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WATER PROTECTION ACT

House Bill 4106
Sponsor: Rep. Bill Bobier
Committee: Conservation,
Environment, and Great Lakes

Complete to 1-26-94

A SUMMARY OF HOUSE BILL 4106 AS INTRODUCED 2-2-93

House Bill 4106 would create the Groundwater and Freshwater Protection Act to require the registration of certain pesticides. The bill would establish a Freshwater Protection Fund, a Groundwater Advisory Council, and certain procedures to regulate the use of pesticides and fertilizers in order to protect the integrity of the state's groundwater resource. Under the bill, the director of the Department of Agriculture in conjunction with other agencies, would develop, promote, and review the implementation of voluntary "groundwater stewardship practices" designed to prevent the contamination of groundwater by pesticides and nitrogen fertilizers.

Definitions. Under the bill, a "specialty pesticide" would be defined to mean a disinfectant, sanitizer, germicide, biocide, or pesticide labeled solely for use directly on humans or pets, in, on, or around areas associated with the household or home life, including garden and ornamental uses, but not including turf, as determined by the director of the department. "Aquifer" would mean a geologic formation, a group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. "Commercial applicator" would mean that term as it is defined under the Pesticide Control Act. "Contaminant" would mean any chemical, radionuclide, ion, synthetic organic compound, microorganism, waste, or other substance that did not occur naturally in groundwater or that naturally occurred at a lower concentration than detected. "Groundwater stewardship practices" would be defined to mean any of a set of voluntary practices promulgated by the Commission of Agriculture under the provisions of the bill, and designed to protect groundwater from contamination by pesticides and fertilizers.

Pesticide Registration. Under the bill, pesticides containing ingredients that had been confirmed in groundwater at a level above their groundwater resource response level, and pesticides for which a specific state management plan was required, would be registered as restricted use pesticides. The director would establish criteria by rule by which a pesticide would be designated as a restricted use pesticide. Registered pesticide users would be required, under the bill, to submit the necessary information to determine the pesticide's mobility in the environment, and its potential to contaminate groundwater. If not previously defined by the United States Environmental Protection Agency (EPA), the director would establish by rule a water resources protection level for all pesticides confirmed in the state's groundwater.

The director could cancel the registration of a pesticide that contained an ingredient that exceeded the groundwater resource protection level (defined under the bill to mean a

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maximum contaminant level established by the EPA or the director) at three or more sites. In determining the need to cancel pesticide registrations, the director would consider the degree to which registrants were willing to address groundwater concerns associated with their products, and the potential effectiveness of additional restrictions.

Groundwater Protection Fee. Under the bill, the following annual groundwater protection fees would be collected for each product registered and credited to the Freshwater Protection Fund:

**** Specialty Pesticide Groundwater Protection Fee: \$100 per product.**

****Fees for all other pesticides: 75 percent of previous registration years' sales, with a \$150 minimum fee.**

****Late fees: \$500 for each pesticide.**

Under the bill, the minimum groundwater protection fee would be due by July 1. Sales based groundwater protection fees greater than the \$150 minimum would be due before October 1 of the following registration years. A person required to pay a specialty fertilizer or soil conditioner registration fee under the Fertilizer Act would be required to pay an additional \$100 groundwater protection fee for each brand and product name of each grade registered. Nitrogen fertilizer distributors would pay an additional .65 cents groundwater protection fee for each ton of fertilizer sold. The department could credit a portion of the previous year's registration fees in proportion to their relative percentage, so as to limit the fund to \$3.5 million (in 1992 dollars) in total unencumbered funds.

Freshwater Protection Fund. Proceeds from the fund would be used by the department to assist the removal of potential sources of groundwater contamination. The department would establish a procedure for approving proposed expenditures from the fund. The fund could receive money or other assets from any source, including, if provided by law, revenue from the sale of Michigan freshwater protection bonds or the Michigan freshwater protection checkoff of state income and single business tax returns. Interest and earnings from fund investments would be credited to the fund. Money in the fund at the close of the fiscal year would remain in the fund, which would be used, upon appropriation, only for one or more of the following purposes:

--Direct assistance (defined under the bill to include, among other items, programs that would provide for the provision of alternate noncommunity water supplies; the closure of improperly constructed wells; the environmentally sound disposal or recycling of specialty and nonspecialty pesticide containers; specialty and nonspecialty pesticide pickup programs for unregistered pesticides; and programs devoted to integrated pest and crop management).

--Indirect assistance (defined under the bill to include, among other items, programs that would provide for public education and demonstration programs on specialty pesticide container recycling and environmentally sound disposal methods; educational programs for pesticide and fertilizer end users; technical assistance programs for pesticide and fertilizer

end users; and the promotion and implementation on-site evaluation systems and groundwater stewardship practices).

--Emergency response and removal of potential sources of groundwater contamination of up to \$15,000 per location.

--Administrative costs of up to 20 percent of annual appropriations from the fund.

Department Responsibilities. Under the bill, the director of the Department of Agriculture would be required to promulgate rules on groundwater protection and pesticide registration assessment protocol, and rules establishing voluntary groundwater stewardship practices (defined under the bill to mean any of a set of voluntary practices promulgated by the Commission of Agriculture and designed to protect groundwater from contamination by pesticides and fertilizers); establish a groundwater advisory council; and establish a groundwater stewardship program to promote the protection of groundwater through technical assistance and grants. The director could also establish regional groundwater stewardship teams -- composed of departmental, educational, and technical assistance and other personnel -- to implement certain programs; and could prioritize the duties of the teams, based on detections of pesticides and nitrogen concentrations in groundwater, groundwater impact potential estimation, or other factors.

A program would also be established by the director to track those pesticides that were defined as restricted use pesticides under the Pesticide Control Act. Under this provision, private applicators would be required to identify the intended county of application of these pesticides at the time of sale; and dealers would be required to maintain and submit records of sales and the intended counties of application. Commercial applicators would also be required to keep records of pesticide registration numbers, product names, the formulated amounts applied, and application locations. Information collected under this provision of the bill would be considered confidential business information and would not be subject to the Freedom of Information Act.

The director, in conjunction with other agencies, would also establish and develop priorities, procedures, protocols, and confirmation mechanisms to implement a groundwater monitoring program that would provide general screening, determine the relative risk of groundwater contamination, and perform envelope monitoring (defined under the bill to mean the monitoring of groundwater in areas adjacent to properties where groundwater was contaminated, to determine the concentration and spatial distribution of the contaminant in the aquifer). The director, or the director's designee, would notify well owners of the monitoring results. The director could, in addition, require a registrant to conduct groundwater monitoring programs for ingredients contained in the products as a condition of product registration. Monitoring performed under this provision would be conducted utilizing generally accepted scientific practices.

Upon confirmation of groundwater contamination, the director would be required to assist in the coordination of local activities to prevent further contamination; conduct envelope monitoring; perform an evaluation of activities in the envelope monitoring region that might have contributed to the contamination; make a determination as to the degree

to which groundwater stewardship practices were being utilized in the envelope monitoring region; and make a determination as to the potential sources of contamination. If confirmed concentrations exceeded the groundwater resource response level, or if a confirmed contaminant migrated into groundwater off the property, then the director could require a person whose action or negligence was responsible to develop an activity plan. The director could also order activities involving pesticides or nitrogen fertilizer to be stopped or modified. A person aggrieved by such an order could request a hearing.

The director could require a person to furnish any information relating to the identification, nature, and quantity of pesticides and fertilizers that were, or had been, used on a particular site, and current or past production practices that might have affected groundwater quality. The director could also require a person to land-apply materials contaminated with pesticides or fertilizers at agronomic rates.

Groundwater Protection Rules. The director could promulgate groundwater protection rules if any of the following occurred:

- Voluntary adoption of groundwater stewardship practices had not been effective.
- A pesticide had been confirmed in groundwater at levels exceeding its groundwater resource response level in at least three distinct locations.
- Nitrogen had been confirmed in groundwater at levels exceeding the maximum contaminant level in 20 percent of wells associated with an aquifer sensitivity region, or a fertilizer use activity as a result of similar activities.
- The EPA proposed to suspend or cancel registration of the pesticide or prohibit or limit its use.

In determining the need and scope of a groundwater protection rule, the director would take into consideration the type of contaminant or contaminants, and the extent to which certain factors -- including identification of the source of the contaminant and the technical and economic feasibility of any mandated practices on persons in the region -- applied.

Groundwater Advisory Council. Under the bill, the council, consisting of departmental, educational, and technical assistance personnel, agricultural producers, and others, would be required to do all of the following:

- Establish educational programs on groundwater protection-related topics.
- Coordinate technical assistance programs for persons making changes consistent with groundwater stewardship practices or groundwater protection rules.
- Provide interagency coordination of groundwater programs.
- Review the groundwater stewardship programs established under the bill.

The council's education personnel would, in addition, develop and promote education materials, including, but not limited to: direct educational assistance and consulting programs; demonstration projects; educational programs; and tours, workshops, and conferences. The council's technical assistance personnel would be responsible for technical assistance programs, including on-site evaluation of practices that might affect groundwater and the development of stewardship and activity plans.

On-site Evaluation System. Under the bill, the director of the Department of Agriculture, in conjunction with other agencies, would develop, promote, and review the implementation of voluntary groundwater stewardship practices, designed to prevent the contamination of groundwater by pesticides and nitrogen fertilizers, and would develop a voluntary on-site evaluation system for pesticide or nitrogen fertilizer use that would accomplish the following:

- Provide persons with the ability to voluntarily determine the relative potential groundwater impact posed by their use of pesticides and nitrogen fertilizers.

- Provide persons with the ability to determine the degree to which operations were in accord with groundwater stewardship practices and applicable groundwater protection rules.

- Prioritize operational changes at the site level intended to protect groundwater.

- Guide persons to appropriate technical and educational materials.