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BILL ANALYSIS



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Senate Bill 1495 (as introduced 9-16-08)
Sponsor: Senator Patricia L. Birkholz
Committee: Natural Resources and Environmental Affairs

Date Completed: 9-17-08

CONTENT

The bill would add Part 50 (On-Site Wastewater Treatment Systems) to the Natural Resources and Environmental Protection Act to do the following:

- **Require the inspection of certain on-site wastewater treatment systems every 10 years, beginning January 1, 2010.**
- **Prescribe an inspector's duties in inspecting a conventional system, including preparing an inspection report and submitting a copy to the system's owner and the local health department.**
- **Require an individual to be certified by the Department of Environmental Quality (DEQ) in order to inspect a system, beginning January 1, 2010.**
- **Provide that individuals who were qualified to inspect conventional systems before January 1, 2010, would be considered certified.**
- **Prohibit the installation of an alternative system that was not approved by the DEQ, beginning January 1, 2010.**
- **Prohibit the installation of an alternative system without a permit from the local health department.**
- **Authorize the DEQ to collaborate with interested organizations in reviewing, approving, and developing educational materials regarding conventional system maintenance.**
- **Create the On-Site Wastewater Treatment System Advisory Council and prescribe its duties.**
- **Create the Alternative System Technical Advisory Committee to**

recommend to the DEQ guidance documents for the use of alternative system technologies.

General Inspection Provisions

Under the bill, if a person entered into a contract for the performance of an inspection of a conventional system or an alternative system, the person would have to contract for that inspection with a certified inspector (i.e., an employee of an authorized local health department or other individual certified in accordance with Part 50 to conduct inspections of conventional and/or alternative systems).

("Conventional system" would mean an on-site wastewater treatment system for treating sanitary sewage that uses a watertight septic tank with a maximum volume of 6,000 gallons, or in which the flow from the system is a maximum of 10,000 gallons per day, and with nonuniform distribution of effluent to subsurface soil. "Alternative system" would mean an on-site wastewater treatment system that is not a conventional system and provides for an equivalent or better degree of protection for public health and the environment, through uniform distribution of effluent to the final disposal system or enhanced treatment before final disposal, or a combination of these methods.

"On-site wastewater treatment system" would mean a system relying on natural process or mechanical components to collect, treat, and discharge or reclaim wastewater from one or more dwellings or

buildings without the use of a sewerage system, including individual systems, community systems, and commercial systems that use subsurface dispersal. "Sanitary sewage" would mean water and contaminants discharged from sanitary conveniences, including bathroom, kitchen, and household laundry fixture of dwellings, office buildings, industrial plants, commercial buildings, and institutions. The term would not include commercial laundry wastes and wastes from industrial and commercial processes.)

Beginning January 1, 2010, the owner of the following on-site wastewater treatment systems would have to obtain an inspection of the systems by an inspector at least every 10 years:

- A conventional system that was permitted for use by a local health department on or after January 1, 2010.
- A conventional system that a local health department determined posed a threat to public health or safety.
- A conventional system inspected on or after January 1, 2010.
- An alternative system that was permitted for use by a local health department before January 1, 2010.

Conventional System Inspections

In conducting an inspection of a conventional system, an inspector would have to do all of the following:

- Locate, expose, open, and inspect the septic tank associated with the system.
- Observe the surrounding area looking for surface drainage problems or evidence of a drain field malfunction.
- Check for locations of an illicit discharge, such as to a waterway, wetland, ditch, or subsurface drain.
- Locate the drain field.
- Assess whether the system was exhibiting evidence of backup of sewage into a structure, evidence of a discharge of effluent onto the ground or into a water body, a liquid level in the septic tank that was above the outlet, or a structural failure of the septic tank.

In consultation with the On-Site Wastewater Treatment System Advisory Council, the DEQ would have to develop and make available on its website an inspection report

form for use in documenting the results of an inspection of a conventional system.

An inspector who conducted an inspection of a conventional system would have to prepare an inspection report describing the results. The inspector would have to give a copy to the system's owner and the local health department with jurisdiction over the location of the system.

Local health departments would have to collaborate on establishing compatible formats for maintaining records of inspection reports.

Inspector Certification

Except as otherwise provided, beginning January 1, 2010, an individual could not conduct an inspection of a conventional or alternative system unless he or she had been certified by a local health department, the DEQ, or an organization approved by the DEQ to conduct inspections of conventional and/or alternative systems. The DEQ would have to approve an organization that provided certification for inspectors if it determined that the organization required minimum levels of education and experience in order to conduct the inspections.

A person who was determined to be qualified to conduct inspections of conventional systems by a local health department before January 1, 2010, would be considered certified under Part 50.

Alternative System Approval & Permit

Beginning January 1, 2010, a person could not install an alternative system unless the DEQ had approved that type of alternative system for use in Michigan.

Upon application, the DEQ would have to review and approve or disapprove the use of a particular type of alternative system in Michigan. In reviewing applications, the Department would have to consider relevant guidance documents prepared by the Technical Advisory Committee. The Department could charge a fee for the review of applications.

If the Department approved the use of an alternative system, it would have to require compliance with local sanitary codes and identify the appropriate characteristic soils,

site conditions, and operating conditions in which the system could be used. The DEQ also would have to determine the frequency of inspections that were required of the system. Inspections would have to be conducted by certified inspectors.

Unless a person had obtained a groundwater discharge permit under Part 31 (Water Resources Protection) for the use of an alternative system, he or she could not install an alternative system unless he or she had received a permit from the local health department in which the system was proposed to be located. If a local health department administered an alternative system permit program within its jurisdiction, it would have to approve the installation of an alternative system if all of the following conditions were met:

- The DEQ had approved the system for use.
- The soils, site conditions, and operating conditions at the location were appropriate for the use of the system as established by the DEQ.
- The system would be subject to inspections by an inspector certified to inspect alternative systems or the DEQ in accordance with Department requirements.

Educational Materials

The DEQ could collaborate with interested organizations such as the Michigan 4-H Youth Conservation Council and the Michigan State University Extension in reviewing existing educational materials and approving or developing additional educational materials, including a multimedia educational campaign, regarding the proper maintenance of conventional systems and the consequences to public health and the environment from the failure to maintain them properly. The DEQ could make these materials available for copying and distribution to owners of conventional systems and to septage waste servicers and inspectors. The DEQ also would have to make the materials available on its website.

The DEQ could identify specifically one or more sets of educational materials that inspectors could distribute when they conducted inspections under Part 50.

Advisory Council

The bill would create the On-Site Wastewater Treatment System Advisory Council within the DEQ. Within one year after the bill's effective date, the Council would have to review and make recommendations on the establishment and funding for a statewide database to document the locations of on-site wastewater treatment systems and problems associated with them that could affect adversely the waters of the State.

The Council also would have to do all of the following:

- Study and make recommendations for a statewide sewage code.
- Study and make recommendations for a certification program for inspectors.
- Study and make recommendations for additional regulations to improve water quality related to the use of on-site wastewater treatment systems.

The Council would have to consist of members appointed by the Senate Majority Leader, the Speaker of the House, and the Governor. The Senate Majority Leader would have to appoint the following:

- A local health department representative who was involved directly in daily inspections and site visits.
- A director of environmental health in a local health department.
- A licensed professional engineer who was involved in designing decentralized wastewater treatment facilities.
- An engineer or soil scientist staff member from a college or university.

The Speaker of the House would have to appoint the following:

- A DEQ-certified operator of decentralized wastewater systems.
- A contractor who installed decentralized wastewater systems.
- A manufacturer's representative or equipment distributor of components used commonly in decentralized wastewater treatment systems.
- A representative of a licensed residential home builders organization.

The Governor would have to appoint the following:

- A representative of a licensed real estate agents organization.
- A resident of a residential community served by a community decentralized wastewater treatment facility.
- A representative of a local unit of government.
- A representative of an environmental or conservation organization.

The members first appointed to the Council would have to be appointed within 60 days after the bill took effect. Council members would serve for terms of four years, or until a successor was appointed. A vacancy would have to be filled for the unexpired term in the same manner as the original appointment. A member could be removed for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The DEQ would have to call the Council's first meeting. At that meeting, the Council would have to elect from among its members a chairperson and other officers as it considered necessary or appropriate. After the first meeting, the Council would have to meet at least quarterly, or more frequently at the call of the chairperson or if requested by at least five members.

The Council would be subject to the Open Meetings Act and the Freedom of Information Act.

Council members would serve without compensation but could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as Council members.

Technical Advisory Committee

The bill would create the Alternative System Technical Advisory Committee within the DEQ. The Committee would have to prepare and recommend to the DEQ guidance documents for the use of generic alternative system technologies.

The Committee would have to consist of the following members:

- A representative of a local health department who was involved directly in daily inspections and site visits and a director of environmental health in a local

health department, both appointed by the Senate Majority Leader.

- A licensed professional engineer who was involved in designing decentralized wastewater treatment facilities and an engineer or soil scientist staff member from a college or university, both appointed by the Speaker of the House.
- A DEQ-certified operator of decentralized wastewater systems, appointed by the Governor.
- A contractor who installed decentralized wastewater systems, appointed by the Governor.
- A manufacturer's representative or equipment distributor of components commonly used in decentralized wastewater treatment systems, appointed by the Governor.
- A DEQ representative.

The members first appointed to the Technical Committee would have to be appointed within 60 days after the bill took effect. Members would serve for terms of four years or until a successor was appointed. A vacancy would have to be filled for the unexpired term in the same manner as the original appointment.

A member could be removed for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The DEQ would have to call the first meeting of the Technical Committee. At that meeting, the Committee would have to elect from among its members a chairperson and other officers as it considered necessary or appropriate. After the first meeting, the Committee would have to meet at least quarterly, or more frequently at the call of the chairperson or if requested by at least four members.

The Committee would be subject to the Open Meetings Act and the Freedom of Information Act.

Committee members would serve without compensation, but could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as Technical Committee members.

Proposed MCL 324.5001-324.5009

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would likely result in a relatively minor increase in costs related to the required inspection process that would be established. Local public health departments would be required either to conduct the inspections of on-site wastewater treatment systems first-hand, or alternatively, to certify outside individuals or organizations to complete these tasks. Accordingly, the various local public health departments would see an increased administrative burden, and likely, increased costs. The State also could be responsible for increased costs, to the extent that local public health departments receive funding from the Department of Community Health budget.

The bill would have an indeterminate fiscal impact on the Department of Environmental Quality. It would allow the DEQ to charge a fee for the review of applications for installation of alternative on-site wastewater treatment systems. The DEQ also would incur costs for the certification of individuals to conduct inspections or the approval of other organizations to certify inspectors, as well as for providing support to the Advisory Council and Technical Advisory Committee and working with organizations to publish educational materials for inspectors.

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