Legislative Analysis

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DISCLOSE WATER POLLUTION

House Bill 4929 as enrolled
Public Act 72 of 2004
Sponsor: Rep. Chris Ward
House Committee: Land Use and Environment
Senate Committee: Natural Resources and Environmental Affairs
Second Analysis (7-27-04)

BRIEF SUMMARY: The bill would amend the Natural Resources and Environmental Protection Act (NREPA) to require that all wastewater treatment facilities, publicly and privately owned, disclose the discharge of untreated or partially treated sewage, in the same manner that is currently required of municipal wastewater treatment facilities.

FISCAL IMPACT: This bill would not have a fiscal impact on the state or on local governmental units.

THE APPARENT PROBLEM:

Currently under the law, municipalities that manage wastewater treatment plants are required to report incidences of sewer overflows—that is, times when untreated or partially treated sewage is discharged onto land or into water—in four ways: by calling the Department of Environmental Quality, contacting the local health department, alerting a local newspaper, and when it is appropriate, notifying the other municipalities with jurisdiction on the affected waters. Hundreds of incidences are reported every year, involving tens of billions of gallons of untreated and partially treated sewage. Municipalities also are required to test the affected water for E. coli and provide results to the local health department. The information reported by municipalities to the DEQ is posted on the department's web site.

In contrast to municipal sewer systems, wastewater treatment systems operated by entities other than a municipality, including private sewer systems, do not have to report sewer overflows. Private on-site wastewater treatment and collection systems are those built, operated, and maintained by individuals or groups, generally when a public municipal system is unavailable. The systems serve private subdivision and condominium associations, apartment complex owners, mobile home park owners, manufacturing operations, large motels and hotels, private campgrounds, and other businesses and industries where wastewater flows exceed 10,000 gallons a day. State and federal correctional institutions and state parks also operate such systems (and not consistently be subject to the same requirements as municipal systems. See Background Information below.)

In order to keep track of private wastewater treatment systems, the Department of Environmental Quality has, until recently, enforced Administrative Rule 33, which

required applicants seeking to construct a private sewage system to obtain a resolution from the local governing body agreeing to take over the system if the developer failed to operate or maintain it. Recently an Isabella County Circuit Court judge called the rule "capricious and arbitrary," and that finding was upheld by the Michigan Court of Appeals, which found the rule invalid. As a result, local governments will not have to bear the responsibility for failed or abandoned private sewage systems, unless they choose to do so, and the fear of contaminated watersheds has risen. As one dissenting appeals court judge noted, "Nothing could threaten our watersheds more than allowing haphazard developers to receive permits, build large sewage retention lagoons, sell their lots and leave the lagoons' maintenance to ill-equipped and poorly funded homeowner and neighborhood associations who would not know of grave environmental disasters until far too late."

Some have argued that privately-owned sewer systems, and public but non-municipal systems, should comply with the same reporting requirements as public systems, so that private system owners stand accountable for the impact of their systems on the environment and the public's health.

THE CONTENT OF THE BILL:

House Bill 4929 would amend the Natural Resources and Environmental Protection Act (NREPA) to require that all public and private wastewater treatment facilities disclose the discharge of untreated or partially treated sewage, in the same manner that is now required of municipal wastewater treatment facilities.

Currently under the law, if untreated sewage or partially treated sewage is discharged from a sewer system onto land, or into the waters of the state, officials in the municipality responsible for the discharge must immediately (but not more than 24 hours) after the discharge begins, notify the Department of Environmental Quality, the local health department, and daily newspapers of general circulation in the county in which the municipality responsible for the discharge is located and in other affected counties. That notification protocol must include all of the following:

- promptly after the discharge starts, a telephone call (or another method of communication required by the department) to provide notification that the discharge is occurring; and,

- at the conclusion of the discharge, notification in writing (or using another manner required by the department) of all of the following: the volume and quality of the discharge; the reason for the discharge; the waters or land area, or both, receiving the discharge; the time the discharge began and ended; verification of the municipality's compliance status with the requirements of the national pollutant discharge elimination system permit, and applicable state and federal statutes, rules, and orders.

House Bill 4929 would retain these provisions but modify two requirements. First, immediate notification would be required that the discharge occurred, or was occurring. Second, at the conclusion of the discharge, verification of a person's compliance status

with its national pollutant discharge elimination system permit, or its groundwater discharge permit would be required.

The law specifies that upon being notified of a discharge, the DEQ must promptly report the notification on its web site. In addition, each time a discharge occurs, the municipality must test the affected waters for E. coli to assess the risk to the public health as a result of the discharge, and provide test results to the affected local county health departments, and the DEQ. Under the bill, each time a discharge to surface water occurred, then the person responsible for the sewer system would have to test the affected waters for E. coli

Currently under the law, a municipality that operates a sewer system that may discharge untreated sewage or partially treated sewage into the waters of the state must annually contact other municipalities whose jurisdictions contain water that may be affected. If the municipalities being contacted wish to be notified immediately (within 24-hours), then the municipal operator must do so. House Bill 4929 would retain this provision but would also require that notice be provided by any person responsible for a sewer system.

The bill specifies that in cases where a sewer system discharges to the groundwater via a subsurface disposal system, and does not have a groundwater discharge permit issued by the Department of Environmental Quality, and where that discharge of untreated (or partially treated) sewage is not to surface waters, then the person responsible for the sewer system must notify the local health department.

Finally, the bill would redefine "partially treated sewage" to mean any sewage, sewage and storm water, or sewage and wastewater, from domestic or industrial sources that meets one or more of the following: 1) is not treated to national secondary treatment standards for wastewater, or that is treated to a level less than that required by the person's national pollutant discharge elimination system permit; 2) is treated to a level less than that required by the person's groundwater discharge permit; and 3) is found on the ground surface.

Further, the bill would re-define "sewer system" to mean a public or privately owned sewer system designed and used to convey or treat sanitary sewage or sanitary sewage and storm water. Sewer system does not include an on-site wastewater treatment system serving one residential unit or duplex. The bill also would define "surface water" to mean all of the following, but not including drainage ways and ponds used solely for wastewater conveyance, treatment, or control: the Great Lakes and their connecting waters; inland lakes; rivers; streams; impoundments; open drains; and, other surface bodies of water.

MCL 324.3112a

BACKGROUND INFORMATION:

In February 2002, in Livingston County, thousands of gallons of untreated raw sewage spilled onto the grounds at the Camp Brighton women's prison because of a malfunctioning wastewater treatment plant. The spill was not reported by prison officials to either local or state officials, despite the fact that it threatened both sensitive wetlands in the Brighton Recreation Area, and additionally, the water in residential wells. For

additional information about the incident, visit the *Detroit News* web site and search for Camp Brighton prison spill.

ARGUMENTS:

For:

Many non-municipal wastewater treatment facilities generate sewage flows equal to and sometimes far exceeding those of municipal, township, or village systems. For example, if this legislation is enacted into law, the kinds of private system owners who would be required to account for illicit sewage discharges would include all of the following: private subdivision and condominium associations, apartment complex owners, mobile home park owners, manufacturing operations, large motels and hotels, private campgrounds, and other businesses and industries where wastewater flows exceed 10,000 gallons a day. State and federal correctional institutions and state parks would also be covered by the bill. When these systems discharge sewage, that sewage threatens the public health and environment. Having to report discharges publicly will help to keep the private system operators accountable to the public, and allow neighbors to know about health risks as soon as they occur. This higher standard of accountability should also help to ensure that the construction standards for the private sewer systems do not decline.

For:

Recently a circuit court judge in Isabella County, found that 'Rule 33,' administered by the Department of Environmental Quality, was "capricious and arbitrary." On appeal, a three-judge panel of the Michigan Court of Appeals agreed, and found the rule invalid. This legislation is important, because 'Rule 33' has been overturned.

In order to keep track of private wastewater treatment systems, the Department of Environmental Quality has, until recently, enforced Administrative Rule 33, which required applicants seeking to construct a private sewage system to obtain a resolution from the local governing body agreeing to take over the system, if the developer failed to operate or maintain it. Now that the administrative rule has been overturned, local governments will not have to take over failed or abandoned private sewage systems, unless they choose to do so. While that ruling may seem fair to taxpayers on the one hand, it also has raised the fear of contaminated watersheds on the other. As one dissenting appeals court judge noted, "Nothing could threaten our watersheds more than allowing haphazard developers to receive permits, build large sewage retention lagoons, sell their lots and leave the lagoons' maintenance to ill-equipped and poorly funded homeowner and neighborhood associations who would not know of grave environmental disasters until far too late." House Bill 4929 will help keep private system operators more regularly and systematically accountable for any defects in their systems that result in discharges.

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■ 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.