

POLLUTANT DISCHARGE PERMITS

House Bill 4295 (Substitute H-2)
First Analysis (5-1-97)

Sponsor: Rep. Rose Bogardus
Committee: Conservation, Environment
and Recreation

THE APPARENT PROBLEM:

The federal Clean Water Act prohibits releasing wastes into the country's surface waters unless a permit has been obtained for the discharge under the federal permitting program entitled the National Pollutant Discharge Elimination System (NPDES). This program is administered by the Environmental Protection Agency (EPA), which may, however, delegate its authority to a state whose regulations are at least as stringent as federal requirements. The EPA retains oversight authority. Michigan is one of those states that requested, and was delegated, this authority. Consequently, the Department of Environmental Quality (DEQ) regulates pollutant discharges and issues discharge permits in lieu of federal permits according to the provisions of Part 31 of the Natural Resources and Environmental Protection Act (NREPA) and administrative rules promulgated under Part 31. The department issues two kinds of discharge permits: individual permits, issued for a single facility and the particular water body that receives the discharge; and general permits, which are developed for broad categories of discharges located throughout the state.

The administrative rules specify that, when processing discharge permit applications, the DEQ must delineate the discharge limits and conditions that must be met, and then prepare a public notice describing these activities. According to the department, the public notice for an individual discharge permit is posted either in a public building in the municipality nearest the discharge, or at the applicant's premises. For a general discharge permit, since it has statewide implications, the DEQ publishes notices in three newspapers: a Detroit newspaper and a Grand Rapids newspaper of general circulation; and the Marquette Mining Journal. Notices must also be mailed to any person who requests a copy in writing. After a general permit is issued, facilities included under the general permit may apply for a "Certificate of Coverage." This application is made on the same form used for an individual permit application. If the DEQ determines that the facility's discharge meets the criteria for coverage under a general permit, a Certificate of Coverage is then issued, and the discharge is authorized under the general permit; if not, the

application is processed as an individual permit application.

The public notification requirements prescribed for issuing a general discharge permit do not apply to the issuance of a Certificate of Coverage. In other words, the department must solicit public input on the contents of a general permit during the application process, but need not solicit public input when deciding which facilities may be covered under the general permit once the permit is issued. Problems regarding this aspect of the permit application process were brought to light recently in Lapeer County, where a proposed plan to build a sewage treatment facility at Potter Lake has met the combined opposition of the adjacent county of Genesee, and of Davis, Burton, and Richfield townships. The proposed sewage system has been tentatively approved by the DEQ, but some feel that there should have been more public input involved before plans reached this stage. Consequently, legislation has been introduced to increase public notification requirements for proposed permit authorizations involving sewage lagoons, and to require that public hearings on discharge permits involving these facilities must be held whenever requested by the public.

THE CONTENT OF THE BILL:

Currently, under Part 31 of the Natural Resources and Environmental Protection Act (NREPA), an individual requesting a new or increased wastewater discharge permit must file an application with the Department of Environmental Quality (DEQ) that specifies, among other things, the nature of the enterprise or development, the proposed point of discharge of the wastes into state waters, and a statement outlining the expected bacterial, physical, chemical, and other known characteristics of the wastes. The department has up to 180 days to grant or deny a permit, and may condition the permit upon the restrictions that it considers necessary to adequately guard against unlawful uses of state waters. House Bill 4295 would amend the act to require that, before granting a permit or certificate of

coverage for a sewage or anaerobic (one that allows bacteria to exist without oxygen) lagoon that serves a residential area, the department would have to fulfill certain public notice and hearing requirements. Upon receiving a completed application, the department would be required to:

C Mail a notice of a permit application by first class mail to the chief executive officer of each municipality that would be affected by the proposed permit.

C Notify the health department of each municipality that is contiguous to the pond or lake, if the permit application is for a discharge site in a pond or lake, and each municipality that is downstream from a proposed discharge site in a creek, stream, or river; and publish notice of the permit application in the local newspapers and the newspapers of general circulation in each municipality. In addition, the DEQ would be required to promulgate rules, based on scientific data, establishing the criteria for determining when a municipality should be considered affected by the granting of a permit.

C Hold a public hearing in the areas affected by the requested permit, including those that are downstream of the requested discharge site, if a request for hearing is received within 60 days after the public notice is last published.

MCL 324.3113 et al.

FISCAL IMPLICATIONS:

The bill would require that the Department of Environmental Quality issue a public notice for new or increased use permits. According to the House Fiscal Agency (HFA), this provision of the bill would have an impact on state funds, depending on the number of new water use permit applications received and the number of local communities affected. (4-30-97)

ARGUMENTS:

For:

Generally, the bill would provide for greater public input and would serve to increase public awareness of proposed discharges from sewage, or wastewater treatment, lagoons that serve residential areas. When properly designed and operated, these lagoons are a cost effective method of treating sewage, and serve to prevent pollution of the local environment. However, public scrutiny can only serve to foster accountability. If a discharge is polluting local lakes or rivers, the public needs to know; if no pollution is taking place, the general public needs to be assured that its fears are groundless.

Against:

The current program by which the Department of Environmental Quality (DEQ) issues general discharge permits and certificates of coverage was implemented in 1995, and was designed to streamline the permit application process and to reduce permit backlog. The public has been well served by this program, and it has greatly reduced the time required to issue permits. On the other hand, according to the department, reinstating a program with increased public notification and public hearing requirements would cause a return to a more "bureaucratic" process, and would add several weeks to the time needed to process and issue permits.

POSITIONS:

The Michigan Environmental Council supports the bill. (4-30-97)

Clean Water Action supports the bill. (4-30-97)

The Department of Environmental Quality (DEQ) opposes the bill. (4-30-97)

Analyst: R. Young

~~This is a preliminary draft of the bill, and is not to be used for any purpose other than for the purpose of its introduction into the House of Representatives.~~
their deliberations, and does not constitute an official statement of legislative intent.