



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bills 503 and 504 (as introduced 5-15-07)  
Sponsor: Senator Jim Barcia (S.B. 503)  
Senator Gerald Van Woerkom (S.B. 504)  
Committee: Agriculture

Date Completed: 5-16-07

### **CONTENT**

**Senate Bill 503** would add Part 86 (Animal Waste Handlers) to the Natural Resources and Environmental Protection Act (NREPA) to require a commercial handler of animal waste to be licensed or certified, and require a \$100 annual fee for licensure or certification.

**Senate Bill 504** would amend several parts of NREPA to do the following:

- Provide that an agricultural storm water discharge from a Michigan Agriculture Environmental Assurance Program (MAEAP)-verified farm would not be considered a violation of Part 31 (Water Resources Protection).
- Indicate that a MAEAP-verified farm would not be considered to have caused an impairment of the State's natural resources unless the Director of the Department of Environmental Quality (DEQ) determined conclusively that the farm or farm operation had caused a receiving water body to exceed water quality standards under Part 31.
- Require an agricultural feeding operation (AFO) to obtain a permit to discharge effluent into the waters of the State if it were more than five times the minimum size for a large concentrated animal feeding operation (CAFO), if it were a large CAFO that was not MAEAP-verified, or if it had a discharge (other than an agricultural storm water discharge)

in violation of State water quality standards.

- Prohibit the DEQ from reissuing a revoked permit or issuing a new permit to the owner or operator of a large CAFO that had violated Part 31, unless the permit prohibited any cumulative expansion of the size of the CAFO for three years; required the owner or operator to obtain a mechanism of financial assurance at least equal to \$100,000 to be used by the DEQ for remediation in the event of a discharge; and required annual water testing and soil testing.
- Require that, in establishing priority lists for sewage treatment and storm water treatment projects, priority be given to efforts that supported MAEAP-verified farms.
- Require that projects at MAEAP-verified farms be given priority when expenditures from the Agricultural 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, "MAEAP-verified farm" would mean a farm or farm operation that had been verified under NREPA as being in compliance with the conservation practices required under the Michigan Agriculture Environmental Assurance Program.)

The two bills are tie-barred to each other.

## **Senate Bill 503**

### License or Certification

Within one year of the bill's effective date, the Michigan Department of Agriculture (MDA) would have to promulgate rules for the licensure or certification of commercial animal waste 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 the 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 animal waste 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 animal waste 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.

A person who was certified by the Michigan Custom Manure Applicators 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 of certification.

### License or Certification Fee

The fee for a commercial animal waste handler license or certification would be \$100 per year. If an annual fee were paid for a commercial animal waste 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 animal waste 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.

The MDA would have to assess interest on all commercial animal waste 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 of a person 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 animal waste handler license or certification.

Fees and interest collected under the bill would have to be deposited into the Agricultural 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, determined that the person violated Part 86 or rules promulgated under it.

A person who violated Part 86 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. (Under Senate Bill 504, the term 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 post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.)

"Commercial animal waste handler" would mean a person who, for consideration, 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.

### **Senate Bill 504**

#### Storm Water Discharge

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.

Under the bill, an agricultural storm water discharge would not be considered a violation of Part 31 or the rules promulgated under the part.

("Agricultural storm water discharge" would mean a precipitation-related discharge from a MAEAP-verified farm that, at the time of discharge, was managed in accordance with the site-specific nutrient management plan approved under that verification.)

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.

## Required Permit

A permit granted under Part 31 requires a permittee to meet the effluent requirements that the DEQ considers necessary to prevent unlawful pollution and to assure compliance with applicable Federal law and regulations.

The bill would require an AFO to obtain a permit under that part under any of the following circumstances:

- 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 discharge, other than an agricultural storm water discharge, of pollutants into the waters of the State in violation of State water quality standards.

As a condition of a permit issued under those provisions, the DEQ would have to require that the permittee prepare and implement a site-specific nutrient management plan to assure that water quality standards were met.

(Under the bill, "site-specific nutrient plan" would mean a site-specific conservation plan that represents a grouping of conservation practices and management activities that, when implemented as a part of a conservation system, will help to ensure that both production and natural resources goals are achieved; addresses soil erosion, manure, and organic byproducts and their potential impact on water quality; and is designed to assist livestock producers in meeting all applicable local, tribal, State and Federal water quality goals and regulations.)

## Reissuing Permit

Under Part 31, if the DEQ finds that the terms of a permit have been, are being, or may be violated, it may modify, suspend, or revoke the permit, or may grant the permittee a reasonable period of time in which to comply with the permit. The DEQ may reissue a revoked permit if the Department is shown that the permittee has corrected the violation.

Under the bill, if the owner or operator of a large CAFO were convicted of a violation or found responsible for a civil violation of the part, the DEQ could not reissue a permit or

issue a new permit to that owner or operator unless both of the following conditions were met:

- The permit prohibited the expansion of the AFO or any new AFO that, cumulatively, would exceed the animal production capacity of the AFO on the date of the violation, for a period of three years after the date of the court action.
- The permit applicant had complied fully with any requirements of the court and was in compliance with Part 31 and any rules promulgated under it.

In addition, the reissued or new permit would have to require all of the following:

- That the permittee annually test the water quality of ambient waters in the vicinity of the AFO to assure compliance with State water quality standards and report that information to the DEQ.
- That the permittee annually test soil samples at the AFO for phosphorus and report that information to the DEQ.
- That the permittee agree to discontinue manure applications at the AFO if the Bray P1 soil test were in excess of 150 parts per million until nutrient use by crops reduced phosphorus test levels less than 150 parts per million.
- That the permittee obtain a bond or other mechanism of financial assurance in an amount of at least \$100,000 that the DEQ could use for remediation in the event of a discharge.

The test results would be exempt from the Freedom of Information Act unless the DEQ determined that water quality standards in ambient waters in the vicinity of the AFO had been caused by the large CAFO.

"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.

### Civil Fines

Part 31 requires a civil fine or other award ordered paid under the part to be payable to the State of Michigan and credited to the General Fund. Under the bill, if the violation occurred at an AFO, the fine would have to be credited to the Agriculture Pollution Prevention Fund.

### 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 under the strategic water quality initiative fund. The priority lists must be based on projects 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.

### MAEAP-Verified Farms

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 that met all of the following requirements:

- Were recommended by the Michigan Agriculture Pollution Prevention

- Implementation Plan signed by the DEQ Director and the MDA Director in 1998.
- Consisted of education, on-farm risk assessment, and third party verification by the MDA.
- Focused on livestock, cropping, or farmstead systems.
- Were designed to help farms and farm operations voluntarily prevent or minimize agricultural pollution risks.
- For operations dealing primarily with livestock, required compliance with a site-specific nutrient management plan.

Part 32 permits the MDA to provide for conservation practice verification as part of a conservation program established under the part. The bill 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, in order for conservation practice verification to be provided for a large CAFO, the MDA would have to conduct an annual on-site inspection of the farm or farm operation and determine that it complied with generally accepted agricultural and management practices under the Right to Farm Act relating to siting, odor, and manure management.

The bill provides that notwithstanding any other provision of NREPA or a rule promulgated under the 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 the part.

## Agricultural Pollution Prevention Fund

Part 82 provides for an Agricultural 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 grants 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 an MAEAP-verified farm was located within the project area.

## Definitions

Under the bill, "MAEAP-verified large CAFO" would mean a large CAFO that had been verified under Section 8203 and was managed in accordance with generally accepted agricultural and management practices under the Michigan Right to Farm Act, relating to siting, odor, and manure management as determined by the MDA Director.

"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.)

Proposed MCL 324.8601-324.8604  
(S.B. 503)

MCL 324.3101 et al. (S.B. 504)

Legislative Analyst: Curtis Walker

## **FISCAL IMPACT**

### **Senate Bill 503**

The bill would create a licensing or certification requirement for commercial animal waste handlers. According to the Department of Agriculture, the implementation of this program would require \$120,000 and 1.25 FTE positions. The licensing/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.

The bill would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of the proposed offense. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

#### **Senate Bill 504**

The bill would have an indeterminate impact on State government related to administrative costs, and fine and permit revenue. Civil fine revenue for violations that occurred at an animal feeding operation would be credited to the Agriculture Pollution Prevention Fund instead of the General Fund.

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

Fiscal Analyst: Bill Bowerman  
Debra Hollon  
Lindsay Hollander

S0708\503sa

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.