

FARM OPERATIONS: SEPTAGE WASTE

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House Bill 4438 (S-1) as passed by the Senate

Sponsor: Rep. Tom Barrett

House Committee: Agriculture

Senate Committee: Natural Resources

Complete to 6-12-18

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 271 of 2018)

BRIEF SUMMARY: House Bill 4438 would amend Part 11 - Septage Waste - within the Natural Resources and Environmental Protection Act (NREPA) by adding a definition of “farm operation,” and creating an exemption for farm operations from Part 11 as that part applies to servicing portable toilets, to associated domestic septage management equipment, such as trailers, pumps, and septage waste vehicles, and to associated storage facilities, if the farm operations meet certain requirements.

FISCAL IMPACT: House Bill 4438 would not significantly affect costs or revenues for the Department of Environmental Quality. The department’s septage waste licensing program is unlikely to be affected by the exemptions proposed in the bill, therefore any departmental fiscal impact is projected to be negligible.

THE APPARENT PROBLEM:

Michigan farmers are required to provide toilets and handwashing stations for their employees under Michigan Occupational Safety and Health Administration standards. During every harvesting season, portable toilets are made available to employees harvesting the crops in the fields. These fields can range in size and can be separated by roads, making it difficult for farmers to have the portable toilets follow the employees in a timely manner. Current regulations in NREPA require licenses to service and empty portable toilets, which must be done prior to relocating a portable toilet. The current process can be costly and time consuming for farmers, so the bill seeks to exempt farm operations from needing a septage waste servicing license, as long as the proposed guidelines below are followed.

THE CONTENT OF THE BILL:

Farm Operation

The bill cites the definition of “farm operation” found in the Michigan Right to Farm Act (MCL 286.472), where the term 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, and includes, but is not limited to:

- Marketing produce at roadside stands or farm markets.
- The generation of noise, odors, dust, fumes, and other associated conditions.
- The operation of machinery and equipment necessary for a farm including, but not limited to, irrigation and drainage systems and pumps and on-farm grain

dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan Vehicle Code (MCL 257.1 to 257.923).

- Field preparation and ground and aerial seeding and spraying.
- The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.
- Use of alternative pest management techniques.
- The fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals.
- The management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.
- The conversion from a farm operation activity to other farm operation activities.
- The employment and use of labor.

Exemption Requirements

The bill would create a new section (proposed MCL 324.11721) to allow a farm operation to be exempt from the Septage Waste regulations within NREPA. To be exempt, all of the following requirements would have to be met:

- The portable toilets are used to comply with requirements listed in the publication from the Department of Agriculture and Rural Development.
- The management, pumping, and temporary storage of the domestic septage from the portable toilets by the farm operation does not result in a release of domestic septage into the environment.
- The portable toilets and associated septage management equipment are securely fastened to a vehicle or trailer in a manner that prevents a release while being moved by the farm operation on or across a public street, road, or highway.
- The farm operation does not move portable toilets containing domestic septage on or across a limited access highway as defined in the Michigan Vehicle Code.
- The farm operation does not store domestic septage for more than 60 days or in a tank larger than 3,000 gallons.
- The farm operation utilizes the services of a person with a septage waste servicing license and septage waste vehicle license to dispose of the domestic septage from the portable toilets in a receiving facility.
- The farm operation does not move domestic septage on or across a public street, road, or highway in a tank larger than 450 gallons.

This same section would mandate that the Department of Agriculture and Rural Development publish a list of field sanitation, worker protection, spill response, and food safety requirements applicable to the exemption provided for above, as well as a guide to recommend spill preparedness, spill mitigation, and spill response programs applicable to the exemption.

The bill would also require the Department of Environmental Quality and the Department of Agriculture and Rural Development to jointly promulgate rules establishing field sanitation and food safety standards for the purposes of the new section.

The bill would make other apparently technical amendments, correcting references and terminology.

MCL 324.11701 et al.

ARGUMENTS:

For:

Because certain crops still require hand harvesting, farmers need employees out in the fields for long periods of time. This requires them to provide toilets and handwashing stations for the employees in the field, which is accomplished with portable toilets. Supporters of the bill have expressed that the new language would enable farmers to service the toilets themselves while also adhering to safety standards. This change would allow farm operations to keep up with the work in the field while safely providing and transporting domestic septage waste.

Against:

Opponents of the bill raised the concern that unlicensed farmers would be able to service portable toilets. Current licensure requirements include continuing education regarding domestic septage waste hazards, which are paramount for food safety. The bill would not require farm operations to have a license to service their portable toilets.

Concern was also raised regarding the transporting or hauling of portable toilets on farms. The bill does not require a farm operation to empty a portable toilet before it is moved, so tipping and spillage could occur. Opponents suggested that a requirement to empty or put a cap on the portable toilet prior to transport be added to the bill.

POSITIONS:

A representative of the Michigan Farm Bureau testified in support of the bill (5-24-17) and indicated support for the bill. (6-14-17)

Representatives of the Michigan Environmental Council testified in opposition to the bill. (6-14-17)

Representatives of the Michigan Septic Tank Association testified in opposition to the bill. (5-24-17 and 6-14-17)

A representative of the Michigan Department of Agriculture and Rural Development and a representative of the Michigan Department of Environmental Quality testified with no position on the bill. (5-24-17)

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