



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #598

Hazardous Waste Fees and Staff (DNR -- Air, Waste, and Contaminated Land)

[LFB 2009-11 Budget Summary: Page 487, #8]

CURRENT LAW

The Department of Natural Resources (DNR) waste and materials management program regulates the transportation, treatment, storage and disposal of solid and hazardous waste. Program activities include plan review, licensing, inspection, compliance actions, technical assistance and outreach. The program is authorized base funding of \$8,083,300 with 80.66 positions from a combination of PR, FED, SEG and GPR. DNR receives program revenue for solid and hazardous waste disposal administration from solid waste landfill plan review fees, licenses and a 15¢ per ton solid waste landfill license surcharge, and from hazardous waste facility licenses, transporter licenses and plan review fees. The DNR program revenue appropriation is authorized 29.0 PR positions in the waste and materials management program. The appropriation received \$3,160,400 in 2007-08 and spent \$3,149,900. DNR receives a federal hazardous waste grant from the U.S. Environmental Protection Agency (EPA) of approximately \$1.9 million annually, and is authorized 23.0 full-time equivalent (FTE) positions from the federal grant in the program.

Generators of hazardous waste who are required to report annually on hazardous waste activities under DNR rules must pay an annual environmental repair fee. The fee includes a base fee of \$210 plus \$20 per ton of hazardous waste generated in the previous calendar year. The total fee may not exceed \$17,000. The fees are deposited in the environmental management account. In 2007-08, DNR received \$536,900 SEG from hazardous waste generator fees.

GOVERNOR

Convert \$502,400 and 5.0 hazardous waste management positions annually from solid and hazardous waste PR to environmental management account SEG.

Increase the base fee portion of the annual hazardous waste generator environmental repair fee from \$210 to \$350 for small quantity generators of hazardous waste and \$470 for large quantity generators of hazardous waste. Maintain the current annual fee of \$20 per ton of hazardous waste generated. Increase the maximum fee a generator of hazardous waste would be required to pay from \$17,000 to \$17,500 per year. Revenues would continue to be deposited in the environmental management account.

Provide that it is the per ton portion of the hazardous waste generator fee that may not be assessed for certain wastes, rather than the entire hazardous waste generator fee. Generators of such wastes would pay the base fee but not the tonnage fee, and some of these generators would be paying the hazardous waste generator fee for the first time.

Direct DNR to promulgate an administrative rule that defines "large quantity generator" and "small quantity generator" for assessing the annual fee for hazardous waste generators. Authorize the Department to promulgate an emergency rule without a finding of emergency. The emergency rule would remain in effect until July 1, 2011, or the date on which the permanent rule takes effect, whichever is sooner.

DISCUSSION POINTS

1. DNR plans for approximately 23 full-time equivalent (FTE) of staff effort in the hazardous waste program through a combination of FED, PR, GPR and SEG funding. DNR is holding approximately two of the positions vacant because federal and program revenues are insufficient to fund all of the 23 positions.

2. DNR funds both solid waste and hazardous waste program activities from the program revenue appropriation. The Department indicates that the solid waste facility license and plan review fees are generally sufficient to fund solid waste activities. However, hazardous waste license and plan review fees are not sufficient to fund hazardous waste program activities authorized from the PR appropriation and provide required state match to the federal hazardous waste grant. In addition, the program is using approximately \$200,000 to \$300,000 of PR annually to pay costs associated with positions authorized under the federal grant for which federal revenues are not sufficient. (For example, in 2008-09, the federal hazardous waste grant will be approximately \$1.9 million but anticipated expenditures would be approximately \$2.2 million, of which part will be paid from the PR appropriation.) There is not expected to be sufficient PR under current law to continue this during 2009-11, and additional vacancies will likely need to be maintained.

3. Table 1 shows actual and anticipated revenue and expenditures in the solid and hazardous waste program revenue appropriation under AB 75. The hazardous waste fees deposited in the PR appropriation are for licenses and plan review activities for hazardous waste treatment,

storage or disposal facilities, and for hazardous waste manifest fees for the transportation of hazardous waste. The fees are expected to generate approximately \$300,000 annually. DNR indicates that all fees deposited in the appropriation have been increased in the last three years through the administrative rule process (other than the landfill license surcharge 15¢ per ton solid waste tipping fee). The Department also indicates the universe of hazardous waste treatment, storage or disposal facilities and hazardous waste transporters is not large enough to generate sufficient revenue to fully fund the hazardous waste program workload without imposing excessive fees. For example, there are currently 17 licensed hazardous waste treatment and storage facilities, and seven closed hazardous waste disposal facilities (and no operating hazardous waste disposal facilities). Hazardous waste generators do not have to obtain licenses for treatment and storage facilities.

TABLE 1

**DNR Solid and Hazardous Waste Management PR Appropriation
Estimated Revenue and Expenditures Under AB 75**

	2007-08 <u>Actual</u>	2008-09 <u>Estimated</u>	2009-10 <u>AB 75</u>	2010-11 <u>AB 75</u>
Opening Balance, July 1	\$580,800	\$591,300	\$368,600	\$403,100
Revenue				
Solid waste license and plan review fees	1,382,200	1,385,700	1,380,000	1,380,000
Solid waste landfill license surcharge (solid waste tipping fee)	1,395,400	1,290,000	1,280,000	1,270,000
Hazardous waste license and plan review fees	316,600	301,400	301,600	301,600
Miscellaneous revenue	<u>66,200</u>	<u>66,200</u>	<u>72,000</u>	<u>72,000</u>
Total	\$3,160,400	\$3,043,300	\$3,033,600	\$3,023,600
Total Available	\$3,741,200	\$3,634,600	\$3,402,200	\$3,426,700
Expenditures				
Authorized expenditures	\$3,149,900	\$3,415,900	\$2,820,400	\$2,820,400
Planned expenditure reductions	0	-150,000	0	0
Reserves	<u>0</u>	<u>0</u>	<u>144,600</u>	<u>213,200</u>
Total Expenditures	\$3,149,900	\$3,265,900	\$2,965,000	\$3,033,600
Less Transfer to General Fund	0	0	34,100	34,100
Closing Balance, June 30	\$591,300	\$368,700	\$403,100	\$359,000
Permanent Positions	33.0	33.0	28.0	28.0

4. The conversion of positions is intended to maintain the current workload of effort in the hazardous waste management program, or to perhaps fill one or two of the positions being held vacant. If the 5.0 positions would not be converted from PR to SEG, the PR appropriation would be in deficit by \$645,800 at the end of 2010-11, and the program would likely have to hold three to five

additional positions vacant.

5. The proposed hazardous waste generator fee increases under the bill are intended to provide additional revenue from current hazardous waste generators and hazardous waste generators that are not currently subject to the fees. The fee amounts were set at amounts intended to generate approximately \$500,000 of additional revenue annually, in order to move that amount of expenditures off of the PR account. This would provide additional revenue for current hazardous waste management program activities related to inspection and compliance activities at hazardous waste generator sites.

6. Table 2 shows the current and proposed hazardous waste generator base fees. The current hazardous waste generator base fee is a flat \$210. The proposed fee would be divided into two categories, for small quantity and large quantity generators. The definitions of the two categories would be established through administrative rule.

TABLE 2

Hazardous Waste Generator Base Fee

	<u>Current Base Fee</u>	<u>Proposed Base Fee</u>	<u>Percent Change</u>
Small Quantity Generator	\$210	\$350	67%
Large Quantity Generator	210	470	124
Currently Exempt Small Quantity Generator	0	350	--
Currently Exempt Large Quantity Generator	0	470	--

7. DNR estimates there are over 11,000 hazardous waste generators in the state. Almost 1,200 of them generate enough hazardous waste to be required by DNR administrative rules to report annually on the amount of hazardous waste generated. The other 9,800 are very small quantity generators who do not have to submit a report. Generators are required to submit an annual report if the site: (a) generated in any calendar month, more than 100 kilograms (220 pounds) of hazardous waste, more than one kilogram (2.2 pounds) of acute hazardous waste, or more than 100 kilograms of acute hazardous waste spill cleanup material; (b) accumulated at any time more than 1,000 kilograms (2,205 pounds) of hazardous waste, more than one kilogram of acute hazardous waste, or more than 100 kilograms of acute hazardous waste spill cleanup material that was generated on-site; (c) was a publicly owned wastewater treatment works that accepted hazardous waste via truck, rail, or dedicated pipe for treatment; or (d) performed any other hazardous waste treatment, storage or disposal activities on-site that required a hazardous waste facility license. Generators do not have to submit an annual report if the site generates less than the amounts shown, and are known as very small quantity generators. For example, a generator of 220 pounds or less of hazardous waste in every month of the year would not have to submit an annual report or pay the hazardous waste generator fee. ("Acute" hazardous waste is a term used but not currently defined in administrative rule rather, the current rule contains a list that identifies acute hazardous wastes. The term generally refers to hazardous waste that is more dangerous to humans and animals, at lower doses, than non-acute hazardous waste. Cyanide is an example of an acute hazardous waste.)

8. DNR officials indicate that, in general, a small quantity generator would generate between 100 kilograms (220 pounds) and 1,000 kilograms (2,205 pounds) of hazardous waste in any calendar month. Examples of small quantity generators might be small factories, fabricators, drycleaners, printers, furniture finishers, autobody shops, home improvement stores, and big retail stores. (Some of these would be very small quantity generators not subject to the fee, rather than small quantity generators, depending on the actual quantity generated.) In general, a large quantity generator would generate more than 1,000 kilograms of hazardous waste in any calendar month, or more than one kilogram (2.2 pounds) of acute hazardous waste. Large quantity generators include uses such as major factory processes that utilize large quantities of hazardous chemicals.

9. While the estimated revenue under the bill is based on these general definitions of large and small quantity generator, the actual revenue would be based on the definitions that would be promulgated by DNR under emergency and permanent rule. In addition, if the administrative rule definition of who has to submit an annual report would be changed, the revised definition would affect revenues collected under the hazardous waste generator fee.

10. It could be argued the proposed fee increase for existing payers of the hazardous waste generator fee more accurately reflects the cost of providing DNR administration of hazardous waste programs. However, the fee increase shown in Table 2 might be viewed as a burden on businesses that may already be stressed by the slowing economy.

11. Hazardous wastes that are recovered for recycling or reuse are currently exempt from the base fee and the tonnage fee. Under the bill, approximately 500 generators of such wastes would be expected to pay the base fee but not the tonnage fee, and some of these generators would be paying the hazardous waste generator fee for the first time. DNR currently requires these facilities to submit an annual report showing the amount of hazardous waste generated, and to meet requirements for management of the hazardous waste they generate, and would continue to do so.

12. DNR indicates the reason for assessing the base fee for hazardous waste generators who currently do not pay the fee would be to help pay for DNR's workload related to administering hazardous waste regulations for these generators. Others might argue that the fee could lessen the incentive for hazardous waste generators to recycle or reuse hazardous wastes in order to be exempt from the fee. However, it is possible that other economic considerations, besides a \$350 or \$470 fee under the bill, would determine whether a business would recycle or reuse hazardous waste (such as the cost of transporting or disposing of hazardous waste).

13. Table 3 shows the estimated revenue from the proposed fee increase. Revenue is reestimated at \$326,200 annually, a decrease of \$173,800 from the \$500,000 estimated earlier by the administration. This is primarily due to the recent availability of 2008 reporting data (instead of 2007 data) which includes 1,181 generators rather than over 1,600 generators estimated earlier.

14. Of the estimated \$326,200 annual revenue increase, \$130,900 would be received from approximately 678 generators who are assessed the current \$210 base fee, and \$195,300 would be received from approximately 503 generators who do not currently pay the base fee. However, the actual number of affected generators will depend on the rule DNR promulgates.

TABLE 3
Hazardous Waste Generator Fees -
Current and Estimated Annual Revenues Under AB 75

	Revenue <u>Current Law</u>	Revenue <u>AB 75</u>	Estimated Annual Revenue <u>Increase</u>	Estimated Number of Payers <u>Under AB 75</u>
Base Fees				
Small Quantity Generator	\$81,900	\$136,500	\$54,600	390
Large Quantity Generator	60,500	135,400	74,900	288
Currently Exempt Small Quantity Generator	0	120,100	120,100	343
Currently Exempt Large Quantity Generator	<u>0</u>	<u>75,200</u>	<u>75,200</u>	<u>160</u>
Subtotal	\$142,400	\$467,200	\$324,800	1,181
Hazardous Waste Tonnage Fees	<u>\$366,800</u>	<u>\$368,200</u>	<u>\$1,400</u>	678*
Total	\$509,200	\$835,400	\$326,200	1,181

* Small and large quantity generators currently exempt from tonnage fees would continue to be exempt from tonnage fees. Approximately 503 generators currently exempt from the base fee are expected to become subject to a base fee.

15. A separate budget paper describes the condition of the environmental management account. Under the bill, it is anticipated that authorized expenditures would substantially exceed revenues in 2009-11. While the administration intended that the amount of expenditure authority transferred from hazardous waste program revenue to the environmental management account would be approximately equal to the revenue generated from the fee increase, the reestimate of revenue results in more expenditure authority being added to the environmental management account (\$502,400 per year) than revenue (\$326,200).

16. A total of \$351,800 and 3.5 positions annually could be converted from PR to SEG instead of \$502,400 and 5.0 positions, which would more closely match the amount of converted expenditure authority to increased fee revenue (Alternative 2). This would maintain \$150,600 annually (\$301,200 over the biennium) and 1.5 positions in the PR account. The 2010-11 closing balance of \$359,000 in the PR account balance (shown in Table 1) would be expected to be sufficient to fund the 1.5 positions that would not be converted.

17. If the fee increase is not approved, there would not be sufficient SEG revenue to convert the 5.0 positions from PR. There may be sufficient revenue in the PR appropriation to support a few positions, which could be maintained as PR, and the other positions could be deleted. For example, if \$201,000 annually (\$402,000 during the biennium) and 2.0 positions would be maintained as PR, \$301,400 annually (\$602,800 in 2009-11) and 3.0 positions could be deleted, because there would not be sufficient PR to fund them (Alternative 3a). If the fee increase is not approved and all of the 5.0 positions are maintained as PR (Alternative 3b), it is likely DNR would not be able to fill all of them.

ALTERNATIVES

1. Approve the Governor's recommendation to: (a) convert \$502,400 and 5.0

hazardous waste management positions annually from solid and hazardous waste PR to environmental management account SEG; (b) increase the base fee portion of the annual hazardous waste generator environmental repair fee from \$210 to \$350 for small quantity generators of hazardous waste and \$470 for large quantity generators of hazardous waste; (c) increase the maximum fee \$17,000 to \$17,500 per year; (d) provide that it is the per ton portion of the fee that may not be assessed for certain wastes, rather than the entire hazardous waste generator fee; (e) direct DNR to promulgate an administrative rule that defines "large quantity generator" and "small quantity generator"; (f) authorize the Department to promulgate an emergency rule without a finding of emergency; and (g) direct the emergency rule would remain in effect until July 1, 2011, or the date on which the permanent rule takes effect, whichever is sooner. Revenue from the fee increase would be reestimated at \$326,200 annually (a decrease of \$173,800 from \$500,000).

ALT 1	Change to Bill
	Revenue
SEG	- \$347,600

2. Approve Alternative 1 related to fee increases and reestimated revenue. Convert \$351,800 and 3.5 hazardous waste positions annually from PR to SEG (instead of \$502,400 and 5.0 positions under the bill) to reflect anticipated revenues.

ALT 2	Change to Bill		
	Revenue	Funding	Positions
SEG	- \$347,600	- \$301,200	- 1.50
PR	<u>0</u>	<u>301,200</u>	<u>1.50</u>
Total	- \$347,600	\$0	0.00

3. Delete the proposed fee increase. In addition, approve one of the following related to the proposed conversion of the 5.0 positions from PR to SEG:

a. Maintain \$201,000 annually and 2.0 positions as PR. Delete \$301,400 annually and 3.0 positions.

ALT 3a	Change to Bill		
	Revenue	Funding	Positions
SEG	- \$1,000,000	- \$1,004,800	- 5.00
PR	<u>0</u>	<u>402,000</u>	<u>2.00</u>
Total	- \$1,000,000	- \$602,800	- 3.00

b. Delete provision. (The 5.0 positions would be maintained as PR, but it is expected there would be insufficient revenue to fully fund them.)

ALT 3b	Change to Bill		
	Revenue	Funding	Positions
SEG	- \$1,000,000	- \$1,004,800	- 5.00
PR	<u>0</u>	<u>1,004,800</u>	<u>5.00</u>
Total	- \$1,000,000	\$0	0.00

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