

Legislative Analysis



SEPTAGE WASTE RECEIVING FACILITIES PROVIDED BY LOCAL GOVERNMENTAL UNITS

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House Bill 4578

Sponsor: Rep. Ken Goike

Committee: Natural Resources, Tourism, and Outdoor Recreation

Complete to 9-12-11

A REVISED SUMMARY OF HOUSE BILL 4578 AS INTRODUCED 4-21-11

Currently, if a governmental unit requires that all septage waste collected be disposed of in a receiving facility or prohibits septage waste from being applied to land, the unit must make a receiving facility available that can lawfully accept all septage waste generated within the unit that cannot lawfully be applied to land.

House Bill 4578 would amend Part 117 (Septage Waste Services) of the Natural Resources and Environmental Protection Act (NREPA) to require receiving facilities provided by a governmental unit to meet **all** of the following requirements:

- 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. (Only the language in italics is new in this provision.)
- 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

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.

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.

State Law on Septage Disposal

Under Section 324.11708 in NREPA, with some exceptions, a person engaged in "servicing" (removing, transporting, or disposing of) septage waste in a receiving facility service area must dispose of the septage waste at that receiving facility or any other receiving facility within whose service area the person is engaged in servicing. As mentioned earlier, NREPA 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, the geographic service area of a receiving facility shall not extend more than 25 radial miles from the receiving facility. This means, according to the Department

of Environmental Quality, that "Part 117 requires the discharge of domestic septage at authorized wastewater treatment plants, referred to as septage waste receiving facilities, if that septage is pumped from a location within the established service area of a given facility If a septage waste receiving facility is not available, then domestic septage can be land applied at approved sites."

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■ 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.