

Legislative Analysis



SEPTAGE WASTE RECEIVING FACILITIES MADE AVAILABLE BY LOCAL GOVERNMENT UNITS

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4578 as reported without amendment

Sponsor: Rep. Ken Goike

Committee: Natural Resources, Tourism, and Outdoor Recreation

First Analysis (9-27-11)

BRIEF SUMMARY:

House Bill 4578 would amend Part 117 of the Natural Resources and Environmental Protection Act (NREPA) to place additional conditions on the ability of a local unit of government to ban, or effectively ban, land application of septage waste.

FISCAL IMPACT:

House Bill 4578 would have no fiscal impact on the State of Michigan. The bill's provisions may have a fiscal impact on local units of government that prohibit the disposal of septage waste through land application.

The fiscal impact on these local governmental units is indeterminate and would be related to any increased costs that the local unit might incur from the bill's requirements that the local unit make a receiving facility available with a service area which includes the entire governmental unit and has the capacity to accept all septage waste from that area. In addition, the bill requires that the local unit make a receiving facility available that, if not government owned, is required by contract to accept all septage waste generated within that local unit.

THE APPARENT PROBLEM:

Currently under NREPA, local units of government are able to decide if the land application of septage waste is allowed within their jurisdiction and the manner in which it is applied. Land application is only allowed with the approval of the local unit and the receipt of the proper permits issued by the Department of Environmental Quality. If local units have an established ordinance prohibiting land application they are currently required to make available a receiving facility that can lawfully accept the septage waste generated within the unit. If septage haulers are servicing a septic tank that is within the service area (25 miles) of an established receiving facility the hauler is required to dispose of the septage waste at the facility. Some persons have assumed that the statute requires local governmental units to make a receiving facility available within their jurisdiction if they wish to ban land application. However, a Court of Appeals decision said governmental units only had to *designate* a receiving facility and that the statute does not require them to provide a facility within their jurisdiction. (See **Background Information**.) Many in the septage hauling industry feel this could lead to increased

costs as they may be required to drive long distances to dispose of waste. This bill is an attempt to remedy the increased transportation costs by requiring local units that have banned the land application of septage waste to make available a receiving facility with a service area that encompasses the entire local unit and to ensure that the receiving facility can and will accept all septage waste generated in the local unit.

THE CONTENT OF THE BILL:

House Bill 4578 would amend Part 117 (Septage Waste Services) of NREPA to specify if a governmental unit requires all septage waste collected in the unit to be disposed of in a receiving facility or prohibits, or effectively prohibits, the land application of septage waste, the governmental unit must make available a receiving facility that meets all of the following requirements (new language in bold):

- **The receiving facility service area must include the entire governmental unit.**
- The receiving facility must lawfully accept and **must have the capacity to accept** all septage waste generated within that governmental unit.
- **If the governmental unit does not own the receiving facility, the receiving facility would be required by contract to accept all septage waste generated within that governmental unit that is not lawfully applied to land.**

The act defines "*receiving facility service area*" to mean the territory for which a receiving facility has the capacity and is available to receive and treat septage waste; however, after the 2010 state fiscal year, the geographic service area of a receiving facility shall not extend more than 25 miles from the receiving facility.

Part 117 defines "*septage waste*" as the fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin that is removed from a wastewater system. Septage waste consists only of food establishment septage, domestic septage, domestic treatment plant septage, or sanitary sewer cleanout septage, or any combination of these.

MCL 324.11715

BACKGROUND INFORMATION:

Recent Court Case

In Houdek, et al. v Centerville Township (2007), the Michigan Court of Appeals upheld a trial court decision where the plaintiff was challenging a Centerville Township ordinance regulating the land application of septic waste. The Appeals Court ruled in favor of the township. In October 2001, Centerville Township enacted a zoning ordinance prohibiting the land application of septage waste within the township if an existing public wastewater treatment or septage waste treatment facility in Leelanau, Grand Traverse, or Benzie counties had the capacity and willingness to accept the waste. The township would eventually adopt a resolution allowing for septage waste to be hauled to the Grand Traverse Septage Treatment Plant after that plant came on line in 2005. James and

Madeline Houdek of Houdek's Pumping Service challenged the zoning ordinance because the prohibition meant they now were able to utilize only a small portion of their property for land application of septage waste (despite DEQ permits for disposal at various sites) and because, after the 2005 resolution was adopted, the township denied permits allowing them to construct a septage holding facility on land acquired for that purpose, because the land was zoned agricultural.

The plaintiffs made several arguments against the ordinance, including that it violated Section 11715 of NREPA (MCL 324.11715) by banning land application within the township without also providing a receiving facility within the township. The Court of Appeals rejected that argument, stating, "The section plainly states a municipality is required to make a treatment facility available for waste that is generated within the jurisdiction. It does not state that a municipality must make a treatment facility available within the same municipality or in an area under its jurisdiction . . . Because the plain language of MCL 324.11715(2) is clear that Centerville Township is not required to construct a treatment facility within its boundaries, the zoning ordinance does not violate MCL 324.11715 and the argument fails." The court also rejected arguments alleging that the township ordinance was exclusionary and that it violated the plaintiff's constitutional rights on due process or equal protection grounds.

ARGUMENTS:

For:

This bill would hold local units of government accountable for their decisions related to banning land application of septage waste. As is currently the case, local units would still retain control over land application practices, including if and how septage waste could be applied to land. However, this bill would hold local units accountable by requiring them to make available a receiving facility whose facility service area contained the entire jurisdiction of the local unit in order to ban the land application of septage waste. (Under the law, the geographic service area of a receiving facility extends 25 radial miles from the receiving facility.) Further, it requires that facility to have the capacity to accept all septic waste generated in the local unit, and there must be a contract between the local unit and the facility that guarantees that all septic waste will be accepted. Currently, local units have to designate a receiving facility but there is no requirement on where that facility has to be located. According to committee testimony, there are instances where local units are designating receiving facilities in other counties.

This bill will reduce the costs of septic maintenance for property owners. As the distance for septage haulers to dispose of waste increases, so does the cost of doing business. There are instances where septage haulers are being required to travel long distances to dispose of waste. This is coming at a heavy cost to property owners, as they are being asked to pay more for regular septic maintenance and cleaning. Requiring a local unit that has banned land application to make available a receiving facility whose service area covers the entire jurisdiction of the unit means haulers will not have to travel long distances and can pass the savings on to their customers.

Lower maintenance costs will help promote safer environmental practices. It is possible that as the cost of septic maintenance increases, there is less incentive for property owners to properly maintain their systems. Delayed maintenance can lead to a host of problems, including system failure. Total system failure could cause contaminants to leak into the ground and surrounding ground water.

Against:

It is important to maintain local control over this issue. Individual governmental units should be responsible for determining the appropriate disposal methods of septic waste. Every township/city/county has unique circumstances and a one-size-fits-all approach may not work. Township Association officials have said that this legislation is unnecessary and an overreaction to limited situations where communities have effectively banned land application. State law already requires local units that want to ban land application to make available a receiving facility that can lawfully accept septage waste generated within the unit. Any additional restrictions are not necessary and impinge on local control.

Township officials note that as a result of the negotiations that led to the 2004 legislation that increased regulation over the pumping, disposal, and land application of septage, some aspects of septage regulation were left to local units of government. The ability to prohibit the land application of waste was one of those aspects; while it may not be advisable all over the state, the prohibition is important to residents in urban townships.

POSITIONS:

The Michigan Septic Tank Association supports the bill. (9-13-11)

The Department of Environmental Quality (DEQ) is neutral on the bill. (9-15-11)

The Michigan Association of Counties opposes the bill. (9-13-11)

The Michigan Townships Association strongly opposes the bill. (9-13-11)

Legislative Analyst: Jeff Stoutenburg
Fiscal Analyst: Viola Wild

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.