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MINERAL WELL FEES

House Bill 5294 (Substitute H-1)
First Analysis (1-20-98)

Sponsor: Rep. Raymond Basham
Committee: Conservation, Environment and Recreation

THE APPARENT PROBLEM:

Part 625 of the Natural Resources and Environmental Protection Act (NREPA) regulates "mineral wells," a term that embraces a broad category of wells, ranging from wells that are used to dispose of hazardous waste to test wells that are drilled for exploratory purposes or to obtain geological, geophysical, or other subsurface data. According to the Department of Environmental Quality's (DEQ) Geological Survey Division, funds were appropriated to regulate the operation, construction, plugging, and monitoring of these wells until 1984. No funds were appropriated after that. Since money generated from drilling and application fees constitutes the department's only revenue source for this program, the DEQ has been unable to monitor approximately 120,000 wells throughout the state. Concern has been voiced that the location of many wells is unknown. Neither is it known whether these wells have been properly plugged or sealed at the conclusion of drilling activities. Consequently, legislation has been introduced that would increase the fees currently required for drilling permits and establish new operating fees. It is proposed that these fees be deposited into a mineral well regulatory fund and used to ensure that the program is self-sustaining.

THE CONTENT OF THE BILL:

Part 625 (MCL 324.62501 et. al) of the Natural Resources and Environmental Protection Act (NREPA), which regulates mineral wells, specifies that a $50 permit application fee must be paid by well owners or operators to drill or convert a brine, storage, or waste disposal well. Also, a $1 application fee is imposed for a permit to drill a test well. House Bill 5294 would delete these provisions and would, instead, require that application and annual regulatory fees be established according to a fee schedule. The bill would also create a Mineral Well Regulatory Fund into which the new fees would be deposited. Under the bill, a person could not drill a well until the proposed permit application fee had been paid. However, the bill would also specify that a permit application fee would not be required for test wells that were regulated under Parts 111 or 115 of the act, which control hazardous and solid waste management, respectively, nor for a water well that was regulated under Part 127 of the Public Health Code (MCL 333.12701).

Exceptions. The bill would amend the current definition of "storage well" to exclude oil and gas storage wells regulated by the supervisor of wells. In addition, a "test well" would be redefined under the bill to exclude a test well whose drilling was not related to mineral exploration or extraction. Also, the bill would specify that a permit application fee would be required for a test well drilled at 50 feet or greater in depth into the bedrock or below the deepest freshwater strata, unless, as currently specified under the act, the area had been designated by the supervisor of wells as one in which a permit was not required, since there was no danger from surface or underground waste.

Permit Application Fee. House Bill 5294 would establish a permit application fee of $2,500 for a well used to dispose of waste products other than processed brine, and $500 for all other wells (storage wells, natural and artificial brine production wells, individual test wells that complied with the act's provisions relating to test wells, and wells that were used to dispose of processed brine).

Annual Mineral Well Regulatory Fees. The bill would impose an annual mineral well regulatory fee on any mineral well that was usable for its permitted purpose or that had not been properly plugged, as specified under Part 625, at the time the fee was due. The fee would have to be submitted to the DEQ, together with any documentation required by the department. The fee would be $2,500 for a well used to dispose of waste products other than processed brine, and $500 for other wells.

Mineral Well Regulatory Fund. Under the provisions of the bill, permit application fees and mineral well regulatory fees received by the Department of Environmental Quality (DEQ) would be deposited into

a new Mineral Well Regulatory Fund, and expended, upon appropriation, to implement and enforce the provisions of Part 625 of the act.

BACKGROUND INFORMATION:

"Mineral wells" is a broad term that embraces several categories of wells. A memorandum on mineral well regulations, issued by the Science and Technology Division of the Legislative Service Bureau (LSB), notes that the term includes natural or artificial brine production wells, subsurface disposal wells, and wells not regulated as gas and oil storage wells by the supervisor of wells. Also included under the term are exploration wells, or test wells. Test well is another broad term that is defined under the act to include "a well, core hole, core test, observation well or other well drilled from the surface to determine the presence of a mineral, mineral resource, ore, or rock unit, or to obtain geological or geophysical information or other subsurface data." The definition excludes holes drilled in the operation of a quarry, open pit, or underground mine.

Currently, a permit must be obtained from the supervisor of mineral wells before a mineral well can be drilled or converted. The permit application must include a survey of the well site, indicating the distances and directions from the well to specific natural and human constructed features within 300 feet, including lakes, streams, swamps, drainage ways, wells, buildings, streets, highways, pipelines, power or other utility lines, railroads, and other features. Detailed descriptions of the proposed well construction drilling program, operation procedures, and plugging are also required. Applicants must provide verification of a surety or security bond, and pay a $50 application fee for each brine production, storage, or waste disposal well permit. If a permit is issued, a mineral well can be drilled or converted from an existing well.

A test permit is not required, under the act, to drill a test well in areas of the state such as the western Upper Peninsula, where rocks of Precambrian age directly underlie unconsolidated surface deposits. The LSB memo notes that, in addition, no permit is required for a well drilled in the operation of a quarry, open pit, or underground mine, if the well is located within 500 feet of the quarry, open pit, or mine. The supervisor of mineral wells can also designate, after a public hearing, areas where there is no known or potential danger of surface or subsurface waste as a result of drilling a test well. However, the owner of such a well must file a report indicating the location of the well within two years of drilling.

Under the act, the owner of a well must also post a bond, based on the cost of plugging a mineral well.

Contamination cleanup may be covered under the bond, but such costs are not figured into the bond amount. Also, as noted in the LSB memo, although test wells are the only mineral wells that can receive blanket permitting, all mineral wells can be bonded either individually or in blanket bonds. Single brine production well permittees must post a $5,000 bond; a blanket bond for brine production wells requires a $15,000 bond; a single storage or disposal well requires a $15,000 bond; and a blanket bond for storage or disposal wells is $25,000. A $2,000 bond is required for single test wells, whereas $5,000 is the test well blanket bond amount.

Some controversy has been generated over the definitions, under the act, of "test wells" and of "monitoring wells." The supervisor of mineral wells states that monitoring wells are a subset of test wells, and that the misunderstanding comes from the definition of "test well," which, the department maintains, is a "catch all" that covers monitoring wells. Monitoring wells are looked upon as observation wells, from which geological information or subsurface data are obtained. Examples of observation wells currently regulated by the department include wells to detect pressure changes around liquid petroleum gas storage facilities, wells to monitor solution mined cavities formed in the production of artificial brines, and wells adjacent to process brine disposal facilities. Industry concerns in this area involve the claim that monitoring wells are already regulated under other statutes. For example, the Hazardous Waste Management administrative rules refer to the hydrogeological monitoring well requirement provisions in Part 625 and the Public Health Code for monitoring wells adjacent to hazardous waste disposal facilities. Also, under the Solid Waste Management administrative rules, hydrogeological monitoring wells requirements outline well installation and performance standards. However, monitoring wells constructed under parts of the NREPA regulating Environmental Response and Leaking Underground Storage Tanks rely on the professional judgement of the contractors. In light of this controversy, a legal opinion has been requested from the attorney general as to whether the department does or does not have jurisdiction over monitoring wells.

FISCAL IMPLICATIONS:

According to the Geological Survey Division of the Department of Environmental Quality (DEQ), the provisions of the bill would result in revenues of $136,500, as follows: $12,500 from permit application fees, including a $2,500 permit application fee for one disposal well, and $10,000 in permit applications fees from 20 other wells, at a rate of $500 for each well; and $124,000 from annual regulatory fees, including $47,500 in annual regulatory fees from 19 disposal wells, at a rate of $2,500 for each well, and $76,500 in annual regulatory fees from 153 other wells, at a rate of $500 for each well. According to the DEQ, the revenues would fund one and one-half FTE positions. (1-14-98)

ARGUMENTS:

For:

There has been no funding to monitor the state's mineral wells since 1984. The Department of Environmental Quality (DEQ) is concerned that the location of many of these wells is unknown, and notes that wells that aren't plugged or sealed off properly at the conclusion of drilling operations can become conduits for aquifer contamination. The fee schedule proposed under the bill for the mineral wells program is the result of discussions between the DEQ and representatives of the oil and gas industry, environmental groups, and local governmental agencies to establish new permitting and regulatory fees. While the discussions resulted in proposed legislation that would have regulated all mineral wells, members of the mineral well industry, which was not represented during the discussion on the proposed fees, have raised concerns that those fees dealt with previously unregulated wells, or wells that are already regulated under other statutes. A compromise has, therefore, been reached that would limit the mineral wells permit and fee proposals to deep wells -- those greater than 50 feet -- that are drilled to evaluate mineral exploration or extraction.

POSITIONS:

The Department of Environmental Quality (DEQ) supports the bill. (1-14-98)

The Michigan Environmental Council supports the bill. (12-10-97)

The Michigan Waste Industries Association supports the bill. (1-20-98)

Analyst: R. Young

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.