



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 977 (Substitute S-2)  
Sponsor: Senator Jud Gilbert, II  
Committee: Natural Resources and Environmental Affairs

Date Completed: 3-15-04

### **CONTENT**

**The bill would amend Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act to require a person who polluted Michigan waters to report the release to the Department of Environmental Quality (DEQ), to the primary public safety answering point (PSAP) where the release occurred, and to local health departments. The bill also would prescribe penalties for noncompliance.**

Under the bill, a person responsible for releasing any polluting material to the surface waters or groundwaters of the State in excess of the threshold reporting quantity, as soon as the person knew of the release, immediately would have to report it to the DEQ and, via a 9-1-1 call, to the primary PSAP serving the jurisdiction where the release occurred.

Within 10 days of the release, the person responsible for it also would have to submit to the DEQ and each local health department a full written explanation of all of the following:

- The cause of the release.
- The type and amount of the polluting material released.
- The time the release began.
- The time the release ended or, if it had not ended, a statement to that effect.
- Response measures taken or to be taken.
- The amount of polluting material recovered.
- Measures undertaken to prevent the recurrence of similar releases.

If rules promulgated under Part 31 require a person to maintain a pollution incident prevention plan, the person would have to update the plan to include these reporting requirements when conducting any evaluation of the plan required by rule.

A person who failed to report a release would be guilty of a felony and would have to be fined at least \$2,500 but not more than \$25,000 for each violation. The court could impose an additional maximum fine of \$25,000 for each day the person failed to report a release. These penalties currently apply to people who knowingly discharged an unlawful substance into State waters, or who intentionally made a false statement on an application for a permit, or intentionally rendered inaccurate a monitoring device or record. In addition, if the violation is a second conviction for a violation of Part 31, the court must fine the person at least \$25,000 per day but not more than \$50,000 per day of violation. The court also may sentence the person to a maximum of two years in prison or probation, and the Attorney General may sue to recover the costs of surveillance and enforcement by the State and the full value of the injuries done to the natural resources of the State.

The emergency management coordinator of each county would have to develop and oversee the implementation of a plan to provide timely notification of a release to appropriate local, State, and Federal agencies.

“Threshold reporting quantity” would be defined as it is the Michigan Administrative Code (324.2002), which establishes minimum amounts of oil, salt, and other polluting materials that, when released, must be reported. “Primary public safety answering point” would be defined as it is in the Emergency Telephone Service Enabling Act”, i.e., a communication facility operated or answered on a 24-hour basis assigned responsibility by a public agency or county to receive 9-1-1 calls and to dispatch public safety response services.

MCL 324.3101 et al.

## **BACKGROUND**

The Michigan Administrative Code (R 324.2007) requires an owner, operator, or manager of an oil storage facility or an on-land facility that releases, or permits to be released, any polluting material in excess of a threshold reporting quantity during any 24-hour period to notify the DEQ by using a toll-free telephone number. Within 10 days after the release, the owner or operator must file a written report with the chief of the DEQ’s Waste Management Division, outlining the cause of the release, discovery of the release, and the response measures taken, or a schedule for completion of measures to be taken, or both, to prevent recurrence of similar releases.

Under R 324.2006, the owner or operator of an on-land facility that receives, uses, processes, manufactures, stores, or ships polluting materials in excess of the applicable threshold management quantity must develop a pollution incident prevention plan, and operate in accordance with it. The plan must include information and be maintained as prescribed by the rule. A facility that is subject to other local, State, or Federal emergency or contingency planning requirements may integrate the pollution incident prevention plan with other plans if the integrated plan contains the required elements of the prevention plan. The facility owner or operator must evaluate the prevention plan or integrated plan every three years or after any release that requires implementation of the plan, whichever is more frequent.

(An “on-land facility” is a temporary or permanent land-based industry, plant, establishment, firm, storage site, or other facility, that receives, processes, manufactures, uses, stores, or ships polluting materials, at which an amount equal to or more than its threshold management quantity is present, and that is so situated that loss of polluting materials could directly or indirectly reach the surface or groundwaters of the State, including any facility that discharges through a public sewer system. The term does not include an oil storage facility, an oil field petroleum or brine storage facility, a recreational marina, installations of oil containing electrical equipment, or a transportation-related facility as defined in Federal regulations.)

Legislative Analyst: Claire Layman  
Suzanne Lowe

## **FISCAL IMPACT**

This bill could result in an indeterminate amount of income to the State from fine revenue. To the extent that the bill would expand the existing felony to include people who failed to report a release, it could increase State and local corrections costs. Local units of government would incur the cost of incarceration in a local facility, which varies by county. The State would incur the cost of felony probation at an average annual cost of \$1,800, as

well as the cost of incarceration in a State facility at an average annual cost of \$28,000. A person who failed to report a release of polluting material would be subject to a penal fine of between \$2,500 and \$25,000 for each violation. The court also could impose an additional fine of up to \$25,000 for each day the person failed to report the release. Fines for repeated violations would be between \$25,000 and \$50,000 per day.

A violator also would be subject to civil liability to the State for the value of injuries to natural resources, and the costs of surveillance and enforcement.

Fiscal Analyst: Jessica Runnels  
Bethany Wicksall

S0304\sb977sb

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.