



House
Legislative
Analysis
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HAZARDOUS SUBSTANCES

House Bill 4249 (Substitute H-1)
First Analysis (2-15-95)

Sponsor: Rep. Tom Alley
Committee: Conservation, Environment,
and Great Lakes

THE APPARENT PROBLEM:

In response to concerns that those responsible for contaminating some 2,700 sites were not taking responsibility for their actions, Public Acts 233 and 234 of 1990 (the Polluters Pay acts) compelled compliance with the Environmental Response Act and provided penalties and incentives to encourage polluters to pay for cleanup of hazardous substances at these sites. Currently, a "hazardous substance" is defined as either a chemical or other material which is, or which could become, injurious to the public health, safety, or welfare or to the environment; as "hazardous waste," or "petroleum," as these terms are defined under the act; or as a "hazardous substance," as the term is defined under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), respectively. The latter three definitions contained in federal and state acts refer to substances that have been specifically determined to be hazardous. However, the definition of "hazardous substance," as contained in the act, has raised concern among some members of the business community, who fear that the definition is so broad that it could result in a facility being included in the Department of Natural Resource (DNR) list of contaminated sites once any hazardous substance has been found there, regardless of whether the material was "injurious to the public health" or not. Critics argue that the act should be amended to clarify current provisions, and to emphasize that each site must be considered on its own merits and that the DNR must demonstrate whether a substance is hazardous or not at that site.

THE CONTENT OF THE BILL:

Under the Environmental Response Act, a "hazardous substance" is defined to include "a chemical or other material which is or may become injurious to the public health, safety, or welfare or to the environment." House Bill 4249 would replace

this definition with language defining "hazardous substance" as any substance that posed an unacceptable risk to public health, safety, welfare, or the environment, as demonstrated by the Department of Natural Resources on a case by case basis. In making the determination, the department would have to consider the fate of the material, dose-response, toxicity, or adverse impact on natural resources.

MCL 299.603

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on state government. (2-14-95)

ARGUMENTS:

For:

The bill would clear up a point of confusion that has existed since the Polluters Pay acts were enacted by specifying the distinctive factors the DNR must take into consideration in determining whether a material is hazardous to the public health or safety. Once placed on the Department of Natural Resources (DNR) "Environmental Response List" of contaminated sites, a site cannot be removed until the appropriate cleanup activities have been completed. This may cause financial hardship, since few buyers can be found for a contaminated site. Some feel, however, that the definition of "hazardous substance" under the act is too broad, and could result in a site being classified as contaminated even though the substance under consideration was not injurious to the public health or safety at that particular site and under the particular circumstances existing there.

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Against:

The bill raises several concerns. Some argue that the bill would result in the burden of proving whether a substance is hazardous being shifted from the polluter to the Department of Natural Resources (DNR). Further, the department's ability to implement the provisions of the Polluters Pay act is restricted even now, due to a shortage of staff, and the additional provisions required under the bill would further hamper its ability to enforce pollution control.

Response:

The bill would simply place current DNR practices in statute. Under current DNR rules, the department must take several factors into consideration when determining if a site is to be classified as "contaminated" or not. For example, a substance in the soil or groundwater must be present in a level above a certain concentration, as determined by the application of a risk analysis formula that relies upon present assumptions regarding acceptable risk, exposure, duration, and amount of ingestion. What actually determines the level of toxicity is related to factors that are unique to each site, such as the particular sensitivity of the ecosystem, and the density of the substance in proportion to surrounding materials at a particular location.

POSITIONS:

The Department of Natural Resources supports the bill. (2-14-95)

The Michigan Chemical Council supports the bill. (2-14-95)

The Michigan Municipal League supports the bill. (2-14-95)

The Michigan State Chamber of Commerce supports the bill. (2-15-95)

The Michigan Manufacturers Association supports the bill. (2-15-95)