee estimates for all NPDES facilities based on the formula in SB 252, which can be accessed at www.michigan.gov/deq.

Landfill Surcharge

House Bill 4640 would require the owner or operator of a landfill to pay a surcharge on solid waste received by the landfill during the previous state fiscal year. The annual cumulative total of the surcharge would be \$3.9 million and would be annual adjusted for inflation beginning in 2005. By January 1 of each year, MDEQ would divide the total surcharge amount by the total number of cubic yards of solid waste received by Michigan solid waste landfills. Each landfill

owner or operator would then be required to pay its pro-rata share of the surcharge, based on the number of cubic yards of solid waste received during the previous year, by January 21 or within 30 days after notice of the fee amount is proved by MDEQ, whichever is sooner. Fees collected under this program would be deposited in the solid waste staff account of the solid waste management fund.

Groundwater Discharge Fee

HB 4619 would authorize MDEQ to levy and collect an annual groundwater discharge fee from facilities that discharge wastewater to the ground or groundwater. The total fees assessed under this bill would be equal to the amount appropriated for the groundwater discharge permit program in state fiscal year 2004 and would be indexed to inflation in subsequent years.

This bill, like the NPDES fee bill, would create a point system to calculate the amount of fees due from each facility. A facility would be assigned points for “complexity factor” based on which regulatory program applies to the discharge. The complexity factor would be multiplied by a “flow factor” based on the total annual discharge volume from the facility. The product of the two factors would be the number of groundwater discharge points assigned to the facility. The total amount to be assessed would be divided by the total of all the discharge points assigned to all facilities to determine the amount of groundwater discharge fee per point. Each facility would then be required to pay a pro-rata portion of the assessment based on the number of points assigned to it.

MDEQ would send invoices for the groundwater discharge fees by January 15 of each year and payment would be due by March 1. Funds collected under this bill would be deposited into a new groundwater discharge permit fund that would be established under HB 4619. Monies from the groundwater discharge permit fund could be used only by MDEQ to implement

Part 31 (water resources protection) of the Natural Resources and Environmental Protection Act (NREPA), subject to legislative appropriation.

Any civil fines assessed under Part 31 of NREPA would also be credited to the groundwater discharge permit fund (currently, up to 25% of Part 31 civil fines are deposited in the environmental education fund and the remaining 75% goes to the general fund). If any monies remain in the groundwater discharge permit fund at the end of a fiscal year, then the amount of groundwater discharge fees assessed in the next year would be reduced by 75% of the amount remaining in the fund. HB 4619 would not limit use of the groundwater discharge permit fund to groundwater discharge permit activities, so it is possible that excess monies in the fund from civil penalties or fee assessments could be used to fund other MDEQ activities under Part 31 of NREPA.

Late fee payments would be subject to an interest penalty and possible enforcement action, which could include revocation of a facility's groundwater discharge permit.

S. Lee Johnson