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

House Bill 5771 (Substitute H-3 as passed by the House)
House Bill 5772 (as passed by the House)
Sponsor: Representative Ruth Johnson
House Committee: Land Use and Environment
Senate Committee: Appropriations

Date Completed: 9-22-04

CONTENT

House Bill 5771 (H-3) would amend Part 117 (Septage Waste Services) of the Natural Resources and Environmental Protection Act to create a new fee structure for septage waste servicing and vehicle licenses and site permits; revise the requirements for each of these license, permit, and disposal methods; establish criteria for receiving facilities; create the "Septage Waste Program Fund"; require the Department of Environmental Quality to convene a septage advisory committee; and increase fines and penalties for violations of this part.

House Bill 5772 would amend the Code of Criminal Procedure to include in the sentencing guidelines the proposed felony offense of knowingly making a false statement or entry in a septage license application or other record.

House Bill 5771 (H-3)

Septage waste servicing licenses authorize the cleaning, removal, transporting, or disposal by application to land or otherwise, of septage waste. Under current law, a person engaged in the servicing of septage waste must be authorized by a septage waste servicing license and a septage waste vehicle license issued by the Department of Environmental Quality (DEQ). The bill would require applications for a servicing license to include a written plan for disposal of septage waste obtained in winter if the disposal method would not be delivery to a receiving facility or land application; written proof of satisfaction of continuing education requirements; and payment of the servicing license fee.

The bill also specifies that, beginning January 1, 2007, a person would have to complete at least 10 hours of continuing education in the preceding two years to be eligible for an initial servicing license. From January 1, 2007, to December 31, 2010, a person would have to complete successfully not less than 10 hours of continuing education in the preceding two years to renew a servicing license. Beginning January 1, 2010, a person could not renew a servicing license unless the person had completed 30 hours of continuing education in the preceding five years. The continuing education courses would have to be approved by the DEQ. Violations of this part by persons conducting the courses could result in revocation or suspension of course approval. Applicants that are corporations, partnerships, or other legal entities would have to designate a responsible agent to fulfill the educational requirements, and the name of that person would appear on any license or permit issued under this part.

Under the bill, servicing licensees would have to report annually on any complaints received concerning disposal of the septage waste. Licensees would be required to maintain records for five years and would have to display these records upon request of the DEQ Director, a peace officer, or an official of a certified health department.

Septage waste vehicle license applications would have to specify whether the septage waste vehicle or any other vehicle owned by the applicant would be used for land application of septage waste. The DEQ would have to notify the applicant promptly if the application were incomplete and identify the deficiencies. The bill also would lengthen the time for which a servicing license and a vehicle license are valid, from three years to five years. It also specifies that the two licenses would be valid for the same five-year period.

Disposal options for septage waste would be revised under the bill. Currently, the waste must be taken to a receiving facility if one is available within 15 road miles or the servicing site is within a receiving facility's service area. For the first year after the bill's effective date, it would exempt septage servicers who own a storage facility with a capacity of 50,000 gallons or more from this requirement. Beginning one year after the effective date, the waste could be disposed of at a receiving facility whose area was being serviced. The bill would exempt from this requirement until 2025 a person with a storage facility with a capacity of 50,000 gallons or more that was constructed before the site was within a receiving facility's service area. In addition to direct disposal, the bill would prohibit the indirect disposal of septage waste into a lake, pond, stream, river, or other body of water.

Land application of septage waste would be subject to additional regulation under the bill. Under current law, people may service their own septage containers and apply the waste to their own land if the property is at least 20 acres in size and if the disposal is otherwise in compliance with the rules and statute. The bill would remove this provision and require a site permit for all land application. The bill would add requirements to the permit application for land application of septage, including the name and address of the land owner, the name and address of the manager of the land, if different than the owner, results of a soil fertility test performed within one year of the permit application date, other information required to comply with State and Federal law, and payment of a site application fee. In addition to sending this information to the DEQ, the applicant would have to send a notice of the application and supporting documentation to:

- The certified health department having jurisdiction
- The clerk of the city, village, or township where the site is located
- Each person who owns a lot or parcel that is contiguous to the proposed site
- Each person who owns a lot that is within 150 feet of a location where septage waste is to be disposed of by injection
- Each person who owns a lot that is within 800 feet of a location where septage waste is to be disposed of by surface application.

The DEQ would have to notify the applicant promptly of any deficiencies in the permit application. The DEQ would be required to issue a site permit if all requirements of State and Federal law were met; otherwise the permit application would be denied. The bill specifies that a site permit would not be transferable and would be valid, unless suspended or revoked, until the expiration of the permitee's septage waste servicing license. A site permit could be revoked if the septage waste land application or site management were in violation of this part.

The bill would revise the determination of the rates at which septage waste may be land applied. Under current law, the waste may be disposed of at a rate not greater than 15,000 gallons per acre per month and not greater than 60,000 gallons per acre per year. The bill

would allow application of the waste at agronomic rates and remove references to specific amounts. The bill also would revise the isolation distances that land application of septage waste must be from drinking water wells. Currently, all private drinking water wells are grouped together. Under the bill, six different types of wells are identified, as defined by administrative rules or Federal regulations, and assigned isolation distances that vary from 150 feet to 2,000 feet, depending on whether the land application would be surface or injection. The isolation distances from buildings, surface water, and roads would be unchanged.

The bill also specifies the number of hours in which septage waste would have to be mechanically incorporated, which is the mixing of surface-applied septage waste with the soil. In most cases, the septage would have to be incorporated within six hours of surface application. If applied to fallow ground, the waste would have to be mechanically incorporated within 48 hours of application.

Beginning two years after the bill's effective date, septage waste could not be applied to frozen land. The bill also would revise the provisions regarding land application of septage waste within those two years. Waste could be applied to frozen land if the pH of the septage waste were raised to 12.0 at 25 degrees Celsius or higher by alkali addition and remained at that level for 30 minutes, or under other conditions approved by the DEQ. If the septage were injected below the surface of the land, there would have to be substantial soil coverage. If the septage were applied to the surface with subsequent mechanical incorporation, then the application would have to be approved by the DEQ, less than 10,000 gallons per acre could be applied during the period that the waste could not be incorporated, and it would have to be incorporated within 20 days following the end of the frozen conditions. The bill would require persons subject to this part also to comply with Federal regulations.

Food establishment septage, such as grease and fatty substances, would have to be combined with other septage waste in a greater than 1 to 3 ratio and blended into a uniform mixture if it were to be applied to land. The bill would require the performance of a soil test in accordance with Federal law within one year before the land application of septage waste containing food establishment material or a single test of mixed septage waste contained in a storage facility. Also, beginning two years after the bill's effective date, domestic septage, such as waste and wastewater from humans or household operations, would have to be screened through a screen of not greater than one-half inch mesh or through slats separated by a gap of not greater than three-eighths inch, or processed through a sewage grinder designed to not pass solids larger than one-half inch in diameter. Screenings would be handled as solid waste and subject to Part 115 (Solid Waste Management).

Receiving facilities would be subject to construction permits once the DEQ promulgated rules regarding design and operating requirements and the control of nuisance conditions. A person would not be permitted to begin construction of a receiving facility after the rules were promulgated unless authorized by the permit from the DEQ. Under the bill, a permit application would have to include a basis of design for the facility, engineering plans sealed by an engineer licensed to practice in Michigan, and any other information required by the DEQ. A construction permit issued under Part 41 (Sewerage Systems) would satisfy the permitting requirement for septage waste receiving facilities.

The bill would prohibit the operation of a receiving facility contrary to an operating plan approved by the DEQ. Existing facilities would have one year from the bill's effective date t to comply with the operating plan requirement. The person proposing the receiving facility would have to publish notice of the proposed operating plan in a newspaper of general circulation in the area of the facility. The notice would have to contain a statement that the

facility would receive septage waste, a statement of where the operating plan was available for review during business hours, a request for written comments, and a deadline for the comment period that was not less than 30 days after publication of the notice. After the deadline, the person proposing the receiving facility would have to submit a summary of the comments and the proposed operation plan to the DEQ for approval. Modification to the operating plan would need DEQ approval. Violations of this section or the rules promulgated under it could result in a hearing and an order to cease operation. The DEQ would have to post on its website all approved operating plans and notice of any orders to cease operation.

Within one year of the promulgation of rules, the owner of a receiving facility would be required to submit to the DEQ a report prepared by a professional engineer licensed to practice in Michigan describing the receiving facility's state of compliance with the rules and any proposed modifications necessary to comply. If modifications were required for compliance, the owner of a receiving facility would have 18 months from the time the rules were promulgated to submit a plan for compliance and obtain a construction permit for the work. The bill would require receiving facility owners to be in compliance with the rules within three years of their promulgation.

Inspections of septage waste disposal sites could be conducted at any reasonable time by a representative of the DEQ to investigate compliance with Part 117. The bill would require the DEQ to inspect septage waste vehicles and disposal sites at least annually and inspect receiving facilities within one year of beginning operation and at least annually thereafter. This would be an expansion of the current law, which requires annual inspection of disposal sites.

An advisory committee would have to be convened by the DEQ under the bill. The committee would make recommendations on septage waste storage facility management practices. The committee could have any number of members, but would have to include a storage facility operator, a receiving facility operator, a generator of septage waste, a representative of township government, a representative of an environmental protection organization, and a licensed Michigan septage waste hauler. Within 18 months of the bill's effective date, the DEQ would be required to establish generally accepted septage storage facility management practices and post them on the DEQ website. The bill also would prohibit a person from constructing a storage facility without written approval from the DEQ.

Certified local health departments currently carry out many of the provisions of the septage waste program and septage fee revenue supports grants to health departments to conduct compliance inspections. The DEQ conducts these inspections in areas where a health department does not. The bill would allow the DEQ to contract with qualified third parties to carry out certain responsibilities of the DEQ under this part when a certified health department does not perform the inspection function. The bill would require a memorandum of understanding between the DEQ and either a certified health department or a qualified third party, which would provide for the compensation to be paid by the DEQ.

The purpose of the Septage Waste Site Contingency Fund would be revised under the bill. Currently, money in the Contingency Fund is used to remove or treat septage that has been disposed of in violation of this section. The bill would eliminate that purpose and allow expenditures to defray costs of the continuing education courses that would otherwise be paid for by persons taking the courses.

The Septage Waste Program Fund would be created by the bill. It would receive fees and interest on fees collected under Part 117. When the bill took effect, all money in the Septage Waste Compliance Fund would be transferred to the new Program Fund. The Fund

could receive money and assets from any source. Money in the Fund would remain in the Fund at the close of the fiscal year and would not lapse to the General Fund. Money in the Program Fund could be spent only upon appropriation for the enforcement and administration of this part.

License and permit fees would be restructured under the bill. The fee for a septage waste servicing license would decrease from $300 to $200 and a one-time fee of $100 that is deposited into the Contingency Fund would be discontinued. The fee for a septage waste vehicle license would be $350 if none of the vehicles owned by applicant were used for land application. The vehicle license fee would be $480 if any of the vehicles owned by the applicant were used for land application of septage waste. The current vehicle license fee if $75. A site permit would cost $500, but the bill would not require an additional fee if the permit were renewed. Any of these fees would have to be refunded by the DEQ if the license or permit were denied.

The servicing and vehicle licensing fees would have to be paid annually. The DEQ would bill the licensees by February 1 and payment would have to be postmarked by March 15. The bills would be prorated for 2005 to reflect the payments licensees had made under the current fee structure. The DEQ would assess interest on late payments equal to 0.75% of the payment due for each month or portion of a month that the payment remained past due. Failure to pay would be a violation of Part 117. If the person failed to pay by October 1, the DEQ could issue an order revoking the license or permit.

Rule promulgation would be authorized under the bill to establish the continuing education requirements, specify information required on license and permit applications, and to establish standards or procedures for a department declaration that a wastewater treatment plant was unavailable as a receiving facility.

Fine and penalties for violations of Part 117 would be increased under the bill. A violation of certain sections would be a misdemeanor and could result in 90 days' imprisonment, instead of the current 10 days, and fine of not more than $5,000, instead of the current $500. The bill would allow a peace officer to issue an appearance ticket for these violations. Other violations of this part or a license or permit issued under it would be misdemeanor, punishable by imprisonment for up to 30 days and a fine between $1,000 and $2,500. The bill also would establish additional actions as violations. False statements or entries on a license application or record would be a felony, punishable by imprisonment for not more than two years or a fine between $2,500 and $25,000. Each day that a violation continued would be a separate violation.

Other provisions contained in the bill include a statement that Part 117 would not preempt local ordinances that prohibit the application of septage waste to land or otherwise impose stricter requirements than the State law. The bill also would cap the amount required for a receiving facility surety at $25,000. The bill would authorize the Director of the DEQ to grant a temporary variance from a requirement of this part added by this bill if the variance request were in writing, the requirements of Part 117 could not otherwise be met, the variance would not create or increase the potential for a health hazard, nuisance condition, or pollution of surface or ground water, and the activity or condition would not violate other parts of the Natural Resources and Environmental Protection Act. The variance granted would have to be in writing and posted on the DEQ website.

House Bill 5772

The bill would include in the sentencing guidelines the proposed felony offense of knowingly making a false statement or entry in a septage license application or other record. The offense would be designated a Class G felony against public safety, with a statutory maximum sentence of two years' imprisonment.

MCL 324.11701 et al (H.B. 5771)
MCL 777.13c (H.B. 5772)

FISCAL IMPACT

Additional fee revenue of $296,600 is anticipated from the new fee structure and increased fee levels. The FY 2004-05 budget for the Department of Environmental Quality includes $2,060,300 in septage waste permit fees, divided between $1,525,000 for septage waste compliance grants and $535,500 for administrative costs. This appropriation includes an increase of $174,900 over the FY 2003-04 appropriation and an offset of the removal of $121,700 in General Fund support for the program, pursuant to the Target Agreement. The increased fee revenue would provide for the additional administrative responsibilities required of the DEQ in this bill.

By creating a new felony and increasing sentence lengths for existing misdemeanor violations, the bills would increase State and local corrections costs. There are no Statewide data on the number of offenders currently convicted of violating the relevant misdemeanors. Local governments incur the costs of misdemeanor probation and incarceration in a local facility, which vary by county. There also are no data available to indicate how many offenders would be convicted of the proposed felony. The felony would be a Class G offense for which an offender would be subject to a sentencing guidelines minimum sentencing range from 0-3 months to 7-16 months. Local units would incur the costs of incarceration in a local facility, while the State would incur the cost of felony probation at an average annual cost of $1,800 and the cost of incarceration in a State facility at an average annual cost of $28,000. Public libraries would benefit from any additional penal fine revenue.

Fiscal Analyst: Jessica Runnels
Bethany Wicksall