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BILL ANALYSIS

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Senate Bill 447 (Substitute S-3 as passed by the Senate)
Senate Bill 448 (Substitute S-4 as passed by the Senate)
Senate Bill 501 (Substitute S-2 as passed by the Senate)
Senate Bill 502 (Substitute S-1 as reported)
Senate Bill 503 (Substitute S-1 as passed by the Senate)
Senate Bill 504 (Substitute S-4 as passed by the Senate)
Sponsor: Senator Cameron S. Brown (S.B. 447 & 448)
Senator Patricia L. Birkholz (S.B. 501 & 502)
Senator Jim Barcia (S.B. 503)
Senator Gerald Van Woerkom (S.B. 504)
Committee: Agriculture

Date Completed: 8-9-07

RATIONALE

Michigan has approximately 200 concentrated animal feeding operations, or CAFOs. Animals raised on these CAFOs include beef and dairy cows, hogs, and poultry. The size of the facilities allows them to operate efficiently, helping the price of meat and dairy products to remain competitive, but the practice of managing a large number of animals on a relatively small area of land also poses environmental challenges. One of the most significant problems that CAFOs face is the management of considerable quantities of animal waste and other waste products, which CAFOs must deal with properly in order to protect the public health and avoid degrading the State's waters. Agricultural waste often is disposed of through application to nearby fields, but there are concerns that improper or excessive or improper application can cause runoff into nearby waterways, polluting the water with high levels of nutrients such as nitrogen and phosphorus, as well as dangerous microorganisms like *e. coli*.

Part 31 of the Natural Resources and Environmental Protection Act (NREPA) regulates the discharge of pollutants into the waters of the State. In addition, the National Pollution Discharge Elimination System (NPDES) establishes standards for manufacturers, municipal waste facilities, and others conducting operations with the potential to pollute the nations' waters. Under administrative rules that took effect in April 2005 (R 323.2196), all CAFOs in the State were required to apply for an NPDES permit by July 1, 2007. Some members of the agricultural community, however, have suggested that participating in the Michigan Agricultural Environmental Assurance Program (MAEAP) should be an alternative to obtaining an NPDES permit, as a way to provide verification of necessary practices and ensure protection of the State's waterways. In addition, other changes have been suggested to align the current requirements with the changing nature of agriculture in the State. (For more details on NPDES permits and MAEAP, please see **BACKGROUND**.)

CONTENT

Senate Bill 447 (S-3) would amend Part 31 (Water Resources Protection) of NREPA to do the following:

-- Require the owner or operator of a large CAFO, under certain circumstances, to obtain a mechanism of financial assurance of $100,000 that was accessible by the Department of Environmental Quality (DEQ) to remediate any environmental harm caused by a violation of a permit under Part 31.

-- **Allow the DEQ to require a financial assurance mechanism of up to $1.0 million if the owner or operator of a large CAFO had a history of convictions or violations.**
-- **Prohibit the owner or operator of a large CAFO that violated Part 31 from increasing the number of animals at the CAFO until one year after the person had satisfied certain requirements regarding compliance and remediation, and had obtained a mechanism of financial assurance as required.**
-- **Prohibit the DEQ from modifying or reissuing a permit, or issuing a new permit, for that CAFO until the owner or operator had met all of the above requirements.**

Senate Bill 448 (S-4) would amend Part 31 of NREPA to do the following:

-- **Require a person to obtain a certificate of construction from the Michigan Department of Agriculture (MDA) before constructing facilities for a large CAFO or expanding an existing large CAFO, with certain exceptions.**
-- **Prescribe a $150 application fee for a certificate of construction.**
-- **Require a person who received a certificate of construction to submit modified plans to the MDA before modifying the design or construction plans for the proposal.**
-- **Permit a court, if an owner or operator of a large CAFO were found guilty of a criminal or civil violation under Part 31, to order the person to comply with the terms of the permit under Part 31, or to revoke the permit, order the removal of all animals from the facility, and order the closure of the facility.**

Senate Bills 501 (S-2), 502 (S-1), and 503 (S-1) would add Part 86 (Agriculture) to NREPA. Senate Bill 501 (S-2) would require the DEQ to post and maintain on its website a booklet identifying environmental laws and rules of particular significance for farms and farm operations.

Senate Bill 502 (S-1) would do the following:

-- **Require the DEQ to begin investigating a complaint against a farm or farm operation within seven days of receiving the complaint.**
-- **Prohibit the DEQ from investigating a complaint unless the complainant identified himself or herself.**
-- **Permit the DEQ Director to order a complainant who brought more than three unverified complaints to pay the cost of investigating any subsequent unverified complaints.**

Senate Bill 503 (S-1) would require a commercial manure handler to be licensed or certified by the MDA, and prescribe a $100 annual fee for licensure or certification.

Senate Bill 504 (S-4) would amend Part 31, Part 53 (Clean Water Assistance), Part 82 (Conservation Practices), and Part 88 (Water Pollution and Environmental Protection) of NREPA to do the following:

-- **Require the MDA to implement MAEAP as a conservation program under Part 82.**
-- **Provide that an agricultural storm water discharge from a MAEAP-verified farm would not be considered a violation of Part 31.**
-- **Specify that a MAEAP-verified farm would not be considered to have caused an impairment of the State's natural resources unless the DEQ Director determined conclusively that the farm or farm operation had caused a receiving water body to exceed water quality standards under Part 31.**
-- **Require the MDA to conduct an annual inspection of each MAEAP-verified large CAFO, including an inspection of the structural integrity of manure storage facilities and verification that the CAFO was in compliance with certain practices and standards.**
-- **Require the MDA to revoke a large CAFO's MAEAP verification if it had a discharge into the waters of the State, and require the owner or operator to apply for a permit under Part 31.**
-- **Require the DEQ Director to notify the MDA Director upon determining that a large CAFO had caused a discharge in violation of Part 31, and**

permit the MDA Director to order an abatement of the pollution or the removal of animals from the CAFO.

- **-- Require an agricultural feeding operation (AFO) to obtain a permit under Part 31 if it were more than five times the minimum size for a large CAFO, if it were a large CAFO that was not MAEAP-verified, or if it had a point-source discharge (other than an agricultural storm water discharge) of pollutants into the waters of the State.**
- **-- Require the permittee to prepare and implement a nutrient management plan; demonstrate compliance with MAEAP standards for verification; take soil samples at the AFO every three years and report the results to the DEQ; and if the operation were a large CAFO, obtain a certificate of construction if appropriate.**
- **-- Require the DEQ to conduct annual inspections of each AFO required to obtain a permit under Part 31, including an inspection of the integrity of manure storage structures at the AFO.**
- **-- Establish a Pathogen Reduction Advisory Council to make specific recommendations regarding pathogen reduction, including recommendations for a pathogen source study of at least two watersheds.**
- **-- Require that, when priority lists for sewage treatment and storm water treatment projects were established, priority be given to efforts that supported MAEAP-verified farms.**
- **-- Require that projects at MAEAP-verified farms be given priority when expenditures from the Agriculture Pollution Prevention Fund were determined, and that the presence of a MAEAP-verified farm be considered when certain grants for nonpoint source pollution prevention and control projects were provided.**

Under Senate Bill 504 (S-4), "AFO" would mean a lot or facility, other than an aquaculture facility, where animals other than aquaculture species have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Large CAFO" would mean an animal feed operation that stables or confines at least the number of animals specified in any of the following categories:

- -- 700 mature dairy cows, whether milked or dry.
- -- 1,000 veal calves.
- -- 1,000 cattle other than mature dairy cows or veal calves.
- -- 2,500 swine each weighing 55 pounds or more.
- -- 10,000 swine each weighing less than 55 pounds.
- -- 500 horses.
- -- 10,000 sheep or lambs.
- -- 55,000 turkeys.
- -- 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system.
- -- 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system.
- -- 82,000 laying hens, if the AFO uses other than a liquid manure handling system.
- -- 30,000 ducks, if the AFO uses other than a liquid manure handling system.
- -- 5,000 ducks, if the AFO uses a liquid manure handling system.

Senate Bills 447, 448, and 504 are tie-barred to one another, and Senate Bills 503 and 504 are tie-barred to each other. All of the bills are described in detail below.

Senate Bill 447 (S-3)

Part 31 prohibits a person from discharging any waste or waste effluent into the waters of the State unless the person has a valid permit from the DEQ. To maintain a valid permit, the permittee must meet the effluent requirements that the DEQ considers necessary to prevent unlawful pollution and to assure compliance with applicable Federal law and regulations. Violators of the part are subject to civil and criminal penalties.

Under the bill, if the owner or operator of a large CAFO were convicted of a violation of Part 31 or found responsible for a civil violation of the part by a court, then the owner or operator could not increase the number of animal units at the CAFO until at least one year after meeting the following requirements:

- -- The owner or operator had complied fully with the court's requirements to conduct any necessary remediation due to the

violation, or had completed a schedule of compliance included in the permit by the DEQ to implement the court's requirements.
-- The owner or operator was in compliance with NREPA and the rules promulgated under the Act, or was making progress toward compliance with the Act as provided in a schedule of compliance incorporated into the permit by the DEQ.
-- The owner or operator was in compliance with the requirement to obtain a mechanism of financial assurance.

In addition, the DEQ could not modify or reissue a permit or issue a new permit to the owner or operator unless these requirements were met.

Under the bill, "owner or operator of a large CAFO" would mean either the person actually owning or operating the large CAFO, or a member of his or her immediate family or a shareholder in the same company in which the owner or operator had a membership interest, or any other immediate successor in interest.

The bill would require the following people to obtain a mechanism of financial assurance, to the satisfaction of the DEQ, equal to $100,000, that the Department could gain access to if necessary to remediate any environmental harm caused by a violation of a permit issued under Part 31:

-- The owner or operator of a large CAFO that was first subject to a permit under Part 31 on or after October 1, 2007.
-- The owner or operator of an animal feeding operation that expanded to become a large CAFO on or after October 1, 2007.
-- The owner or operator of a permitted large CAFO that had been convicted of a violation of Part 31 or found responsible by a court for a civil violation of the part.
-- The owner or operator of a large CAFO that was not in compliance with generally accepted agricultural and management practices (GAAMPS) for site selection and odor controls, as determined by the MDA under the Michigan Right to Farm Act.

The DEQ could require a mechanism of financial assurance in an amount greater than $100,000, but not more than $1.0 million, if it determined that a higher amount was necessary because the owner or operator of the large CAFO had a history of convictions or court-determined violations of Part 31.

Senate Bill 448 (S-4)

Beginning 30 days after the bill's effective date, a person could not construct facilities or structures for the operation of a large CAFO or expand an existing large CAFO without first obtaining a certification of construction from the MDA.

A person could apply for a certification of construction by submitting to the MDA an application containing the name and address of the applicant, of all partners if the applicant were a partnership, or of all officers and directors if the applicant were a corporation, and of any other person who had a right to control or in fact controlled management of the applicant or the selection of officers, directors, or managers of the applicant.

The application also would have to include the following information:

-- The type and number of livestock that the large CAFO would be designed to raise or maintain.
-- Design and construction plans for the proposed construction of the large CAFO that included the proposed location of the construction, the anticipated beginning and ending dates for work performed, and any other relevant information the MDA required.
-- Whether the applicant had ever been found by a court to be in violation of Part 31, including the type and date of the violation, if any.

Upon receiving an application, the MDA would have to notify each city, village, or township, and the county in which the large CAFO was located, and would have to inspect the construction site. Within 90 days after receiving an administratively complete application, the MDA would have to approve a certification of construction if it determined that the applicant's proposed construction or expansion conformed to the GAAMPs for site selection and odor control under the Michigan Right to Farm Act, and to Conservation Practice Standard Code 313 (Waste Storage Facility) of the U.S. Department of Agriculture (USDA) Natural Resource Conservation Service, NRCS Michigan Field Office Technical Guide, November 2005.

The MDA would have to deny a certification of construction if it determined that the permit application contained misleading or false information, or if the design and plans failed to conform to the GAAMPs or to Conservation Practice Standard Code 313.

If the MDA failed to make a decision within 90 days of receiving an administratively complete application, the certification of construction would be considered approved.

The application fee for a certification of construction would be $150.

If a person who received a certification of construction subsequently modified the design or construction plans for the proposal, the person would have to submit the modified design or construction plans to the MDA before construction began. A fee could not be charged for the review of the modifications.

If, before the bill's effective date, a large CAFO had received a determination from the MDA that it was in compliance with the GAAMPS for site selection and odor control and the USDA Natural Resource Conservation Service standard for waste storage facilities that was applicable at the time of construction or expansion, then the bill's requirements for a certificate of construction would not apply to the construction of facilities or structures for the operation or expansion of that large CAFO.

For the purposes of these provisions, "expand an existing large CAFO" would mean increasing the number of animals or expanding manure storage capacity at a large CAFO, or both.

The MDA would have to post on its website a list of approved certificates of construction, including the farm name and address.

In addition to any other penalty or remedy provided under Part 31, if the owner or operator of a large CAFO were convicted of a criminal violation or found responsible for a civil violation of Part 31, the court could revoke a permit held by the owner or operator, or could order the owner or operator to comply with the terms of the permit. If the court revoked a permit, it would have to order all of the following:

-- That all animals be removed from the facility.
-- That the facility be closed in an environmentally acceptable way, in compliance with NREPA and with Conservation Practice Standard 360 (which deals with closure of waste impoundments), USDA NRCS Michigan Field Office Technical Guide, April 2005 (described below in **BACKGROUND**).
-- That all byproducts or waste materials at the facility were used or disposed of in an environmentally acceptable manner, in compliance with NREPA.

Each of these requirements would have to be performed in accordance with a schedule established by the court.

The bill specifies that the revocation of a permit under these provisions would not prevent a new owner or operator who was not affiliated with the owner or operator who was subject to the revocation from reopening the facility in compliance with law. In addition, a permit that was revoked or was subject to an order under these provisions could not be reissued or modified except in compliance with Section 3112 (the section that Senate Bill 447 (S-3) would amend).

Senate Bill 501 (S-2)

The bill would require the Department of Environmental Quality, beginning January 1, 2008, to post and maintain on its website a booklet identifying environmental laws and rules of particular significance for farms and farm operations.

The DEQ and the MDA would have to work cooperatively to develop reasonable approaches to meeting the requirements of the laws identified in the booklet.

Senate Bill 502 (S-1)

Under the bill, the DEQ would have to begin investigation of a complaint against a farm or farm operation under NREPA within seven days after receiving the complaint.

The DEQ could not act on a complaint against a farm or farm operation under NREPA unless the complainant provided the Department with his or her name and address. The complainant's name, address, and any other personal information provided to the DEQ would be exempt from disclosure under the Freedom of Information Act, and could not be disclosed by the Department

except in proceedings to collect a payment owed under the following provisions.

If a complainant brought more than three unverified complaints under NREPA against the same farm or farm operation within three years, the DEQ Director could order the complainant to pay the DEQ the full cost of investigating any subsequent unverified complaint against the same farm or farm operation.

The bill would take effect 180 days after it was enacted.

Senate Bill 503 (S-1)

License or Certification

Within one year after the bill's effective date, the Michigan Department of Agriculture would have to promulgate rules for the licensure or certification of commercial manure handlers. The rules would have to provide for license or certification terms of at least three years.

The rules also would have to include training and education standards for initial licensure or certification and continued education or continued competency training for renewal licensure and certification. The MDA could provide by rule for a waiver of the education and training requirements for people who, on the effective date of the rules, were engaged in handling manure at an AFO and could demonstrate a combination of training, education, and experience substantially equivalent to the requirements imposed under the rules.

In addition, the rules would have to include a process for phasing in the licensure and certification requirements for people operating as commercial manure handlers on the bill's effective date. The phase-in period would have to conclude within one year after the rules took effect.

In establishing standards under the bill, the MDA could incorporate by reference existing standards adopted by the Federal government or by trade or industry groups.

Beginning 180 days after the effective date of the rules, a commercial manure handler could not handle manure, production area waste, or process wastewater at an animal feeding operation unless the person obtained a license or certification under the bill.

Upon request, the MDA could review the standards for certification granted by the Michigan Custom Manure Applicator's Association, and if the Department determined that those standards were consistent with the rules promulgated under the bill, a person who was certified by that association would be considered to have met the bill's certification requirements.

Bonding Requirement

As a condition of licensure or certification, a person would have to maintain a bond in an amount of at least $25,000. The bond would have to be payable to the State of Michigan and conditioned upon compliance with State and Federal laws, rules, and regulations applicable to the licensee or certification.

License or Certification Fee

The fee for a commercial manure handler license or certification would be $100 per year. If an annual fee were paid for a commercial manure handler license or certification, but the application for the license or certification were denied, the MDA would have to refund the fee promptly.

For each State fiscal year, a person possessing a commercial manure handler license or certification as of January 1 of that fiscal year would have to be assessed the $100 annual fee. The MDA would have to notify those people of their fee assessments by February 1 of that fiscal year. Payment would have to be postmarked by March 15.

The MDA would have to assess interest on all commercial manure handler license and certification payments received after the due date. The amount of interest would have to equal 0.75% of the payment due, for each month or portion of a month the payment remained past due. Failure to pay a fee imposed under the bill in a timely manner would be a violation of Part 86.

If a person failed to pay a required fee in full, plus any interest accrued, by October 1 of the year following the date of notification of the fee assessment, the MDA could issue an order revoking the person's commercial manure handler license or certification.

Fees and interest collected under the bill would have to be deposited into the Agriculture Pollution Prevention Fund.

Other Provisions

The MDA would have to promote composting, wastewater treatment, and other alternative technologies to encourage the beneficial use of manure, process wastewater, and production area waste, and would have to help AFO owners and operators to employ these methods.

The MDA could suspend or revoke an animal waste handler license or certification if, after notice and opportunity for an administrative hearing, the Department determined that the person violated Part 86 or rules promulgated under it.

A person who violated the bill's licensure or certification provisions would be guilty of a misdemeanor punishable by imprisonment for up to 90 days or a maximum fine of $5,000, or both.

Definitions

Under the bill, "AFO" would mean an animal feeding operation as defined in Section 3101 (which Senate Bill 504 (S-4) would amend).

"Commercial manure handler" would mean a person who, for hire, handles or disposes of or offers to handle or dispose of manure, production area waste, or process wastewater from an AFO owned or operated by another person.

"Manure" would include any manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

"Process wastewater" would mean any of the following:

-- Spillage or overflow of water used for AFO animal or poultry watering systems.
-- Water directly or indirectly used at an AFO for washing, cleaning, or flushing pens, barns, manure pits, or other facilities; for direct contact swimming, washing, or spray cooling of animals; or for dust control.
-- Any water that comes into contact with, or is a constituent of, any AFO raw materials, products, or byproducts, including manure, litter, feed, milk, eggs, or bedding.

"Production area waste" would mean manure or any waste from the production area and any precipitation that comes into contact with, or is contaminated by, manure or any of the components of the production area. Production area waste would not include water from land application areas.

"Production area" would mean that part of an AFO that includes animal confinement areas, manure storage areas, raw materials storage areas, waste containment areas, an egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities. Animal confinement areas would include open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables.

"Manure storage area" would include lagoons, runoff ponds, storage sheds, stockpiles, underhouse or pit storages, liquid impoundments, static piles, and composting piles. "Raw materials storage area" would include feed silos, silage bunkers, and bedding materials. "Waste containment area" would include settling basins and areas within berms and diversions that separate uncontaminated storm water.

"Farm" and "farm operation" would mean those terms as defined in Section 2 of the Right to Farm Act.

(Under that Act, "farm" means the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products.

"Farm operation" means the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products. The term includes marketing produce at roadside stands or farm markets; the generation of noise, odors, dust, fumes, or other associated conditions; the operation of necessary machinery and equipment; field preparation, seeding, and spraying; the application of chemical fertilizers or other substances; the use of alternative pest

management techniques; the fencing, feeding, watering, sheltering, transportation, treatment, use, handling, and care of farm animals; the management, storage, transport, use, and application of farm byproducts, including manure or agricultural wastes; the conversion from one farm operation activity to another; and the employment and use of labor.)

Senate Bill 504 (S-4)

Storm Water Discharge

The bill specifies that an agricultural storm water discharge would not be considered a point source discharge requiring a permit under Part 31.

("Agricultural storm water discharge" would mean that term as described in the Code of Federal Regulations (40 CFR 122.23), i.e., a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO, where the manure, litter, or wastewater has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural use of the nutrients in those materials.)

The bill would require the DEQ to review and provide environmental input to the MDA on all generally accepted agricultural and management practices established under the Michigan Right to Farm Act designed to protect water resources.

MAEAP Verification

Part 82 (Conservation Practices) allows the Michigan Department of Agriculture to establish conservation programs designed to encourage the use of conservation practices in the State.

The bill would require the MDA to implement a Michigan Agriculture Environmental Assurance Program (MAEAP) for farms and farm operations. The program would have to meet all of the following requirements:

-- Be recommended by the Michigan Agriculture Pollution Prevention Implementation Plan signed by the DEQ Director and the MDA Director in 1998.
-- Consist of education, on-farm risk assessment, and third party verification by the MDA.
-- Focus on livestock, cropping, or farmstead systems.
-- Be designed to help farms and farm operations voluntarily prevent or minimize agricultural pollution risks.
-- For operations dealing primarily with livestock, require compliance with a site-specific nutrient management plan.

Part 82 permits the MDA to provide for conservation practice verification as part of a conservation program established under the part. The bill would require, rather than permit, the MDA to provide for such verification, and would include MAEAP as a conservation program.

Under the part, conservation practice verification may be granted if certain conditions are met. These include a requirement that the DEQ has conducted an on-site inspection of the conservation practices and determined that the person has established and is maintaining all conservation practices provided for in the conservation plan, according to the plan schedule.

Under the bill, for a large CAFO, the on-site inspection would have to be conducted annually and include an inspection of manure storage structures at the large CAFO to determine their structural integrity. Based on the on-site inspection, the MDA would have to determine that the large CAFO was in compliance with GAAMPs under the Right to Farm Act relating to siting, odor, and manure management. The MDA also would have to determine that the large CAFO had obtained a certification of construction (as Senate Bill 448 (S-4) would require), if appropriate, and that the large CAFO was in compliance with the standards of the USDA Natural Resources Conservation Service (NRCS) related to waste storage facilities that were in effect when the storage facilities were constructed, and with Conservation Practice Standard Code 590 (nutrient management), NRCS Michigan Field Office Technical Guide, February 2005. (Those standards are described in **BACKGROUND**.)

For primarily livestock operations, the MDA would have to verify that the person had prepared and was maintaining compliance with a site-specific nutrient management plan.

The bill specifies that, notwithstanding any other provision of NREPA or a rule promulgated under that Act, if a farm or farm operation were verified under Section 8203 (which provides for conservation practice verification), the farm or farm operation would not be considered to have caused an impairment of the natural resources of the State unless the DEQ Director determined that water quality data or results from a water quality study conclusively established that the farm or farm operation caused a receiving body of water to exceed water quality standards under Part 31.

If the MDA determined that a large CAFO had had a discharge of waste or waste effluent into the waters of the State, other than an agricultural storm water discharge, the Department would have to revoke the large CAFO's conservation practice verification promptly. The MDA would have to consult with the DEQ before making this determination. Within 30 days after the verification was revoked, the owner or operator of the large CAFO would have to apply for a permit under Part 31.

If the DEQ Director determined that a large CAFO had caused a discharge of pollutants in violation of Part 31, the DEQ would have to notify the MDA Director. Upon receiving the notification, the MDA Director could issue an order requiring the large CAFO to abate the pollution and to remove animals from the CAFO.

NPDES Permit

Under the bill, the DEQ could not require an agricultural feeding operation to obtain a permit under Part 31, although an AFO would have to obtain a permit if any of the following circumstances existed:

-- The AFO was five times larger than the minimum size of a large CAFO.
-- The AFO was a large CAFO that was not MAEAP-verified.
-- The AFO had a point source discharge, other than an agricultural storm water discharge, of pollutants into the waters of the State.

As a condition of a permit issued under those provisions, the DEQ, at a minimum, would have to require the permittee to do all of the following:

-- Prepare and implement a site-specific nutrient management plan to assure that water quality standards were met.
-- If the AFO were a large CAFO, obtain a certification of construction from the MDA if appropriate (as Senate Bill 448 (S-4) would require).
-- Demonstrate compliance with MAEAP verification standards under Part 82.

In addition, the permittee would have to test soil samples every three years at the AFO using the Bray P1 soil test for phosphorus and report that information to the DEQ. If the testing found phosphorus in excess of 150 parts per million, the permittee would have to discontinue manure applications at the AFO until nutrient use by crops reduced phosphorus test levels to less than that amount.

The DEQ would have to conduct an annual compliance inspection of each AFO required to obtain a permit that included an inspection of manure storage structures to determine their structural integrity.

Under the bill, "nutrient management plan" would mean that term as it is defined in 40 CFR 122.42. (Under that regulation, a nutrient management plan must, to the extent applicable, do the following:

-- Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of storage facilities.
-- Ensure proper management of dead animals to ensure that they are not disposed of in a storage system that is not specifically designed to treat animal mortalities.
-- Ensure that clean water is diverted, as appropriate, from the production area.
-- Prevent direct contact of confined animals with the waters of the United States.
-- Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants.
-- Identify appropriate site-specific conservation practices to be implemented, including, as appropriate, buffers or equivalent practices, to control runoff of pollutants to waters of the United States.

-- Identify protocols for appropriate testing of manure, litter, process wastewater, and soil.
-- Establish protocols to land-apply manure, litter, or wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural use of the nutrients in the manure, litter, and process wastewater.
-- Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.)

The bill would define "MAEAP-verified farm" as a farm or farm operation that had been verified under Part 82 as being in compliance with the conservation practices required under the Michigan Agriculture Environmental Assurance Program. "MAEAP-verified large CAFO" would mean a large CAFO that had been verified as being in compliance with the conservation practices required under MAEAP for large CAFOs.

Pathogen Reduction Advisory Council

The bill would create the Pathogen Reduction Advisory Council within the DEQ. The Council would have to consist of 14 individuals representing municipal, industry, agriculture, public health, conservation, and environmental interests and the general public. The Council also would have to include representatives of the DEQ, the MDA, the Department of Community Health, the Department of Natural Resources, Michigan State University, Grand Valley State University, the USDA Natural Resources Conservation Service, and the U.S. Environmental Protection Agency, as nonvoting members who would serve as information resources to the Council.

The members would have to be appointed jointly by the DEQ Director and the MDA Director within 60 days after the bill's effective date.

The Council would have to do all of the following:

-- Review scientific information regarding pathogen sources and associated issues in Michigan.
-- Study the effectiveness of conservation measures, technologies, and regulations on pathogen reduction.
-- Recommend education, monitoring, and conservation measures related to pathogen reduction.
-- Provide a recommendation for a pathogen source study of at least two watersheds in the State that included study scope, scale, potential participants, time frame, and associated costs.

Within 12 months after all members were appointed to the Council, it would have to submit a report, approved by a majority of the voting members, on its findings and recommendations to the Senate Majority Leader, the Speaker of the House of Representatives, and the standing committees of the Legislature with jurisdiction primarily related to natural resources and the environment. The DEQ and MDA Directors would have to encourage the implementation of the Council's recommendations of industry-specific conservation measures.

The Council would be disbanded six months after it submitted its findings and recommendations.

Storm Water Treatment Projects

Part 53 (Clean Water Assistance) requires the DEQ annually to develop separate priority lists for sewage treatment works projects and storm water treatment projects, for nonpoint source projects and for projects funded by the Strategic Water Quality Initiatives Fund. The priority lists must be based on project plans submitted by municipalities, and specific criteria. Among other requirements, rankings for nonpoint source projects must be consistent with the State Nonpoint Source Management Plan. Under the bill, priority would have to be given to projects that supported the efforts being made by MAEAP-verified farms.

Agriculture Pollution Prevention Fund

Part 82 provides for the Agriculture Pollution Prevention Fund, which may be used only for certain purposes, including payments, incentives, or reimbursement for rental payments for the implementation of conservation practices; for the purchase, monitoring, or enforcement of conservation easements; for awards to participants in conservation programs established under the part; for promotion of those conservation programs; and for administrative purposes.

The bill would require the DEQ, in determining expenditures from the Fund, to give priority to projects at MAEAP-verified farms.

Grants Program

Part 88 (Water Pollution Prevention and Monitoring) requires the DEQ to establish a program to provide grants to local units of government or certain tax-exempt nonprofit organizations for nonpoint source pollution prevention and control projects and wellhead protection projects.

In selecting projects for a grant award, the DEQ must consider certain criteria relating to the project, including the expectation for long-term water quality improvement or long-term protection of high quality waters; the consistency of the project with remedial action plans and other regional water quality or watershed management plans; and the placement of the watershed on a Federal list of impaired waters.

The bill also would require the DEQ to consider whether a MAEAP-verified farm was located within the project area.

MCL 324.3112 (S.B. 447)
324.3115 et al. (S.B. 448)
Proposed MCL 324.8613 (S.B. 501)
Proposed MCL 324.8611 & 324.8612 (S.B. 502)
Proposed MCL 324.8601-324.8603 (S.B. 503)
MCL 324.3101 et al. (S.B. 504)

BACKGROUND

NPDES Permits

The National Pollution Discharge Elimination System was established to regulate the discharge of pollutants into national waters. Under the NPDES, each state is responsible for establishing a permitting process that complies with the Federal requirements. Michigan's NPDES permit program was first approved in 1973. The DEQ is responsible for implementing and enforcing the NPDES program in Michigan and ensuring that the program meets the Federal requirements.

The DEQ may issue three types of permits under the program: an individual permit, which is site-specific, based on the type and amount of discharge and other individual characteristics; a general permit, which covers permittees of the same category, such as municipal wastewater facilities or large CAFOs; and a permit by rule, in which the permitting requirements are specified in administrative rules. Large CAFOs are covered under a general permit (number MIG019000) issued by the DEQ.

The owner or operator of a CAFO applying for an NPDES permit must demonstrate that there are adequate storage structures for animal waste and process wastewater, which are properly designed, constructed, operated, and maintained, according to specifications set out in the USDA's Natural Resource Council Standard (NRCS) 313. The storage facilities must be large enough to contain the volume of waste generated in six months, with extra capacity to handle a significant rainfall event. In addition, if the structure is subject to runoff caused by precipitation, there must be at least 12 inches of freeboard, meaning that the level of the waste must be at least 12 inches below the top of the structure. If the structure is not subject to precipitation-caused runoff, there must be at least six inches of freeboard.

The structures must be inspected and maintained on a regular basis, and any discharge must be reported to the DEQ.

In addition, to receive a permit, the CAFO owner or operator must develop a comprehensive nutrient management plan (CNMP) to provide for the storage and disposal of waste. The CNMP must specify which fields the CAFO will apply waste to, and must provide for a field-by-field assessment of all land application areas before the waste is applied, to determine the condition of the soil, the location of any drainage tiles, tile risers or outlets, or other factors that could permit the applied waste to enter the waters of the state.

The permittee must determine the nutrient content of the waste, and test the soil at the land application sites every three years to determine phosphorus levels. That information must be used to establish appropriate application rates that do not exceed the capacity of the soil and the planned crops to assimilate the nutrients.

The permittee must inspect each field and any tile outlets draining it within 48 hours before applying waste, and must inspect the tile outlets again after the application of the waste, to determine if there is any change in

the color or odor of the water from the outlet.

In addition, the permittee may not apply waste to frozen or snow-covered ground without incorporating the waste into the soil, and may not apply waste if a half-inch or more of rainfall is predicted within 24 hours.

If the owner or operator transfers the waste from the large CAFO to another person, a manifest must be completed and used to track the transfer and use of the waste. The manifest must include the name, address, and telephone number of the generator of the waste, and specify the nutrient content of the waste, its total volume, and other information. The manifest must include a statement by the generator that the large CAFO waste is accurately described on the manifest and is suitable for land application.

Any discharge of waste into the waters of the state must be reported to the DEQ within six hours after the permittee becomes aware of the discharge, to be followed up with a written report within five days. Any other instance of noncompliance must be reported within five days. The report must include a description of the discharge or the cause for noncompliance, and the steps taken to correct the noncompliance, or steps taken to reduce, eliminate, and prevent recurrence of the discharge.

NRCS 313: Waste Storage Facilities

Natural Resource Council Standard 313 provides specifications for structures that store waste such as manure, wastewater, and contaminated runoff as a component of an agricultural waste management system.

Under the standard, waste storage facilities should not be located in floodplains, although if site restrictions require location in a floodplain, the structure must be protected from inundation or damage from a 25-year flood event, or larger if otherwise required. Waste storage facilities also must be located to minimize the potential impacts from breach of embankment, accidental release, or liner failure.

All field tiles within 50 feet of a waste storage facility must be removed and capped. The standard also prescribes minimum distances between waste storage facilities and drinking water wells.

For CAFOs, the minimum storage period, defined as the maximum length of time anticipated between emptying events, is six months, although for operations under an NPDES permit, the minimum storage period is as required by the permit.

The design storage volume of the facility must be at least equal to the operational volume of the facility, with extra emergency capacity to handle a 25-year, 24-hour precipitation or runoff event, or a 100-year, 24-hour precipitation or runoff event for new swine, poultry, and veal CAFOs.

In addition, there must be at least one foot of freeboard, except fabricated structures must have at least six inches of freeboard above the design volume.

Some component must be provided to empty the storage facility, and provisions must be made for periodic removal of accumulated solids, to preserve storage capacity.

A waste storage pond must have a liner of compacted earth, clay, bentonite, concrete, or a flexible membrane. The bottom of the pond must be at least two feet above the seasonal high water table, with certain exceptions. The standard provides specifications for the design, slope, and minimum thickness of the liner.

Sites where the underlying aquifer is at a shallow depth and not confined, or where the aquifer is a domestic water supply or ecologically vital water supply, or where certain other conditions apply should not be used for waste storage ponds unless no reasonable alternative exists. If those sites must be used, additional measures should be considered to minimize the potential for liner failure.

A fabricated waste structure must have a foundation proportioned to support all superimposed loads safely without excessive movement or settlement. If the foundation is of bedrock with joints, fractures, or solution channels, it must be treated, a minimum separation distance of one foot of impermeable soil must be provided between the floor slab and the bedrock, or alternative measures must be taken. The bottom of the fabricated structure must not be lower than the seasonal high water table, with certain exceptions.

Applications such as tanks that require liquid tightness should be designed according to standard engineering and industry practices appropriate for the construction materials used to achieve water tightness.

The design must consider all items that will influence the performance of the structure, including loading assumptions, material properties, and construction quality. The structure must be designed to withstand all anticipated loads.

In addition, the standard specifies that waste storage facilities should be located as close to the source of waste and polluted runoff as possible. The facility should also be sited based on access to other facilities, ease of loading and unloading waste, appropriate health regulations, and the direction of prevailing winds and other factors to minimize odors.

If a breach of embankment or accidental release would affect surface water bodies or other sensitive areas, then safeguards or management measures should be considered to reduce the potential for accidental release, including the use of an emergency spillway, additional freeboard, planning storage capacity for a wet year rather than normal year precipitation, a reinforced embankment, or secondary containment.

NCRS 590: Nutrient Management

This standard requires a nutrient management plan to include an aerial photograph or map and a soil map of the site; current or planned crop rotations; the results of soil, water, manure, or organic by-product samples; realistic yield goals for the crops in rotation; quantification of all nutrient sources; recommended nutrient rates, timing, form, and method of application and incorporation; the location of sensitive areas or resources and the associated nutrient management restriction; guidance for plan implementation, operation, maintenance, and record-keeping; and a complete nutrient budget for nitrogen, phosphorus, and potassium for the crop rotation sequence.

The nutrient management plan must be based on current soil test information not older than three years. The standard includes guidance for determining appropriate rates of application of nitrogen, phosphorus, potassium, and other plant nutrients, as well as appropriate timing and methods of application.

If the nutrient management plan includes the application of manure as a nutrient source, the nutrient values of the manure must be determined before application by laboratory analysis, recognized book values, or historical records for the operation. The water application rate for liquid manure applied through irrigation must not exceed the soil intake/infiltration rate, and the total application should not exceed the field capacity of the soil. The standard also provides guidance on the amounts of nitrogen and phosphorus to be applied through manure or other organic by-products.

When manure or other organic materials are applied to a frozen or snow-covered fields, the field must be assessed to determine the potential for phosphorus transport from the field. The nutrient management plan must include a record of the assessment rating for each field or subfield, as well as information on conservation practices and management activities that may reduce the potential for phosphorus movement from the site.

Winter manure application is permitted on snow-covered or frozen ground if a field-specific assessment determines that the risk of phosphorus transport is "low" or "very low". A field with a "medium" ranking also may be used if all GAAMPs for manure management and use are met.

In areas where the water is impaired because of nutrient-related factors, an assessment must be completed to determine the potential for nitrogen and/or phosphorus transport from the field. Those assessments must be included in the nutrient management plan.

Plans developed to minimize agricultural non-point source pollution of surface water or groundwater resources must include practices and/or management activities that can reduce the risk of nitrogen or phosphorus movement from the field.

MAEAP

The Michigan Agriculture Environmental Assurance Program was established in 1998 by a coalition of agricultural producers, commodity groups, State agencies, and

conservation and environmental interests. According to the MDA website, "MAEAP is a voluntary, pro-active program designed...to reduce producers' legal and environmental risks. It teaches effective land stewardship practices that comply with state and federal regulations and shows producers how to find and prevent agricultural pollution risks on their farms."

The MAEAP website describes three phases of the program. Phase 1 is an educational program to raise awareness of practices that reduce on-farm legal and environmental risks. In Phase 2, the producer conducts an on-site risk assessment, and develops a comprehensive nutrient management plan (CNMP).

Under Phase 3, for a producer to be certified as a MAEAP participant, MDA field staff conduct a site visit to verify compliance with Phase 2 and CNMP implementation. To be certified, producers must follow GAAMPS and request a farm inspection every three years.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

As farms grow progressively larger in order to remain competitive in the global market, they face great challenges dealing with animal waste and other agricultural waste products, which can impair the groundwater and surface water if handled incorrectly. The agricultural community has recognized these problems, and has responded by creating the MAEAP program, which is a voluntary system that provides owners and operators with guidance on how to establish and operate environmentally sound operations. MAEAP is rigorous and effective, with periodic inspections required to determine if the verified farm continues to meet the standards. If a farming operation fails to comply with MAEAP, the owner or operator may lose his or her certification.

Under current law, all CAFOs in the State were required to apply for an NPDES permit by July 1, 2007. Some farmers have complained that the permitting process is cumbersome, and they object to the idea of having mandates imposed on them by the State government, when most are ready and willing to take responsible action on their own, if provided the opportunity and appropriate incentives. For these reasons, Senate Bill 504 (S-4) would recognize MAEAP in statute and allow CAFOs to gain MAEAP verification as an alternative to an NPDES permit, under certain circumstances. Operations that are five times the minimum size of a large CAFO, operations that have had a point-source discharge, and those that are not MAEAP-verified still would have to apply for an NPDES permit under the bill. All other CAFOs could apply for MAEAP verification to demonstrate compliance with the necessary environmental standards. Because it was designed with input from the agricultural community, MAEAP would be well-suited to help owners and operators achieve and maintain compliance and educate farmers on the most effective ways to meet the standards. In addition, the program would be overseen by the MDA, which historically has had a positive working relationship with the agricultural community.

Under the bill, MAEAP would provide significant oversight of operators and consequences for those who failed to meet the requirements. Each owner or operator of a large CAFO would have to submit to an annual inspection in order to maintain MAEAP verification. If the inspector determined that the owner or operator was not in compliance with MAEAP, the verification could be revoked. If a large CAFO discharged waste in violation of Part 31, the MDA would have to revoke its verification and could order that all animals be removed. Without verification, the owner or operator would have to apply for an NPDES permit.

In addition, under Senate Bill 447 (S-3), if a court found that a large CAFO violated Part 31, the owner or operator would have to conduct remediation, comply with NREPA and administrative rules, and purchase an instrument of assurance that the DEQ could use to cover the cost of any future spills. These provisions would provide strong incentives for CAFO operators to comply with MAEAP, and would give the MDA and the DEQ the necessary tools to penalize those who were not in compliance.

At the same time, if a CAFO operator has taken all of the required precautions and is operating in an environmentally sound manner, he or she should not be held liable if an unexpectedly heavy rainfall causes a

discharge from the CAFO. For this reason, under Senate Bill 504 (S-4), if a CAFO had an agricultural storm water discharge, it would not be required to get an NPDES permit under Part 31, as otherwise would be required.

Response: Providing exceptions for storm water discharges would significantly weaken the DEQ's ability to protect the waters of the State. The current standards for manure storage facilities require that the total operating volume be large enough to handle a significant precipitation event, in addition to the six-month storage capacity required. Also, owners and operators are required to take weather into account when applying agricultural waste to fields, and may not apply the waste if significant rain is predicted. These and other standards help to minimize the risk of a discharge from rainstorms. The bill would undermine those requirements, reducing the accountability of farmers who have not taken adequate steps to prepare for a serious weather event.

Supporting Argument

To strengthen the MDA's oversight of CAFOs, Senate Bill 448 (S-4) would require a person to obtain a certificate of construction before constructing a large CAFO or expanding an existing large CAFO. The application for the certificate would have to include the design details for the proposed construction, and if the design were changed, the changes would have to be submitted before construction could begin. A certificate could not be approved unless the design and plans conformed to GAAMPS and the conservation practice standard governing waste storage facilities. These provisions would ensure that the facilities were properly designed to handle the anticipated number of animals while minimizing the threat to any nearby waters of the State.

Supporting Argument

Application of manure onto agricultural fields must be done properly, under appropriate weather conditions, and with full knowledge of the condition of the fields. Because safe application is vital to the environment and public health, Senate Bill 503 (S-1) would require a commercial manure handler to be licensed or certified, after receiving certain training or demonstrating equivalent knowledge or experience. A commercial manure handler would have to acquire a bond in the amount of at least $25,000, that could be used for remediation in the event of a discharge. These provisions would provide for accountability of those purchasing, transporting, and applying manure commercially.

Supporting Argument

Pathogens in the water are of particular concern, because of the health risk that they pose. Since manure commonly contains *e. coli* or other harmful bacteria, farms often are blamed for any pathogens found in nearby waterways, even though the source of the contamination is not always clear. In some cases, *e. coli* in the water has been traced back to leaky septic tanks, rather than agricultural waste. Pathogens also can come from dead animals in streams or other natural sources. Identifying the source of the pathogens is an important step in rectifying the problem, but current methods for tracking pathogens are either imprecise or very expensive. Significant progress is being made, however, and a review of the current testing options available could identify new or better techniques that could be implemented. To this end, Senate Bill 504 (S-4) would establish a Pathogen Reduction Advisory Council and require it to examine the issues related to pathogen sources and reduction, and to make recommendations for a study of at least two watersheds.

Supporting Argument

Farm residents and workers across the State reportedly have been harassed by individuals who trespass on their property, take pictures, and collect water samples from adjacent waterways. Evidently, these individuals then use that information to file complaints with the DEQ, which often turn out to be unsubstantiated. This practice causes farm owners and operators significant inconvenience, because they must deal with an investigation and respond to the allegations even if they are unfounded. False accusations also waste time for DEQ inspectors. Current law provides no penalty for making false complaints against a CAFO, and does not require a complainant to leave his or her name. Under Senate Bill 502 (S-1), a complainant would have to identify himself or herself, and if an individual repeatedly made false complaints against the same farm, he or she could be required to pay the cost of investigating subsequent unverified complaints. Those provisions would discourage repeated complaints or nuisance calls with no basis in fact.

Supporting Argument

Farms and farm operations must comply with myriad laws and regulations that sometimes are bewildering in their complexity. Identifying and becoming familiar with the applicable laws can be a daunting task, and members of the agricultural community sometimes have found themselves in violation of laws that they did not know existed. Senate Bill 501 (S-2) would require the DEQ to post on its website a booklet identifying environmental laws and rules that apply to farms and farm operations, so that agricultural producers would know exactly where to go to find all of the applicable requirements.

Response: The DEQ currently has on its website two guides that would seem to meet the bill's requirements: "CAFO Guidebook", and "Complying as a CAFO--Part II Guidebook". These publications include applicable environmental laws as well as information on applying for an NPDES permit. The process of researching and producing such a booklet is time-consuming and expensive, so if another booklet were required under the bill, the Department would need additional resources to meet that requirement.

Opposing Argument

Although MAEAP is a very useful program for small and medium-sized farms, it is no substitute for an NPDES permit for large CAFOs in the State. These large operations produce a tremendous amount of waste, often equivalent to that produced by entire cities. Managing that waste safely and responsibly is not easy, and adequate oversight is necessary to ensure that proper measures are taken to prevent discharges into the waters of the State. The NPDES permit, which all CAFOs were required to apply for by July 1, 2007, will hold these large operations accountable, and will require owners and operators to meet certain strict standards. The bills, in contrast, would permit the owners of most CAFOs to become MAEAP-verified rather than obtain an NPDES permit. The MAEAP guidelines are considerably more lenient than the NPDES standards, often phrased as recommendations rather than specific requirements. Furthermore, the program lacks the regulatory teeth of NPDES. According to testimony before the Senate Agriculture Committee, several MAEAP-verified farms that have committed discharges are still MAEAP-verified. This lack of accountability does not promote confidence in the ability of the program to provide adequate oversight and enforcement. At a time when there is growing concern about the extent of the environmental damage caused by large CAFOs, it seems unwise to loosen oversight and regulation of these large farming operations.

Opposing Argument

Michigan has an abundance of water, which provides great benefits to all residents of the State. Agricultural producers can significantly degrade nearby waterways if their operations are not conducted properly, and once the damage is done, it is very difficult and expensive to remediate. Agricultural waste discharges can kill fish, cause algae blooms, and pose a public health hazard. Because large farm operations are capable of widespread harm, close regulation is necessary to ensure that they adhere to best practices that will environmental risk. Other industries must meet strict NPDES requirements to protect the waters of the State, and there is no reason that large agricultural producers should be held to a lower standard.

In addition, the bills would shift some enforcement responsibility from the DEQ to the MDA. Currently, the MDA conducts inspections to verify compliance with MAEAP, a voluntary program. Under Senate Bill 504 (S-4), the MDA would retain that authority, but compliance with either MAEAP or the NPDES would be mandatory for all CAFOs. That would place the MDA in the position of enforcing compliance with water quality standards for MAEAP-verified CAFOs. Unlike the DEQ, which is primarily an enforcement agency, the MDA is charged with supporting and promoting the agricultural industry in Michigan. It is inconsistent with and outside the mission of the Department to require it to take on an enforcement role, particularly regarding environmental requirements. Also, providing for the two Departments to share responsibilities could cause some difficulties and unnecessary delays in enforcement. For example, the bill would require the MDA to consult with the DEQ before determining that a discharge was a violation of Part 31, slowing down any potential response or regulatory action. The DEQ is charged with protecting the waters of the State, and the role of enforcing related regulations belongs with that agency.

Opposing Argument

Senate Bill 502 (S-1) would require a person filing a complaint against a CAFO to give his or her name and address. This would have a chilling effect on public participation, and could discourage citizens from reporting suspected water violations, for fear of retribution. In addition, if the DEQ received an anonymous tip of a significant discharge, the Department would be prohibited from acting on that tip, even though the discharge could pose a public health hazard. Fire and police departments are not prohibited from acting on information from anonymous sources, and the DEQ should not be bound by such a restriction.

The provisions requiring a complainant to pay the cost of an investigation in some circumstances also could discourage a person from reporting a possible violation. Often it is not clear whether a discharge is legal or not, and a concerned resident might not be in a position to determine that question definitively. The bill would penalize an individual who reported discharges that turned out to be unsubstantiated, in effect placing the burden of determining the legality of the discharge on the individual, before he or she could notify anyone. Also, depending on the time it took for the DEQ to follow up on the complaint, the evidence of the discharge could be erased by rain or dissipated in the waterways, leaving the charge unsubstantiated even if an actual problem had existed earlier.

Response: Under the bill, a person's identity could not be revealed unless he or she was the subject of a lawsuit to collect the cost of an investigation. This should protect a complainant against retribution by owners, who would not know the identity of the complainant.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Senate Bills 447 (S-3) & 448 (S-4)

The bills would result in additional responsibilities for the DEQ, mainly related to the implementation of financial assurance mechanisms. Whether the DEQ absorbed these functions with existing staff, or new staff, would be contingent upon future appropriations.

The fiscal impact of Senate Bill 448 (S-4) relating to the MDA cannot be determined at this time, as it is unknown how many construction permit applications would be submitted in the future.

Senate Bill 501 (S-2)

The bill would cost the State a small and indeterminate amount in staff time and resources to create the booklet.

Senate Bill 502 (S-1)

The bill would result in indeterminate administrative savings to the DEQ dependent upon the extent to which complaints were reduced and the number of unverified complaints for which the investigation costs would be reimbursed.

Senate Bill 503 (S-1)

According to the MDA, the implementation of the licensure or certification program would require $120,000 and 1.25 FTE positions. The annual license or certification fee would be $100. Revenue from this fee would depend upon the number of commercial animal waste handlers seeking licensure. The MSU Extension Manure Resource webpage currently lists nine commercial waste haulers. Using this number as an estimate, the fee would generate $900 annually.

Senate Bill 504 (S-4)

The bill would have an indeterminate impact on State government related to administrative costs. The DEQ would be required to conduct annual compliance inspections of animal feeding operations with NPDES permits, the cost of which would be covered by the NPDES permit fees paid by permitted facilities.

The members of the Pathogen Reduction Advisory Council would not be compensated. Staff resources from various State and Federal agencies would be used to support the Council, which could divert effort from other programs.

The bill would require annual inspections of large confined animal feeding operations by the MDA. The Department estimates that implementing the inspection program would require $200,000 and 2.0 FTEs.

Fiscal Analyst: Jessica Runnels
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