



STATE OF MICHIGAN

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENT

LANSING

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GOVERNOR

REBECCA A. HUMPHRIES
DIRECTOR

VIA E-MAIL

TO: Members of the Michigan Legislature
FROM: Rebecca A. Humphries, Director
DATE: April 6, 2010
SUBJECT: Hazardous Waste User Charge Report

A handwritten signature in black ink, appearing to read "Rebecca A. Humphries".

In accordance with Subsections 11135(6) and 11153(8) of Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, attached is the Department of Natural Resources and Environment's (DNRE) third biennial Hazardous Waste User Charge Report.

If you need further information, please contact Liane Shekter Smith, Acting Chief, Waste and Hazardous Materials Division, at 517-373-9523, or you may contact me at 517-373-7917.

Attachment

cc/att: Nathaniel Lake, Governor's Office
Gary S. Olson, Director, Senate Fiscal Agency
Mitchell E. Bean, Director, House Fiscal Agency
Bob Emerson, Office of the State Budget
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HAZARDOUS WASTE USER CHARGE REPORT TO THE LEGISLATURE

April 1, 2010

Jennifer M. Granholm, Governor
Rebecca A. Humphries, Director

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Introduction

The Department of Natural Resources and Environment (DNRE) submits this report to the Legislature regarding the hazardous waste user charge (HWUC) fee system. The report is required under Subsections 11135(6) and 11153(8) of Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451). In general, Part 111 of Act 451 requires: Beginning in 2005, the DNRE shall evaluate the effectiveness and adequacy of the manifest processing user charges, the site identification number user charges, and the handler user charges collected relative to the overall revenue needs of the DNRE's Hazardous Waste Program (HWP) administered under Part 111. Beginning in 2006, not later than April 1 of each even-numbered year, the DNRE shall summarize its findings in a report and shall provide that report to the Legislature. This is the third biennial report provided to the Legislature.

Hazardous Waste Program

The HWP is a preventive program that protects human health and the environment by ensuring the proper handling, tracking, remediation, transportation, storage, treatment, and disposal of hazardous wastes and management of liquid industrial wastes in Michigan. It is a comprehensive program regulating hazardous wastes from "cradle-to-grave" that extends to the management of liquid industrial wastes.

The primary state authorities for the HWP are as follows:

- Part 111, Hazardous Waste Management, of Act 451, and its administrative rules, Michigan Administrative Code R 299.9101 *et seq.* (Part 111 Rules)
- Part 121, Liquid Industrial Wastes, of Act 451
- Part 167, Used Oil Recycling, of Act 451
- Part 171, Battery Disposal, of Act 451
- Hazardous Materials Transportation Act, 1998 PA 138
- Consistent with Congressional intent that the federal hazardous waste regulations be delegated to the states for implementation, the DNRE is federally authorized to operate Michigan's HWP. This delegation comes from Michigan's authorization to administer Part 111 of Act 451 in lieu of the federal Resource Conservation and Recovery Act of 1976, as amended (RCRA).

The HWP includes the following major components:

HWP Element	FTEs
Statutory/Regulatory/Application Development <ul style="list-style-type: none"> • Obtain/Maintain Authorization 	1
Compliance Monitoring and Enforcement <ul style="list-style-type: none"> • Inspections/Records Review • Enforcement (formal and informal) • Corrective Action Compliance and Enforcement • Manifest Processing • Waste Classification <ul style="list-style-type: none"> ○ Identification ○ Delisting ○ Universal Waste • Financial Record Reviews • Biennial Reporting • Notification (EPA ID Number) • Transporter Program • Environmental Sampling • Recycling • Used Oil Management Standards • Land Disposal Restrictions • Generator Requirements 	20
Permits/Closures <ul style="list-style-type: none"> • Operating License/Major Modifications/Renewals • Construction Permits (new and expansions) • Closure (plans and certification) • Postclosure Operating Licenses and Plans • Database/Tracking/Public Information • Financial Assurance • Public Participation 	6
Corrective Action <ul style="list-style-type: none"> • Planning/Priority Setting • Oversight • Waste Classification • Permit/Closure/Corrective Action Tracking • Criteria/Land Use/Pathways • Orders and Voluntary Agreements • Institutional Controls 	12
Management and Reporting <ul style="list-style-type: none"> • Administrative Activities • Information Management and Reporting • Training • Information Requests • Laboratory Coordination • State Authorization 	15
Total Full-Time Equivalent Positions	54

Program Funding

The DNRE's fiscal year (FY) 2010 HWP budget is about \$6.9 million and is funded with a federal grant from the U.S. Environmental Protection Agency (U.S. EPA), fees generated from the HWUCs that are deposited into the Environmental Pollution

Prevention (EPP) Fund, General Fund/General Purpose (GF/GP) dollars, and fees generated from hazardous and liquid industrial waste transporters that are deposited into the Hazardous Materials Transportation Permit (HMTP) Fund.

Following is a breakdown of these sources of program funding:

Source of Funding (FY 2010)	Dollars	Percent
Federal Hazardous Waste Management Grant	\$3,809,000	55%
Environmental Pollution Prevention Fund	\$1,733,000	25%
General Fund/General Purpose	\$1,136,000	16%
Hazardous Materials Transportation Permit Fund	\$271,000	4%
Total	\$6,949,000	100%

Of the \$6.9 million total, the DNRE, Waste and Hazardous Materials Division (WHMD) is budgeted to expend about \$5.4 million (50 FTEs) in FY 2010 to carry out the core functions of the HWP. (Note that the core program consists of 54 FTEs but the FY 2010 budget only provides enough funding for 50 FTEs). Also included in the above federal grant amount is \$270,000 of federal funding that is not appropriated to the WHMD but, at the request of the WHMD, is used by the U.S. EPA to pay for 8 FTE Senior Environmental Employee Program (SEEP) contract staff. These contract employees are supervised by WHMD managers and perform critical work in support of Michigan's HWP.

The balance of the \$6.9 million, about \$1.2 million, is used to cover costs that support the HWP, such as rent, information technology support, and DNRE central administration; statewide central services; DNRE, Office of Criminal Investigations (OCI), expense; and Department of Attorney General (DAG) expense. The following chart provides a breakdown of how the overall program funding for FY 2010 is projected to be expended:

Type of Expenditure (FY 2010)	Estimated Expense	Percent
WHMD Salary Expenses	\$4,995,000	72%
WHMD Travel Expenses	\$55,000	1%
WHMD Contractual & Supply Expenses	\$395,000	6%
SEEP Contract Employees	\$270,000	4%
Rent, Information Technology Support, and DNRE Central Administration	\$610,000	9%
Statewide Central Services	\$405,000	6%
OCI Expense and DAG Expense	\$170,000	2%
Total	\$6,900,000	100%

Improvements, Efficiencies, and HWP Reductions Implemented

The DNRE has been incorporating improvements, efficiencies, and reductions in the HWP to reduce costs and upgrade the services provided. These efforts are summarized below:

Synchronize Billing Cycle

The DNRE supported the 2008 enactment of legislation containing recommendations made by the hazardous waste user charge stakeholder work group to synchronize the billing cycles for handler user charges and manifest processing user charges. Prior to this improvement, the manifest processing user charges were based on the DNRE fiscal year, October to September, and the handler user charges were based on a calendar year.

The DNRE estimated that approximately 400 hours annually were spent resolving the confusion associated with this inconsistent approach.

The current system aligns the billing cycles to a calendar year. In order to accommodate this shift, the invoice date was moved to March 24 instead of February 28 to allow time to process manifests from October, November, and December of the previous year and include them in the invoice.

Improved Administration by Coordination with Federal Program

The DNRE has improved the administration of Michigan's HWP by coordinating it closely with the federal Hazardous Waste Program. This ensures that Michigan's HWP is consistent with the federal program, provides for a level playing field for Michigan-regulated waste businesses, and avoids duplicate state and federal requirements. Doing so also provides Michigan's HWP with nearly \$4 million per year of federal grants. While the U.S. EPA could perform many of the HWP services and activities, it has delegated its authority to the DNRE to perform them. This delegation comes from Michigan's authorization to administer Part 111 of Act 451 in lieu of the RCRA. That authorization began in October 1986, and Michigan has continuously modified its HWP, as needed, to maintain its authorization. Michigan leads the U.S. EPA, Region 5, states in federal rule authorization. As an authorized state, Michigan has greater control over how federal requirements are administered within the state, the opportunity to include provisions important to Michigan citizens and industry, and direct oversight as the administering agency.

Senior Environmental Employee Program

Michigan also utilizes the federal Senior Environmental Employee (SEE) Program for cost-effective contract positions to assist with manifest processing, data entry, and Site ID processing. Although the SEE Program is efficient and cost-effective, the HWP relies heavily upon the SEE Program contractors to accomplish the data management requirements of the user charge process. Because of the reliance on the contract employees and the inability to hire state employees, the loss of the SEE Program contract would be devastating to the ability of the HWP to collect valuable facility information as well as user charges.

Improved Implementation of Cleanup HWP

The DNRE improved the implementation of the HWP cleanup (corrective action) in Michigan. On April 8, 1996, the DNRE was authorized by the U.S. EPA to administer the cleanup of sites contaminated by hazardous waste treatment, storage, and disposal facilities in Michigan. The U.S. EPA and DNRE entered into a Memorandum of Understanding in November 2000 to promote consistent and predictable requirements under both state and federal authority in order to achieve corrective action goals in Michigan. This enabled regulated Michigan facility owners and operators to work with DNRE staff (instead of U.S. EPA, Region 5, staff in Chicago) to manage these cleanups for over 200 facilities subject to corrective action liability, which runs with the land. Resolving these liability issues is vital to brownfield redevelopment in Michigan. The DNRE has successfully implemented this part of the overall HWP without any increase in state staff.

Implementation of Waste Data System (WDS) Database

The DNRE implemented the WDS database to improve the management of hazardous waste information. Discontinued handlers have been removed from the WDS database, and information for current handlers has been updated. There are approximately 30,000 active waste handlers tracked in the WDS database. There are also records maintained for inactive handlers to bring the total number to about 80,000 records.

The HWUC process has helped in improving the data in the WDS database.

The WDS database is currently undergoing significant redesign efforts to increase the functionality of the database, expand the capabilities, and streamline the efficiencies of the entire system. Testing of the redesigned database will begin in 2010, and the final system is expected to be operational in 2011.

Internet Access to WDS Database

The DNRE provides Internet access to the WDS database to the public and the regulated community. This helps ensure that data is accurate and has resulted in significantly improved administrative efficiency of the HWP. Examples of available information are:

- Regulated waste handler business names
- Site ID numbers
- Addresses
- Compliance status
- HWUC invoice information
- Manifest data
- Biennial reporting data
- Owner/operator data
- Permitting data

- Corrective action data
- Financial mechanism data
- Transporter licensing data
- Monthly Operating Report data

The redesigned WDS database will further improve the access of information to the public.

Online Payment

The DNRE has improved the HWP by innovative use of the Internet. The DNRE continues to utilize the online payment system available at: <https://www.thepayplace.com/mi/deq/hwuc>. Businesses may also review regulated waste notification information online.

Staffing Reductions and Efficiencies

The staffing of the HWP has been reduced in spite of continually increased delegated duties from the U.S. EPA as part of Michigan's authorization process. These reductions include:

- Unfilled district inspector position in Southeast Michigan District Office.
- Unfilled district supervisor position in Lansing District Office, unfilled supervisor position in Southeast Michigan District Office, and unfilled secretary position in Kalamazoo District Office (all partially funded with hazardous waste funding).
- Unfilled enforcement specialist position.
- Unfilled technical support unit chief position in the Hazardous Waste Section.
- A HWP project manager vacancy has been eliminated.

Evaluation of Need for Increased HWP Funding

The ability for the HWP to collect the user charges sunsets October 1, 2011. Without extension of the sunset and increase of revenue, the EPP Fund cannot sustain the HWP through FY 2012.

In January 2003 the WHMD began efforts to collect \$1.6 million in annual HWUC fees to operate the HWP. This original annual target revenue amount was intended to replace annual transporter license revenues that had been eliminated from the HWP, and it was intended to be revenue neutral. Unfortunately, the fee system has never collected the targeted \$1.6 million in any one year. Following is a table that summarizes annual HWUC revenue collected since FY 2004:

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Handler User Charges Collected and Manifest User Charges Collected	\$1,185,000	\$1,162,000	\$1,260,000	\$1,200,000	\$1,140,000	\$1,170,000
Site ID User Charges Collected	\$101,000	\$102,000	\$88,000	\$95,000	\$94,000	\$90,000
Total	\$1,286,000	\$1,264,000	\$1,348,000	\$1,295,000	\$1,234,000	\$1,260,000
Statutory Target	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000
Target Shortfall	\$314,000	\$336,000	\$252,000	\$305,000	\$366,000	\$340,000

It is anticipated that future HWUC fee revenue will decline even further as a reflection of the state of Michigan's economy. HWUC fees are deposited into the EPP Fund, and due to the inability to collect the original annual target revenue amount along with increasing costs, the HWP has continued operating on a declining EPP Fund balance. The EPP Fund balance cannot sustain HWP operations beyond FY 2011. Not only are the HWUC fees inadequate to support core program operations, GF/GP funding for the program is on the decline. Additionally, the Governor's FY 2011 executive recommendation for the DNRE budget includes a fund shift of \$400,000 to reduce GF/GP and increase the HMTP Fund appropriation amount by \$400,000. This is a one-time fund shift because the HMTP Fund cannot sustain this increased spending beyond FY 2011. This will result in additional spending pressure on the EPP Fund in FY 2012.

The overall effectiveness of the HWP has been impacted because of the lack of adequate program funding. Vacancies have remained unfilled due to lack of funding, and program effectiveness has diminished. Without a fee increase, funding is insufficient to support even current program staffing beyond FY 2011. This will result in the elimination of staff positions and a potential loss of federal hazardous waste grant funding due to our inability to meet federal grant requirements, including Congressional corrective active timetable requirements under the federal Government Performance and Results Act. Following are specific examples of the negative effects of a diminished HWP, which could result in the mismanagement of hazardous waste and the increased likelihood of accidents and environmental damage:

- Failure to timely detect and require corrective action for releases from hazardous waste treatment, storage, or disposal facilities.
- Increased risk of improper treatment or disposal of hazardous waste.
- Lack of waste characterization assistance and advisement that aid small business.
- Lack of timely review of operating license renewals and/or modifications, restricting companies from implementing proposed enhancements/improvements to hazardous waste operations.
- Fewer on-site evaluations/inspections, resulting in an increased chance of accidents or releases of materials being improperly or inadequately managed.
- Lack of timely review of corrective action proposals for historic contamination problems, ultimately limiting cleanup/remediation efforts.

- Reduced ability to conduct sampling and analysis activities for waste classification, corrective action validation, audits, follow up on citizen complaints, and enforcement actions.
- Lack of timely review and processing of petitions and requests for variance.
- Reductions in compliance assistance activities that provide companies with valuable information and guidance to minimize the need for enforcement, enhance waste minimization efforts, and improve waste handling practices in general.

Considerations for Proposed User Fee System

The HWP believes the current Michigan user charge system has some strong points. It is a fair system for the identified handlers, and it does provide quality information that can be used by the regulated community, the agency, and the public. The DNRE recommends that the existing fee structure be evaluated and that statutory changes be brought forward to redesign the current user charge program to implement improvements based on the 8 years of experience gained and increase the current fees in order to collect sufficient revenue to operate the HWP. The WHMD intends to convene a hazardous waste user charge stakeholder work group in the summer of 2010 to evaluate the current fee structure and explore the possibility of a new user charge proposal to bring to the Legislature. Included in this evaluation will be a review of the successes of fee programs in other states.

The HWP offers the following points for consideration in developing a new user charge fee proposal:

First, the administrative cost required to collect, maintain, and verify the information; produce, mail, and process the invoices; process and dispense refunds; and pursue collections should be reviewed. The DNRE spends approximately 25 percent of the user charges to collect the money. The original user charge work group estimated that it would take 2 full-time positions to administer the user charge collection system. Experience has shown that this estimate was low due to the amount of data collection, the complexity of varying fees, and follow up necessary to produce valid invoices.

Second, the user charge system should be amended to align with the goals of the HWP. The HWP not only acts to prevent releases of chemicals but also supports waste minimization activities and recycling. In many cases, the DNRE supports limited exemption from regulation in order to encourage reuse and recycling, which results in reduced revenue but includes activities that still require oversight. These materials (e.g., universal wastes or recycled solvents), although exempted or excluded, still require oversight and are expected to grow in volume as the state adopts new federal regulations and continues to advance state rules to encourage diversion to recycling and recovery.

Third, programmatic changes need to be considered to enhance and support revenue collection. The Part 111 Rules were not originally promulgated with the intention of supporting user charge collections. For example, the entire handler system is based on

information that is only required to be submitted once, with the exception of biennial reports. Experience has shown that the handler status for an individual facility may change from year to year. However, there is no requirement for a handler to identify these changes and, in many cases, this becomes known only after an invoice has been created and mailed. An annual reporting or notification requirement would be a tremendous advantage to improve the quality of the information.

Conclusion

The HWUC fee schedule continues to fail to provide the originally projected \$1.6 million annual revenue for the HWP. The HWP encouragement of waste minimization and advancement of rule changes excluding material from regulation and the economic difficulties in Michigan have resulted in the continuing decline in hazardous waste generation, manifests, and the number of hazardous waste handlers. Additionally, there are ongoing financial obligations placed upon the EPP Fund, including inflationary pressures. If not for the appropriation and use of GF/GP dollars in 2009, the HWP would have already depleted the EPP Fund balance.

The ability for the HWP to collect the user charges sunsets October 1, 2011. Without extension of the sunset and increase of revenue, the EPP Fund cannot sustain the HWP through FY 2012. A user charge stakeholder work group will be convened during the summer of 2010 to explore the user charge process and develop an improved user charge proposal that provides adequate funding.